

the City of Homer and leases property to The Auction Block Company. Respondents deny any other allegations in Paragraph I.

II. Respondents admit that the City of Homer is a municipal corporation, organized under the laws of the State of Alaska; that the City of Homer owns and operates the Port of Homer in Homer, Alaska; that the City Manager is Walt Wrede and the Harbormaster is Bryan Hawkins; and that the principal address of Respondents is 491 East Pioneer Avenue, Homer, Alaska 99603. Respondents deny any other allegations in Paragraph II.

III. Respondents admit that the City of Homer operates the Port of Homer and has filed the "Port of Homer Terminal Tariff No. 600 filed under ATFI Rules" which has been adopted and ratified by the Homer City Council. Respondents deny any other allegations in Paragraph III.

IV. Respondents admit that the State of Alaska levies a fish tax and shares revenue from that tax with municipalities, including Respondent City of Homer; that the City leases property in its harbor to Icicle Seafoods; that Icicle Seafoods formerly operated a fish processing plant on that property; that the Icicle Seafoods fish processing plant burned in 1998 and has not been rebuilt; that some of the fish that are delivered to Icicle Seafoods in Homer are transported to Seward for processing; that Complainant leases property from the City in the City Harbor; and that Complainant purchases fish for resale at its leased property in the City Harbor. Respondents deny any other allegations in Paragraph IV.

V. Respondents deny the allegations in Paragraph V, p. 3, lines 3 through 28. Respondents aver that the terms of the Terminal Tariff and the lease to

Icicle Seafoods speak for themselves, and that no response to allegations regarding the terms of those documents is required. Respondents lack knowledge or information from which to form a belief as to the accuracy of the costs incurred by Complainants as alleged in Paragraph V from p. 5, line 11 through p. 6, line 37, and therefore deny the same. Respondents deny any other allegations in Paragraph V, Sections A through F.

VI. (Second Paragraph V beginning at p. 7, line 10): Respondents deny the allegations in the second Paragraph V beginning at p. 7, lines 10 through 27.

VII. Respondents deny the allegations in Paragraph VI.

VIII. Respondents deny the allegations in Paragraph VII.

AFFIRMATIVE DEFENSES

I. The Commission lacks jurisdiction of the subject matter of Complainants' Second Amended Complaint.

II. Complainants' Second Amended Complaint fails to state a claim for which relief can be granted.

III. Reparations for the offenses alleged by Complainants are barred by the statute of limitations.

WHEREFORE, Respondents prays that the Federal Maritime Commission:

I. Dismiss Complainants' Second Amended Complaint with prejudice; and

II. Grant Respondents any other and further relief that the Commission deems appropriate.

DATED this 20th day of June, 2012.

BIRCH HORTON BITTNER & CHEROT
Attorneys for Respondents

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of June, 2012, a true and correct copy of the foregoing was served on the following in the manner indicated:

Mr. Steven J. Shamburek
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- U.S. Mail
 Facsimile
 Electronic Delivery
 Hand Delivery

BIRCH HORTON BITTNER & CHEROT

By: 