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**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT



COMPLAINT

Complainant, Maher Terminals, LLC ("Maher") by and through the undersigned hereby files this Complaint against The Port Authority of New York and New Jersey ("PANYNJ") alleging violations of the Shipping Act of 1984, *as amended* (46 U.S.C. § 40101 et seq.) (the "Shipping Act").

I. Complainant

A. Complainant Maher is a limited liability company ("LLC") registered in the State of Delaware.

B. Maher's corporate offices are located at 1210 Corbin St., Elizabeth, New Jersey and Maher has facilities located at Elizabeth, New Jersey.

II. Respondent

A. PANYNJ is a body corporate and politic created by Compact between the States of New York and New Jersey and with the consent of the Congress and having offices at 225 Park Avenue South, New York, New York.

B. PANYNJ owns marine terminal facilities in the New York New Jersey area, including in Elizabeth, New Jersey.

III. Jurisdiction

A. PANYNJ is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14).

B. The PANYNJ and Maher are parties to agreement EP-249 filed with the Federal Maritime Commission ("Commission" or "FMC") and designated FMC Agreement No. 201131.

C. The Commission has jurisdiction over this Complaint which is filed pursuant to the Shipping Act, 46 U.S.C. § 41301.

D. The Commission has jurisdiction over this Complaint because PANYNJ is a marine terminal operator within the meaning of the Shipping Act, 46 U.S.C. § 40102(14) and the actions and failures to act of the PANYNJ which are the subject of this Complaint are violations of the Shipping Act.

IV. Statement of Facts and Matters Complained of

PANYNJ's Unlawful Transfer/Change of Control Practices

A. PANYNJ has a practice of requiring payments and other economic consideration from marine terminal operators in order to obtain PANYNJ's consent to transfers of marine

terminal leases and changes in ownership and/or control interests of marine terminal operator tenants.

B. PANYNJ's published policy provides that "after appropriate due diligence has been conducted," the PANYNJ Executive Director "determines that the entity . . . assuming ownership or control of the lease or tenant . . . shall pay to the Port Authority such economic consideration as the Executive Director determines to be appropriate under the circumstances."

C. PANYNJ has required payments of cash and commitments of other economic considerations to obtain PANYNJ's consent to transfers and/or changes of ownership and/or control interests, including approximately \$237 million in such consideration with respect to Port Newark Container Terminal ("PNCT"), New York Container Terminal, Inc. ("NYCT") and Maher.

D. PANYNJ has in other instances consented to transfers and/or changes of ownership and/or control of interests without requiring payment of cash and/or commitments of other economic considerations to obtain PANYNJ's consent to transfers and/or changes of ownership and/or control interests with respect to other PANYNJ marine terminals.

E. PANYNJ has not fairly, uniformly or reasonably observed or enforced its policy of conducting "appropriate due diligence" or requiring "appropriate" consideration with respect to consents granted by PANYNJ to transfers and/or changes of ownership and/or control interests involving PANYNJ marine terminal operator tenants.

F. PANYNJ's practice to require entities assuming ownership or control interests of a lease to pay and/or provide economic consideration in order to obtain PANYNJ's consent to a change in ownership and/or control interests established, observed, and enforced by PANYNJ

unduly prejudices Maher by unjustly overcharging Maher for the benefit received. *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 U.S. 261 (1968).

G. PANYNJ's practice to require entities assuming ownership or control of a lease to pay and/or provide economic consideration in order to obtain PANYNJ's consent to a change in ownership interest and/or control established, observed, and enforced by PANYNJ unjustly and unreasonably requires economic consideration in exchange for consent for reasons unrelated to, and/or for consideration in excess of, the cost of the service provided. *Volkswagenwerk Aktiengesellschaft v. Federal Maritime Commission*, 390 U.S. 261 (1968).

H. PANYNJ's practice to require entities assuming ownership or control of a lease to pay and/or provide economic consideration to obtain PANYNJ's consent to a change in ownership interest and/or control established, observed, and enforced by PANYNJ unduly prejudices Maher by unjustly overcharging Maher as compared to other marine terminal operators. *Ceres Marine Terminal v. Md. Port Admin.*, No. 94-01, 27 S.R.R. 1251 (F.M.C. Oct. 10, 1997); *Ceres Marine Terminal v. Md. Port Admin.*, No. 94-01, 29 S.R.R. 356 (F.M.C. Aug. 15, 2001).

Unreasonable and Discriminatory Actions and Practices with Respect to Ocean Carriers
and Ocean-Carrier-Affiliated Marine Terminals

I. PANYNJ has an unreasonable practice of providing unduly preferential treatment to ocean carriers and ocean-carrier-affiliated marine terminals that has and continues to unduly prejudice Maher.

J. Until approximately on or about October 1, 2009, Mediterranean Shipping Company ("MSC"), an ocean carrier, was Maher's largest customer by container volume at its PANYNJ marine terminal.

K. Prior to on or about October 1, 2009, PNCT had sought unsuccessfully to negotiate an agreement with PANYNJ to expand the PNCT terminal.

L. On or about October 1, 2009, MSC moved its PANYNJ container business from Maher to PNCT.

M. PANYNJ was aware that PNCT did not have sufficient container handling capacity to adequately handle MSC's container volume served by Maher.

N. PANYNJ was aware that MSC's move to PNCT was not feasible in the long term without substantial expansion of PNCT's terminal.

O. Pursuant to PANYNJ's change of control/transfer of ownership interest policy and practice, MSC could not obtain an ownership interest in PCNT without obtaining PANYNJ's consent.

P. PANYNJ was aware that the loss of MSC's business to PNCT would harm Maher.

Q. Following MSC's move to PNCT, PANYNJ announced an agreement with PNCT and MSC to expand the PNCT terminal and provide other concessions to PNCT.

R. The agreement involves PANYNJ granting its consent for MSC's taking an ownership interest in PNCT, PANYNJ lowering PNCT's lease rates, PANYNJ agreeing to a terminal expansion nearly doubling the size of PNCT's terminal, providing preferential chassis storage and extending the lease approximately 20 years in exchange for PNCT investing in the terminal and purportedly guaranteeing, via rent, certain levels of MSC cargo.

S. PANYNJ did not provide the same or comparable expansion opportunities, rate reductions, lease extension, or other preferences to Maher.

T. PANYNJ did not provide for a reduction of Maher's container volume, rent or other obligations under its lease with PANYNJ.

Unreasonable Leasing Practices

U. PANYNJ has a practice of requiring lease provisions in marine terminal leases, lease extensions and/or amendments and modifications, that (i) unreasonably require tenants to provide general releases and/or waivers of claims, including to release PANYNJ from potential violations of the Shipping Act, (ii) require tenants to agree to liquidated damages provisions that are unreasonable, and which are designed to trigger if Shipping Act claims are brought against PANYNJ, and (iii) require lease rate renewal and/or extension provisions that purport to set future lease rates in advance in a manner not reasonably related to the cost of the services provided.

V. Prior to PANYNJ entering into the June 23, 2010, lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001) for the operation of a marine terminal facility located outside the Bayonne bridge (hereinafter the "Global Lease"), PANYNJ unreasonably excluded Maher from consideration as a prospective operator of the marine terminal that is the subject of the Global Lease.

W. PANYNJ has continued its practice of categorically excluding Maher, and other existing container terminal operators, from operating the marine terminal that is the subject of Global Lease in the future by excluding existing terminal operators from qualifying as Qualified Transferees under the Global Lease.

Unreasonable and Discriminatory Actions Regarding Capital Expenditure Obligations

X. On July 24, 2008, PANYNJ unreasonably granted to APM the undue preference, effective as of April 1, 2009, which also unduly prejudices Maher, consisting of the deferral until

2017 of APM's leasehold capital expenditure obligations valued at approximately \$50 million dollars that should have been completed by APM, but which were not completed as required.

Y. In addition to consenting to the deferral of the required work, PANYNJ approved APM's use of PANYNJ construction financing, in amounts equal to or exceeding the costs of the deferred mandatory work, for other projects, including but not limited to, a large expansion of APM's container handling capacity.

Unreasonable Refusal to Deal or Negotiate

Z. As of June 23, 2010, PANYNJ entered into a lease agreement with Global Terminal & Container Services, LLC (Lease No. LPJ-001) for the operation of a marine terminal facility (hereinafter the "Global Lease").

AA. Despite Maher's request, prior to entering into the Global Lease PANYNJ unreasonably refused to deal or negotiate with Maher with respect to the letting of the marine terminal facility which is the subject of the Global Lease.

BB. Despite Maher's request for parity, PANYNJ unreasonably refused to deal or negotiate with Maher with respect to the deferral of Maher's leasehold capital expenditure obligations or other financial obligations like the foregoing deferral granted to APM or provide other relief.

CC. PANYNJ's practice to require entities assuming ownership or control of a lease to pay and/or provide unreasonable economic consideration in order to obtain PANYNJ's consent to a change in ownership interest and/or control established, observed, and enforced by PANYNJ constitutes an unreasonable refusal to deal by PANYNJ.

V. Violations of the Shipping Act

A. As a result of the foregoing, PANYNJ violated and continues to violate the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2), 41106(3) and 41106(1) because PANYNJ:

(a) has and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property;

(b) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maher and gave and continues to give an undue or unreasonable preference or advantage with respect to Maersk, APM, MSC, PNCT, NYCT, and Global, and other marine container terminal operators and ocean carriers;

(c) has and continues to unreasonably refuse to deal or negotiate with Maher; and

(d) has and continues to agree with another marine terminal operator or common carrier to boycott and/or unreasonably discriminate in the provision of terminal services to a common carrier.

Count I

B. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to,

PANYNJ's establishment, observation, and enforcement of its practices with respect to the transfer and/or change of ownership and/or control interests.

Count II

C. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to, PANYNJ's establishment, observation, and enforcement of its practices with respect to providing preferential treatment to ocean carriers and ocean-carrier-affiliated marine terminals.

Count III

D. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, with respect to PANYNJ's unreasonable leasing practice of requiring tenants to provide general releases and/or waivers of claims, including to release PANYNJ from potential violations of the Shipping Act, in marine terminal operator leases, lease extensions and/or amendments and modifications thereto.

Count IV

E. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, with respect to PANYNJ's

unreasonable leasing practice of requiring tenants to agree to liquidated damages provisions that are unreasonable, and which are designed to trigger if Shipping Act claims are brought against PANYNJ, in marine terminal operator leases, lease extensions and/or amendments and modifications thereto.

Count V

F. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, with respect to PANYNJ's unreasonable leasing practice of requiring lease rate renewal and/or extension provisions that purport to set future lease rates in advance in a manner not reasonably related to the cost of the services provided, in marine terminal operator leases, lease extensions and/or amendments and modifications thereto.

Count VI

G. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to, PANYNJ's practice of unreasonably excluding Maher and existing tenants for consideration as a leasee, operator or Qualified Transferee of the marine terminal that is the subject of the Global Lease.

Count VII

H. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property, including but not limited to, PANYNJ's granting a deferral of marine terminal operator leasehold obligations, including but not limited to capital expenditures, and agreeing to providing financing allotted for mandatory projects for terminal capacity expansion projects.

Count VIII

I. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by imposing on Maher unduly and unreasonably more prejudicial requirements for payments and economic considerations for PANYNJ consent to transfer and/or change of ownership and/or control interests than required of Maersk, APM, PNCT, NYCT, and other marine terminal operators, and by providing undue preferences to other marine terminal operators.

Count IX

J. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by granting and continuing to grant to APM unduly and unreasonably preferential treatment than provided to Maher and which prejudice Maher, including but not limited to, PANYNJ granting APM a deferral until 2017 of required leasehold capital expenditures, while PANYNJ prejudices Maher

by requiring Maher to fulfill leasehold capital expenditure obligations and refusing to provide Maher deferral of its obligations or other relief.

Count X

K. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violated and continue to violate the foregoing provisions of the Shipping Act by granting and continuing to grant to APM unduly and unreasonably preferential treatment than provided to Maher and which prejudice Maher, including but not limited to, PANYNJ approving APM's use of PANYNJ construction financing allocated for mandatory projects for other projects, including but not limited to an expansion of APM's container handling capacity while not providing additional PANYNJ financing for other Maher projects, including Maher capacity expansion.

Count XI

L. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violate the foregoing provisions of the Shipping Act by unreasonably refusing to deal or negotiate with respect to the deferral of Maher's leasehold capital expenditure obligations or other financial obligations like the foregoing deferral granted to APM.

Count XII

M. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violate the foregoing provisions of the Shipping Act by unreasonably refusing to deal or negotiate with respect to the leasing and operation of the marine terminal which is the subject of the Global Lease.

Count XIII

N. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act violate the foregoing provisions of the Shipping Act by unreasonably refusing to deal or negotiate with respect to PANYNJ's practice to condition PANYNJ's consent to a change in ownership interest and/or control on requiring entities assuming ownership or control of a lease to pay and/or provide unreasonable economic consideration.

Count XIV

O. As set forth above and incorporated fully herein, PANYNJ's actions and failures to act with respect to PANYNJ's agreements with PNCT, MSC and other ocean carriers and carrier affiliated marine terminals violate the foregoing provisions of the Shipping Act by agreeing and continuing to agree with other marine terminal operators and common carriers to unreasonably discriminate in the provision of terminal services to common carriers.

The Lack of Valid Transportation Purposes

P. There is no valid transportation purpose for the foregoing undue or unreasonable prejudices against Maher and undue or unreasonable preferences advantaging other entities.

Q. If there is a valid transportation purpose, the discriminatory actions of PANYNJ exceed what is necessary to achieve the purpose.

VI. Injury to Maher

A. As a result of PANYNJ's aforementioned violations of the Shipping Act, Maher has sustained and continues to sustain injuries and damages, including but not limited to higher costs and other undue and unreasonable payments, economic considerations, restrictions on transfers and/or changes in ownership or control interests, lost business, forgone business, and

additional obligations not required of Maersk, APM, PNCT, NYCT, and other marine terminals, and other damages amounting to a sum of millions of dollars to be determined more precisely at hearing.

VII. Prayer for Relief

A. With respect to the required statement regarding alternative dispute resolution procedures, PANYNJ and Maher have been litigating other disputes since August 2007 when PANYNJ first sued Maher and Maher's repeated efforts at alternative dispute resolution have continued but have not succeeded. Therefore, Maher has not consulted with the Commission's dispute resolution specialist.

B. WHEREFORE, Complainant Maher prays that Respondent PANYNJ be required to answer the charges in this Complaint; that after investigation and due hearing in Washington, D.C. that an order be made commanding PANYNJ to cease and desist from the aforementioned violations of the Shipping Act, providing to Maher the undue preferences provided to other marine terminal operators, relieving Maher of the undue prejudices and unreasonable requirements imposed by PANYNJ, putting in force such practices as the Commission determines to be lawful and reasonable; and that an order be made commanding PANYNJ to pay Maher reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees, and any other damages to be determined; and that the Commission order any such other relief as it determines appropriate.

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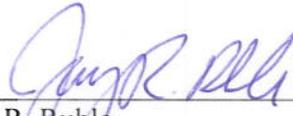
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Execution Follows

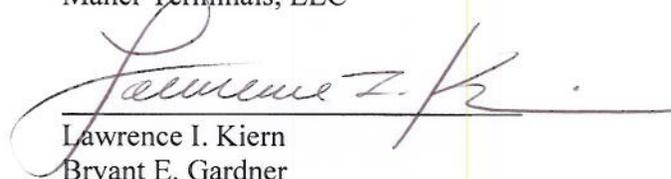
Date: March 30, 2012

Respectfully submitted,



Jay R. Ruble
General Counsel and Secretary
Maher Terminals, LLC

3/29/2012



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VERIFICATION

State of New Jersey

County of Union, ss:

Jay R. Ruble, being first duly sworn on oath deposes and says that he is General Counsel and Secretary of Complainant Maher Terminals, LLC, and is the person who signed the foregoing complaint; that he has read the complaint and that the facts stated therein, upon information received from others, affiant believes to be true.

Subscribed and sworn to before me, a notary public in and for the State of New Jersey

County of Somerset this 29th day March, 2012.

MILAGROS GALARZA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/19/2014
Registered in Somerset County

[Seal] _____

(Notary Public)

My Commission expires 8/19/2014