

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**Docket No. 14-06**

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**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ  
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and  
SYLVIA ROBLEDO d/b/a 81<sup>st</sup> DOLPHIN PARKING**

**Complainants**

**v.**

**THE BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES and THE GALVESTON PORT FACILITIES  
CORPORATION**

**Respondents**

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**FIRST AMENDED VERIFIED COMPLAINT**

**COME NOW** Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking; Lighthouse Parking, Inc.; and Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking (collectively “Complainants”), by and through the undersigned, and hereby file this First Amended Verified Complaint against the Board of Trustees of the Galveston Wharves and the Galveston Port Facilities Corporation (collectively “Respondents”), pursuant to 46 U.S.C. § 41301(a), alleging violations of the Shipping Act of 1984, as amended (46 U.S.C. § 40101 et seq.) (the “Shipping Act”).

Complainants have been and are being charged “Access Fees” under Respondents’ Tariff that are excessive and not reasonably related to the value of services rendered to Complainants. Through application of such charges, Complainants have been forced to subsidize Respondents’ costs associated with services provided to other users of the same port facilities. Such other users therefore receive greater levels of service and benefit from the Respondents’ services at a lower cost. Respondents have refused to negotiate the amounts of money they seek to recover from Complainants by charging them increased Access Fees under their now *modified* Amended Tariff.

Complainants therefore seek a cease and desist order and reparations for injuries and damages caused to them by the Respondents’ violations of the Shipping Act, 46 U.S.C. §§ 41102(c), 41106(2) and (3), including (a) subjecting Complainants to an undue or unreasonable prejudice or disadvantage; (b) granting an undue preference or advantage with respect to other users of its facilities; (c) failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property; and (d) unreasonably refusing to deal or negotiate with Complainants regarding modification of the unreasonable rates and charges.

### **I. Complainants**

A. Complainant Santa Fe Discount Cruise Parking, Inc. d/b/a EZ Cruise Parking (“EZ Cruise”) is a for-profit corporation organized and existing under the laws of the State of Texas, incorporated on December 2, 2003. EZ Cruise owns and operates a private parking lot facility located at 2727 Santa Fe Pl., Galveston, TX 77550, approximately five (5) blocks from the Port of Galveston Cruise Terminal. At maximum capacity, EZ Cruise’s lot can accommodate approximately 413 vehicles. EZ Cruise’s business model is principally focused upon providing cruise passengers with convenient and secure surface lot storage for their vehicles while they are

away. EZ Cruise also owns and operates (with commercially certified drivers where necessary) eight (8) shuttle buses to transport passengers with their luggage directly to and from the terminal, allowing them to stay with their luggage, keep their families together, and avoid traffic at the port facility entrance otherwise associated with unloading baggage from their cars themselves prior to parking.

B. Complainant Lighthouse Parking, Inc. (“Lighthouse”), is a for-profit corporation organized and existing under the laws of the State of Texas, incorporated on May 27, 2005. Lighthouse owns and operates a private fully covered parking lot facility located at 309 29th St, Galveston, TX. 77550, approximately seven (7) blocks from the Port of Galveston Cruise Terminal. At maximum capacity, Lighthouse’s lot can accommodate approximately 230 vehicles. Lighthouse’s business model is principally focused upon providing cruise passengers with convenient, secure, and covered storage for their vehicles while they are away. Lighthouse also owns and operates (with commercially certified drivers where necessary) four (4) shuttle buses to transport passengers with their luggage directly to and from the terminal, allowing them to stay with their luggage, keep their families together, and avoid traffic at the port facility entrance otherwise associated with unloading baggage from their cars themselves prior to parking.

C. Sylvia Robledo d/b/a 81<sup>st</sup> Dolphin Parking (“81<sup>st</sup> Dolphin”), is a natural person who is a citizen and resident of the State of Texas. 81<sup>st</sup> Dolphin commenced doing business in May 2009. In doing business as 81<sup>st</sup> Dolphin, Ms. Robledo individually leases and operates a private parking lot facility located at 2801 Market St. Galveston, TX 77550, approximately six (6) blocks from the Port of Galveston Cruise Terminal. At maximum capacity, 81<sup>st</sup> Dolphin’s lot can accommodate approximately 135 vehicles. 81<sup>st</sup> Dolphin’s business model is principally focused upon providing cruise passengers with convenient and secure surface lot storage for their

vehicles while they are away. 81<sup>st</sup> Dolphin also leases and operates (with commercially certified drivers where necessary) three (3) shuttle buses to transport passengers with their luggage directly to and from the terminal, allowing them to stay with their luggage, keep their families together, and avoid traffic at the port facility entrance otherwise associated with unloading baggage from their cars themselves prior to parking.

## **II. Respondents**

A. The Board of Trustees of the Galveston Wharves (the “Wharves Board”) have been authorized by the City of Galveston to manage and control the Port of Galveston’s wharf and terminal facilities. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (designating Galveston Wharves as a “separate utility” of the City of Galveston to be managed by the Board of Trustees of the Galveston Wharves). The City of Galveston is a municipality that owns and operates a port, and therefore, the State has accorded the Board of Trustees with the power to “construct, acquire, lease, improve, enlarge, extend, repair, maintain, replace, develop, or operate a port improvement or facility.” TEX. TRANSP. CODE § 54.003(a). In furtherance thereof, the Wharves Board publishes rules, regulations, and tariffs for the Port of Galveston.

B. The Galveston Port Facilities Corporation (“GPFC”) is a nonprofit corporation organized and existing under the laws of the State of Texas, incorporated on June 17, 2002. GPFC is a “local government corporation” charged with assisting the Board of Trustees with its governmental functions. *See* TEX. TRANSP. CODE § 431.101(a). According to its Articles of Incorporation, GPFC is organized and will be operated exclusively for one or more charitable purposes, within the meaning of Section 501(c)(3) of the U.S. Internal Revenue Code of 1986, as amended. Upon information and belief, GPFC is primarily utilized by the Wharves Board for purposes of operating the Texas Cruise Ship Terminal at Piers 25 & 27 (the “Cruise Terminal”), and Cruise Terminal’s parking lots “A” Lot “A” (located off Old Port Industrial Road behind the

entrance at 33<sup>rd</sup> Street) and Lot “B” (located off 33<sup>rd</sup> Street across Harborside) in order to keep associated revenues and expenses separate from those related to other services provided by the Port of Galveston.

C. GPFC, through development of real property held by the Port of Galveston (i.e., Lot “A”) and purchase of privately owned and operated parking lots virtually identical to those operated by Complainants (i.e., Lot “B”), owns and operates their own parking lot facilities in direct competition with Complainants. In total, Respondents parking lots reportedly have an approximate 2,567 vehicle capacity. Respondents’ registered address is 123 Rosenberg Avenue, 8<sup>th</sup> Floor, Galveston, Texas 77550. The Wharves Board and GPFC, individually and/or collectively, constitute marine terminal operators that control and/or furnish wharf, dock, and other marine terminal facilities and services at the Port of Galveston, in connection with common carriers engaged in U.S. coastwise and foreign commerce.

### **III. Jurisdiction**

A. This action is brought pursuant to the Shipping Act of 1984, as amended, 46 U.S.C. § 40101 *et seq.* This Honorable Commission has jurisdiction over this Complaint because the Respondents are marine terminal operators within the meaning of the Shipping Act, 46 U.S.C. § 40102(14) and the actions of Respondents, which are the subject of this Complaint, constitute violations of the Shipping Act. The Complainants respectfully request from the Federal Maritime Commission (“FMC”) reparations for injuries caused by Respondents’ violations of Sections 41102(c) and 41106(2) and (3) of the Shipping Act of 1984, for their unreasonable tariffs, unjust practices, undue prejudice and otherwise unreasonable refusal to negotiate with respect to the Complainants.

B. Complainants also seek an order from the Commission directing Respondents to cease and desist from future violations of the Shipping Act of 1984. Respondents' rates, tariffs and practices are irrational, discriminatory, confiscatory, and neither reasonable nor rationally related to the services or benefits provided.

#### **IV. Factual Background**

##### **Complainants' operation in the Port of Galveston**

A. In September 2000, Carnival Cruise Lines' made its inaugural voyage from the Texas Cruise Ship Terminal at Pier 25 in the Port of Galveston. By 2004, Royal Caribbean Cruise Lines' and Celebrity Cruise Lines' were also making regular sailings from the Port of Galveston, and a second terminal was added at Pier 27 to accommodate same (Piers 25 and 27 collectively referred to as the "Cruise Terminal"). In May 2004, the Port of Galveston marked its one millionth passenger to sail from the Cruise Terminal since the beginning of year-round operations in September 2000.

B. Since that time period, Complainants have operated private parking lot businesses from properties in close proximity to the Cruise Terminal,<sup>1</sup> providing cruise passengers with a more economic and convenient alternative to parking within the Port of Galveston facility owned and operated by Respondents. However, one crucial aspect of Complainants' business is their ability to transport cruise passengers and their luggage to and from the Cruise Terminal in shuttle buses, which Complainants own and/or operate themselves. Through complementary transportation service and personnel assisting with luggage, cruise passengers are able to safely park and be dropped off within the Cruise Terminal – and *vice versa* – without encountering traffic associated with accessing the Cruise Terminal's lots through the main entrance.

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<sup>1</sup> Complainants Lighthouse and EZ Cruise commenced operations in 2005, while 81<sup>st</sup> Dolphin opened for business in 2006 and transferred to its current location in May 2009.

C. Specifically, to access the Cruise Terminal's parking lots, cruise passengers are required to drive their vehicles through the main entrance at 22<sup>nd</sup> Street and Harborside, drop off their luggage themselves, then proceed in their vehicle to one of the parking lots (either Lot "A" off Old Port Industrial Road behind the entrance at 33<sup>rd</sup> Street, or Lot "B" located off 33<sup>rd</sup> Street across Harborside), and be shuttled back individually. The Port of Galveston offers a limited number of covered parking spaces (approximately 115), which are on a first come basis.

D. Complainants' shuttle buses are required to enter with all other traffic through the main entrance at 22<sup>nd</sup> Street and Harborside, drop off their customers and luggage at an assigned area on the lower deck, and then proceed out of the facility through either: the gate on 25<sup>th</sup> Street (if leaving from Terminal 1); the gate on 28<sup>th</sup> Street (if leaving from Terminal 2); or, the gate on 33<sup>rd</sup> Street (if 28<sup>th</sup> Street gate is closed). Importantly, Respondents do not permit Complainants' shuttle buses to enter through the "back" gate at the intersection of 33<sup>rd</sup> Street and Old Port Industrial Road as they do their own.

**Wharves Board's Tariff for Off-Port Parking User Access Fees established in 2006.**

E. In August of 2006, the Wharves Board promulgated Tariff Circular No. 6 (Item No. 111 – "Other Licenses and Permits") (hereinafter the "Tariff"), which sets forth fees the Wharves Board charges operators of private parking lots and other companies that drop off and pick up customers at the Cruise Terminal. Essentially, the Tariff sets forth guidelines for "Port Use Permits" for entities like Complainants that desire to use, or have their vehicles and operators enter on, Cruise Terminal property for commercial purposes. To receive a permit, the applicant is required to pay an Application Fee, comply with certain liability and other insurance requirements (including, for example, naming the City of Galveston and Wharves Board as Additional Insureds), pay a Decal Fee, and pay an Access Fee that is either imposed on a per trip basis, or – for operators of off-port parking lots like Complainants – assessed on a per-parking-

space, per-month basis predicated upon the number of potential revenue spaces in their respective lot(s) regardless of whether spaces are used for employee parking, bus storage, or business ventures not associated with the Cruise Terminal.

F. The following is a summary of the Tariff relating to Decal and Access Fees that were put in place at that time:

Category	Decal Fee	Access Fee
Charter Buses, and Commercial passenger vehicles (except buses) with seating capacity of 15 or more persons	\$10.00/ per-decal-per-year	\$50.00/per trip
Commercial passenger vehicles (except buses) with seating capacity of 15 persons or more	\$10.00/ per-decal-per-year	\$20.00/per trip
Commercial passenger vehicles (except buses) with seating capacity of less than 15 persons	\$10.00/ per-decal-per-year	\$10.00/per trip
Limousines with seating capacity of not more than 8 persons	\$10.00/ per-decal-per-year	-
Taxicabs with City of Galveston permits	\$7.50/ per-decal-per-year	-
Off Port Parking Users (i.e., private parking lots)	\$10.00/ per-decal-per-year	\$8.00/per-parking-space-per-month

(Ex. A, Tariff Circular No. 6, Item 111 (5<sup>th</sup> Rev. of pp. 3-F and 3-G), Notes C and D).

G. Specifically, for “Off-Port Parking Users,” the Tariff provided as follows:

Those Off-Port Parking Users, . . . in operation and accessing the Texas Cruise Ship Terminal on Galveston Island®, or the Texas Cruise Ship Terminal at Pier 27, collectively the Cruise Ship Terminal Complex, as of August 15, 2006 *shall*, in lieu of the Access/Trip fee, be subject to a monthly Access Fee equal to the initial amount of \$8.00 per parking space located in the Off-Port Parking User’s parking facility, with number of billable parking spaces to be confirmed periodically by the Galveston Wharves. . . . Commencing on August 15, 2011, the monthly Access Fee will be adjusted on that date and on each anniversary of such date . . . to reflect increases in the Consumer Price Index for All Urban Consumers for Houston-Galveston-Brazoria, Texas . . . published by the Bureau of Labor Statistics of the United States Department of Labor. . . .

*See id.*, Note D (emphasis added).

H. Despite expressly providing the methodology for determining annual increases to monthly Access Fees charged to Off-Port Parking Users based on consumer price index (C.P.I.) growth, the Wharves Board failed to implement same in 2011, 2012, or 2013.

**Interim Report from Access Fee Study Team on April 22, 2013**

I. On April 22, 2013, the Wharves Board considered an interim report from an internal study team – made up entirely of in-house personnel – assembled to conduct research on how other ports, including local area airports, handle the issue of assessing access fees to offsite operators, specifically in regard to the Port of Galveston’s Access Fees that were (or were not) being charged to different private parking lot owners, hotels, and shuttle buses who enter into the Cruise Terminal. (Ex. B, Minutes of Regular Monthly Meeting, April 22, 2013, pp. 7-8). In the meeting, Respondents’ own internal team informed them that, although there was a policy for access fees in place (contained in the Tariff), *procedures still needed to be implemented for purposes of its enforcement.* *Id.*, at pg. 7 (emphasis added). Further, it was also noted that “[t]he scope isn’t really just for those who operate parking interests, but also those who operate limousines, buses, taxis and other shuttle services.” *Id.* (emphasis added).

J. Further, the interim report indicated that other ports and the airports in the area charge offsite operators a registration fee consisting of a fee per vehicle (comparable to the Port’s “Decal Fee”) and also impose a fee as a percentage of what someone pays to park at an outside location, which is usually collected as a percentage of gross revenue earned by offsite operators (including limousines, buses, and shuttle services as well as offsite parking). *Id.* It was further discussed that the airports in Houston require an annual audit of each of the licensees, where companies with gross revenue below a certain threshold conduct a self-audit, and those that are above made subject to an audit on a periodic basis. *Id.*

**Wharves Board Amends Tariff on November 21, 2013, to impose the 15% increase in Off-Port Parking User Access Fees.**

K. In accordance with the foregoing, on November 21, 2013, the Wharves Board amended the Tariff, increasing Decal and Access Fees as follows:

Category	Decal Fee	Access Fee
Charter Buses, and Commercial passenger vehicles (except buses) with seating capacity of 15 or more persons	\$10.00/ per-decal-per-year	\$60.00/per trip
Commercial passenger vehicles (except buses) with seating capacity of 15 persons or more	\$25.00/ per-decal-per-year	\$22.86/per trip
Commercial passenger vehicles (except buses) and Limousines with seating capacity of less than 15 persons	\$15.00/ per-decal-per-year	\$11.43/per trip
Taxicabs with City of Galveston permits	\$7.50/ per-decal-per-year	-
Off Port Parking Users (i.e., private parking lots)	Dependent on seating capacity	\$9.14/per-parking-space-per-month

(Ex. C, Tariff Circular No. 6, Item 111 (6<sup>th</sup> Rev. of pp. 3-F and 3-G), Notes C and D).

L. Specifically, for “Off-Port Parking Users,” the Tariff was amended as follows:

Those Off-Port Parking Users, . . . in operation and accessing the Texas Cruise Ship Terminal on Galveston Island®, or the Texas Cruise Ship Terminal at Pier 27, collectively the Cruise Ship Terminal Complex, as of August 15, 2006 ***shall***, in lieu of the Access/Trip fee, be subject to a monthly Access Fee equal to the initial amount of \$8.00 per parking space located in the Off-Port Parking User’s parking facility, with number of billable parking spaces to be confirmed periodically by the Galveston Wharves. . . . ***(For Calendar Year 2014, the Access Fee will be \$9.14.) . . .***

*Id.*, Note D (emphasis added).

M. However, despite the Wharves Board’s incorporation of this increase at end of the 2013 calendar year – and despite same being published as part of the 2014 Tariff – for reasons unknown, the above increases were never implemented or enforced. Instead, the Wharves Board apparently decided to reconvene on the issue of Access Fees for Off-Port Parking Users less than six (6) months later.

**Special Finance Committee's Proposed 261% increase in Off-Port Parking User Access Fees.**

N. During their meeting on May 12, 2014, the Special Finance Committee for the Wharves Board again met and deliberated upon issues relating to cruise terminal parking, and placed two items on the agenda: (1) Parking Access Fees, and (2) Amendment to the Tariff.<sup>2</sup> According to the Committee, the total annual cost borne by GPFC for the Cruise Terminal is approximately \$7,228,158,<sup>3</sup> which – the Committee contends – generates a \$1,486,925 loss experienced by the Port of Galveston Cruise Terminal because it only collects \$5,741,233.00 in total annual revenues. (Ex. D, Port of Galveston Analysis of Access Fees.)

O. However, upon information and belief, the Cruise Terminal is not operating at a loss; it collects approximately ***\$9,894,883 in total annual revenues.*** *Id.* In presenting their analysis in support of the subject increase, the Committee left out the Cruise Terminal's budgeted revenue from parking lots "A" and "B" in the amount of \$4,153,650. *Id.* Upon information and belief, when the additional revenue is included, and percentage of Port of Galveston's overhead costs reallocated back based upon same,<sup>4</sup> ***the Cruise Terminal is actually operating at a profit in excess of \$1.5 million dollars.***

P. Notwithstanding this omission, the Committee and Chairman of the Board nevertheless represented that the "shortfall" had to be paid from revenue generated from parking and by increasing Access and Registration Fees, which – they contend – are the only other

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<sup>2</sup> See Notes from the 5/12/14 Meeting.

<sup>3</sup> Inclusive of operating expenses, administrative overhead, debt service, depreciation, and R&R expense; exclusive of Ship Services.

<sup>4</sup> In its analysis, the Committee only allocated 21% of the Port of Galveston's total overhead costs based upon Cruise Terminal revenue without Cruise Terminal parking revenue. As indicated in the Committee's analysis, the Cruise Terminal's revenue with parking included accounts for 37% of total revenue. Accordingly, the total overhead costs need to be adjusted to allocate 37% of same to the Cruise Terminal.

revenue stream available to cover the “loss.” (Ex. E, Audio Transcription of 5/12/14 Wharves Board Special Finance Meeting, at pg. 12; Ex. D, Port of Galveston Analysis of Access Fees.)

Q. To accomplish this, the Committee proposed a substantial departure from the \$8.00 per-space Access Fee and increased same to \$28.88 per-space charged to Off-Port Parking Users to pay down the Cruise Terminal’s alleged \$1.5M deficit. (*Id.*, at pg. 12; Ex. D, Port of Galveston Analysis of Access Fees.) From a policy standpoint, their report essentially reflected that a 261% increase is justified in order to ensure “. . . the private parking lots [like Complainants’] pay a more fair share of the [\$1.5M] in expenses.” (Ex. F, Audio Transcription of Mierzwa Interview on 5/19/14, at pg. 6.) Further, the Committee rationalized the increase is both fair and equitable to Complainants, because the Wharves Board is going to “pay the same” Access Fee for its parking spaces too. This, they posit, will provide the Cruise Terminal with enough revenue to offset its Cruise Terminal costs in the amount of \$7,228,158 as follows:

	Access Fee	Annual Revenue
Cruise Passenger Revenue		\$5,741,233
Cruise Terminal Access Registration and Renewals		\$27,180
Charter Buses	\$60 per-trip	\$45,000
Airport Shuttles	\$15 per-trip	\$12,375
Per trip Access Fees	\$15 per trip	\$100,125
Per Month Access Fee—Private Lots 1,191 parking spaces <sup>5</sup>	\$28.88 per- parking-space	\$412,713
Per Month Access Fees—Port Lots 2,567 parking spaces	\$28.88 per- parking-space	\$889,533
	<b>Total</b>	<b>\$7,228,158</b>

(Ex. D, Port of Galveston Analysis of Access Fees.)

<sup>5</sup> Importantly, the Committee’s figures only accounted for revenue from 1,191 private parking spaces held by Complainants, Discount, Park and Walk, and V.I.P. Parking, in arriving at the \$28.88 figure. As discussed in further detail in the next section at pg. 12, *infra*, the Committee failed to consider numerous hotels that also constitute “Off-Port Parking Users” for purposes of its calculation.

R. In conducting their analysis of the proposed impact of the increase on Complainants' business model, the Committee simply "assumed" that Complainants have an annual occupancy between eighty and ninety percent. The Committee never asked to review Complainants' gross receipts to verify what their actual occupancy historically has been; they apparently just utilized a range that would support their determination. However, as indicated herein, Claimants have never experienced annual occupancy in this range. Nevertheless, the committee used such figures and erroneously concluded the impact of the proposed Access Fees increase would account for between 13.19% and 14.83% of Complainants' gross revenue, as opposed to roughly 4% prior thereto. *Id.*

S. Finally, the Committee and Chairman of the Board made the following comments with regard to increasing Access Fees charged to Off-Port Parking Users:<sup>6</sup>

- That approximately 600,000 cruise passengers come through Galveston annually, why not charge \$2.00 per cruise passenger to make up the shortfall. The charge could be assessed when the passenger crosses a walkway or a charge to keep the passenger out of a dangerous intersection (Ex. E, Audio Transcription of Special Finance Meeting on 5/12/14, at pp. 15-16);
- That the Port of Galveston needs passengers to park in its lots, and there needs to be a charge that makes sure the private parking lots pay something towards the industry creating a job for them (*Id.* at pg. 16);
- That nobody ever verified whether hotels were charging passengers for cruise parking, and that hotels are no different than the private parking lots – the hotels are pulling passengers away from Port parking lots and the fees for hotels need to be appropriate (*Id.* at pg. 19);
- That hotels are obviously offering parking and a shuttle service to the cruise terminal (*Id.* at 21);

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<sup>6</sup> Upon information and belief, the only "Off-Port Parking Users" that have been assessed Access Fees by the Wharves Board in the past are Complainants (i.e., Lighthouse, EZ Cruise, and 81<sup>st</sup> Dolphin) and Discount Parking, which reportedly has the capacity to park 148 vehicles.

- That hotels are maximizing their revenue for offering parking and shuttle services at the detriment to the Port, but unlike the private parking lots, hotels add value, and the Wharves Board does not need the private parking lots as the Cruise Terminal can facilitate all parking for passengers (*Id.* at pp. 22-23);
- That hotels that allow parking for cruise passengers are in direct competition with the Port of Galveston (*Id.* at pg. 24);
- That, if access fees must be raised, they must raise it equally on everybody – that is the only way that the increase can be defended and the Wharves Board must be careful to raise fees equitably for all parties concerned (*Id.* at pg. 25);
- That there was no feedback from hotels regarding whether they were charging additional money for people to park, but the hotel internet sites indicate they provide parking for cruise passengers (*Id.* at pp. 26-27);
- That the Port of Galveston is in direct competition with the private parking lots and they are taking business away from the Port (*Id.* at pp. 31-32);
- That the 261% increase is necessary for the Port to be competitive; the private parking lots will have to raise their price and figure out a different way to manage their businesses, including cutting staff, because the Port needs to increase its market share of parking (*Id.* at pg. 32);
- That the \$8.00 per parking space fee established in 2006 was never increased like the Tariff provided for, and that is why the Port is in the position it is in today (*Id.* at pg. 37);
- That the private parking lots are making a profit and the Port is not putting any money in its pocket. The Port is trying to find a number that pays the expenses and would have to increase its parking fees to earn a profit, but the Port wants the private parking lots to help pay for the facilities and terminal (*Id.* at pg. 39);
- That the proposed access fee would require private parking lots to increase their parking rates to come more in line with what the Port charges for cruise parking at the terminal (*Id.* at pg. 42);
- That the proposed access fee for private parking lots would force them to raise their rates and put them on an even playing field with the Port (*Id.* at pg. 43);

- That the private lots should worry about whether they are going to stay in business—whether they can make a buck or not—they chose to compete with the Port. Private lots make money on the Port’s back; the Port has to pay for the cruise terminal facility and the private lots need to pay for it if they choose to stay in the parking business. **If the private parking lots cannot stay in business with the tariff increase, then fine – the Port has sufficient parking for all the cruise passengers** (*Id.* at pg. 44).

**Wharves Board Amends Tariff to impose the 261% increase in Off-Port Parking User Access Fees.**

T. A week later, on May 19, 2014, the Wharves Board approved the Committee’s proposed 261% increase in Off-Port Parking User Access Fees, which becomes effective July 1, 2014 (“2014 Tariff”). The following table summarizes the Wharves Boards’ increases in Access Fees under the 2014 Tariff:

Category	Access Fee Charges		Increase
	Tariff	2014 Tariff	
Charter Buses	\$50.00/per trip	\$60.00/per trip	20%
Commercial passenger vehicles (except buses) with seating capacity of 15 or more persons	\$20.00/per trip	\$30.00/per trip	50%
Commercial passenger vehicles (except buses) with seating capacity of less than 15 persons	\$10.00/per trip	\$20.00/per trip	100%
Taxicabs with City of Galveston permits	-	-	0%
Off Port Parking Users (i.e., private parking lots)	\$8.00/per-parking-space-per-month	\$28.88/per-parking-space-per-month	261%

(Ex. G, Port of Galveston Request for Discussion and Trustees Action, Bus. Item E-2, May 19, 2014; Ex. H, Tariff Circular No. 6, Item 111 (7<sup>h</sup> Rev. of pp. 3-F and 3-G), Notes C and D.) Accordingly, despite increasing Access Fees for Off-Port Parking Users by three and one-half times, the Wharves Board disproportionately raised what is charged to vehicles on a per-trip basis and continued to exempt taxicabs from any charge whatsoever. As such, the increase is unjust and discriminatory, because the Wharves Board only desires to impose same on

Complainants and Discount Parking.<sup>7</sup> Further, said increase is not rationally related to any marine terminal services or benefits, because the more than three-fold increase comes with absolutely no increase or change in services provided by Respondents.

U. With respect to the Wharves Board's basis for 2014 Tariff, the Port Director, Michael J. Mierzwa, indicated during his audio taped interview that the Wharves Board had provided specific direction on how they wanted the Committee to approach the Access Fees issue, wherein he stated as follows:

“About 5.7 million of the 7.2 million of our expenses is paid from fees that we collect from the cruise lines to bring passengers into Galveston. . . . [T]he remainder of that total, which is about one and a half million dollars, is paid by funds or revenue that the we generate, the Port of Galveston generates, for parking and then also the access fees that we charge these other entities bringing passengers into the cruise terminal along with some registration fees for annual decals and things of that nature.

The feeling of the [Wharves Board] was they wanted to see the private parking lots and the other entities that are accessing the cruise terminal with these cruise passengers to pay a more fair share of these [1.5M] expenses which the Port of Galveston has been paying . . .

. . . Although, that is a three and a half times the rate of what they are paying now, what it really means is to these different private parking lots is that for – in order for them to maintain, we'll say the gross profit margin that they have now, for a four-date cruise, they would have to raise their price, approximately, \$2.80. For a five-day cruise, would be \$3.50 cents; and for a seven-day cruise, \$4.90. ***If they raise their prices, their affect on revenues would be a wash.***

. . . I also have to pay – I pay Carnival a market incentive fee that they get a certain percentage of my parking revenue to help us market our Port of Galveston parking lot. . . . [W]e'll probably pay in excess of \$200,000.00 for their assistance in marketing the terminals – excuse me – in monitoring the port's parking. . . . Carnival is wanting a piece of the parking action in exchange for marketing . . .”

(Ex. F, Audio Transcription of Mierzwa Interview on 5/19/14, at pp. 5-7, and 12-14.)

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<sup>7</sup> See discussion in sections e. at pg. 16, and f. at pg. 20.

V. The problem with the Port Director's conclusion regarding the effect on revenues is that same is based on a presumed annual occupancy rate between eighty and ninety percent that Complainants' historically *never* have experienced. Further, he irrationally assumes that Complainants charging higher prices will not have any effect on demand. Upon information and belief, Respondents failed to conduct any market impact study or analysis to consider the effect said price increase would have on demand (i.e., Complainant's occupancy). Indeed, the logical conclusion is that an increase in Complainants' prices will result in reduced demand and, therefore, reduced occupancy. Clearly, reduced occupancy translates into reduced revenue for Complainants, which loss will certainly be exacerbated by the Wharves Board's "tax" on every parking space regardless of whether or not same generate revenue. Based upon the foregoing, the Port Director failed to provide any reasonable or rational basis for the unjustifiable and unsubstantiated 261% increase.

W. Further, during the hearing on revising the Tariff for "Off-Port Parking Users," some of Complainants' representatives pointed out that \$8.00 per-parking-space, per-month was previously deemed equitable by the Wharves Board, and that the Tariff provided for the rate to be increased in proportion to the consumer price index. Based upon the foregoing, Complainants inquired as to whether the Wharves Board's financial position had changed, and whether Wharves Board sustained itself differently now for some reason. In response, the Chairman of the Board indicated as follows:

We got potential customers that want to come. We need to build another terminal. We don't have the money to build it. We got to do that. That's going to increase traffic to you, for us, for everybody else; but it's got to be built. Somebody's got to pay for it. All right. So we got to generate revenue to pay for it. . . .

That's what we are trying to do . . . . If you look at what we are talking about, we are doing it fairly and what you have to realize you are talking about what we charge, but y'all don't charge anything near that. ***If you charged the same thing we did, then it couldn't cost you a penny more. But the problem is is you want to take cargo away – parking away from the port which we need to pay for the cruise lines . . . .***

(Ex. J, Audio Transcription of Hearing on Parking Fees on 5/19/14.)

X. Based upon the foregoing, Respondents appear to be engaged in nothing more than rank price fixing – and the costs that the Wharves Board seek to impose on Complainants clearly are not reasonably related to services rendered by Respondents. To the contrary, the charges are undoubtedly being levied to place Complainants at a disadvantage with respect to the Cruise Terminal's parking lots—which Carnival Cruise Line also appears to have a vested interest in. By imposing an arbitrary and irrational increase on Complainants under such dubious pretenses, Respondents as marine terminal operators, failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and unreasonably discriminate, prejudice, and place the Complainants at a disadvantage.

Y. Finally, at the Hearing on May 19, 2014, some of Complainants' representatives expressed their concerns with regard to: the Wharves Board's preferential treatment of numerous local hotels which provide cruise parking for passengers' vehicles and transportation to and from the Cruise Terminal; and the fact that – besides Complainants and Discount Parking – there are two other private parking lots located at 25<sup>th</sup> Street and Harborside Drive, Galveston Park and Cruise and V.I.P. Parking, which have an estimated 280 parking spaces and pay nothing – *zero* –

to the Port of Galveston in the form of Access Fees, because passengers are allowed to walk with their luggage across Harborside Drive through the 25<sup>th</sup> Street gate into the Cruise Terminal.

**Preferential treatment of local hotels in competition with Complainants.**

Z. Despite the express applicability of the 2006 and 2014 Tariff to local hotels who also provide off-port parking to passengers as part of their business model, the Chairman of the Wharves Board, Benjamin Holland Jr., informed Complainants' representatives that "[hotels] help the [Port of Galveston] attract passengers [and he does] not want to charge them like parking lots." (Ex. I, Notes from the 5/12/14 Meeting.)

AA. This is an obvious example of discrimination; the Galveston Wharves' "selective enforcement" of its Tariff provides an undue and unreasonable preference and advantage to the local hotels, and unlawfully subjects Complainants to unreasonable prejudice and disadvantage. From the time the Tariff became effective, certain local hotels have historically provided off-port parking to passengers away on their cruises. Indeed, these hotels typically own and/or operate "Courtesy Vehicles"<sup>8</sup> or arrange for "Commercial Passenger Vehicles"<sup>9</sup> to pick up or drop off

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<sup>8</sup> In pertinent part, "Courtesy Vehicle" is defined in Items 111(7) in the Tariff, and 111(8) in the 2014 Tariff as a commercial passenger vehicle . . . operated on property owned, leased or controlled by the Galveston Wharves [that is]:

(A) . . . owned or provided by one or more commercial business entities that: (i) arrange for the vehicle to provide transportation only incidentally to the commercial business entities primary businesses or activities, which may, for example, be off-port car rental user, off-port parking user, lodging, air transportation, special events or medical care; (ii) provide the vehicle, by purchase or lease or by contracting with another party . . .; and (iii) all sign the application for the Port Use License and/or Port Use Permit for the Vehicle, as applicants or co-applicants[;]

(B) . . . provided for the exclusive use of officers, agents, employees, customers or invitees of any of the commercial business entities[; and]

(C) [t]here is no fare, charge or thing of value paid, demanded or expected from the people transported, directly or indirectly, for transportation, and this is effectively communicated to the traveling public. (Example: An increase in the charge for lodging or for an event could be an indirect charge, if related to transportation.)

passengers within the Cruise Terminal complex in connection with their operations outside the boundaries of property owned, operated, or controlled by the Wharves Board. "Off-Port Parking Users is defined in Items 111(10) in the Tariff, and 111(11) in the 2014 Tariff, as:

. . . a commercial business entity which provides or arranges for one or more commercial passenger vehicles, courtesy vehicles, buses or shuttles, however owned or operated, to pick up or drop off passengers with a terminal complex of the Galveston Wharves in connection with the operations of a business of the user involving the parking of motor vehicles . . . at a facility located outside of the boundaries of property owned, operated or controlled by the Galveston Wharves.

BB. In direct competition with Complainants and the Wharves Board, numerous local hotels in Galveston are providing cruise parking for passengers' vehicles, and providing or arranging for transportation to the Cruise Terminal, including, without limitation:

Hampton Inn & Suites 6431 Central City Blvd. Galveston, TX 77551 (409) 744-5600	Charges \$50.00 flat rate per vehicle for cruise parking at the hotel, and provides complimentary shuttle both to and from the Cruise Terminal to passengers with one (1) night stay.
Comfort Inn Galveston 6302 Seawall Blvd. Galveston, TX 77551 (409) 741-8888	Charges \$25.00 flat rate per vehicle for cruise parking at the hotel to passengers with one (1) night stay, and arranges for passengers to utilize Hampton Inn's shuttle to and from the Cruise Terminal for an additional \$10.00 per person.

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<sup>9</sup> "Commercial Passenger Vehicle" is defined in Items 111(6) in the Tariff, and 111(7) in the 2014 Tariff, as . . . a vehicle not otherwise defined in this Tariff while it is used or offered (orally or in a writing or sign) to be used, to transport one or more people to, on land, either:

- (A) in exchange for a fare, charge, or other thing of value (paid, demanded, or expected for the transportation service, in whole or in part, directly or indirectly, by the person transported or by another person, or otherwise); or
- (B) in connection with the operations of a commercial business entity, regardless of whether a fare, charge, or other thing of value is paid, demanded or expected for the transportation service.

It shall be the presumption that a vehicle bearing the name, trade name, common name, emblem, trademark or other identification of a commercial business entity and being used to transport a passenger is a commercial passenger vehicle.

Country Inn & Suites 2818 Avenue R ½ Galveston, TX 77550 (409) 763-5000	Cruise parking at the hotel included in hotel room rate for passengers with one (1) night stay. Hotel provides shuttle to and from the Cruise Terminal at the rate of \$7.00 per person / \$14.00 round trip.
Hilton Galveston 5400 Seawall Blvd. Galveston, TX 77551 (409) 744-5000	Provides free cruise parking at hotel for passengers with one (1) night stay, and complimentary shuttle both to and from the Cruise Terminal.
Holiday Inn Resort 5002 Seawall Blvd. Galveston, TX (409) 740-5300	Provides free cruise parking at hotel and complimentary shuttle both to and from the Cruise Terminal to passengers with one (1) night stay.
Hotel Galvez & Spa 2024 Seawall Blvd. Galveston, TX 77550 (409) 765-7721	Provides cruise parking in hotel garage at rate of \$18.40 per day to passengers with one (1) night stay, and complimentary shuttle both to and from the Cruise Terminal.
The Tremont House 2300 Mechanic St. Galveston, TX 77550 (409) 763-0300	Provides cruise parking in Hotel Galvez's garage at rate of \$18.40 per day to passengers with one (1) night stay, and complimentary shuttle both to and from the Cruise Terminal.
La Quinta Inn & Suites 8710 Seawall Blvd Galveston, TX (409) 740-9100	Charges \$25.00 flat rate per vehicle for cruise parking at the hotel to passengers who stay 2 or more nights, and arranges complimentary shuttle of up to 4 people to and from the Cruise Terminal.
Days Inn & Suites 8712 Seawall Blvd Galveston, TX (409) 740-3000	Charges \$25.00 flat rate per vehicle for cruise parking at the hotel to passengers who stay 2 or more nights, and arranges complimentary shuttle of up to 4 people to and from the Cruise Terminal.
Holiday Inn Express 8628 Seawall Blvd. Galveston, TX 77554 (409) 740-7900	Charges \$25.00 flat rate per vehicle for cruise parking at the hotel to passengers who stay 2 or more nights, and arranges complimentary shuttle of up to 4 people to and from the Cruise Terminal.

Moody Gardens  
1 Hope Blvd.  
Galveston, TX 77554  
(409) 744-4673

Charges \$20.00 flat rate per vehicle for cruise parking at the hotel to passengers who stay one (1) or more nights, and provides complimentary shuttle to and from the Cruise Terminal.

Howard Johnson  
8216 Harborside Dr,  
Galveston, TX 77554  
(409) 744-1100

Provides free cruise parking at hotel to passengers with one (1) night stay, and arranges for Discount Parking Lot to shuttle both to and from the Cruise Terminal at the rate of \$10.00 per person.

San Luis Resort  
5222 Seawall Blvd,  
Galveston, TX 77551  
(409) 744-1500

Provides free cruise parking at hotel and complimentary shuttle both to and from the Cruise Terminal to passengers with one (1) night stay.

CC. Accordingly, these hotels constitute “Off-Port Parking Users” just like Complainants under both the 2006 and 2014 Tariff alike. Upon information and belief, the above hotels provide cruise parking to hundreds upon hundreds of vehicles weekly, and there are many others engaging in similar practices that defer parking revenue away from the Port of Galveston that Respondents collect nothing from.<sup>10</sup> At a minimum, the above listed hotels should be required to pay Access Fees on a “per-parking-lot-space, per-month” basis just like Complainants. However, upon information and belief, the Wharves Board has not enforced or collected same from any such hotel since inception of the Tariff. By contrast, the Wharves Board has enforced and collected Access Fees from Complainants since inception of the Tariff. This, in and of itself, has created a substantial loss of revenue to the Cruise Terminal, and resulted in the situation at bar; that is, Complainants are now being asked to subsidize

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<sup>10</sup> For instance, the Baymont Inn, Beachcomber Inn, Best Western, Commodore, Fourpoint Sheraton, Quality Inn, Casa del Mar, Gaidos Inn, and EconoLodge hotels all provide free cruise parking in connection with either a one or two night stay. These hotels require passengers to contact a local taxicab for transportation to and from the Cruise Terminal. This is problematic for the Port of Galveston, because, unlike Complainants, the Wharves Board does not require taxicabs to pay an Access Fee to enter the Cruise Terminal Facility and drop off passengers.

Respondents' past and future failures to implement, enforce, and collect Access Fees under the Tariff from these other Off-Port Parking Users.

DD. Upon information and belief, Complainants and Discount Parking are the only companies that have been required to pay "Off-Port Parking User" Access Fees since the Tariff became effective. The Wharves Board's discretionary and *de facto* exemption of local hotels from the 2006 and 2014 Tariffs is unreasonable, and creates a competitive disadvantage due to an improper allocation of the cost of the Port of Galveston's services among recipients of those services. *See, e.g., Volkswagenwerk Aktiengesellschaft v. FMC*, 390 U.S. 261, 282 (1968).

**The Tariff unreasonably favors Complainants' competitors.**

EE. As noted above, besides Complainants and Discount Parking – there are two other private parking lots located at 25<sup>th</sup> Street and Harborside Drive, Galveston Park and Cruise and V.I.P. Parking (collectively "V.I.P."). V.I.P. have an estimated 280 parking spaces, engage in the exact same business as Complainants, and do not pay any Access Fees to the Port of Galveston, because the Wharves Board has historically allowed V.I.P.'s passengers to walk with their luggage across Harborside Drive through the 25<sup>th</sup> Street gate into the Cruise Terminal.

FF. Under the Tariff (\$8.00 per-parking-space, per month), this translates into an annual \$26,880.00 loss in revenue<sup>11</sup> to the Cruise Terminal for the entire period V.I.P. has been in business to date. Under the 2014 Tariff (\$28.88 per-parking-space, per-month), this translates into an annual \$97,036.80 loss in revenue<sup>12</sup> for the Cruise Terminal moving forward. However, because Off-Port Parking User Access Fees are only imposed upon "commercial business entit[ies] which provide or arrange for commercial passenger vehicles . . . to pick up or drop off

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<sup>11</sup> Based upon 280 parking spaces at \$8.00 per-parking-space, per month, multiplied by 12 months.

<sup>12</sup> Based upon 280 parking spaces at \$28.88 per-parking-space, per month, multiplied by 12 months.

passengers within a terminal complex of the Galveston Wharves ...,” V.I.P. has been unreasonably exempted from the 2006 Tariff and all subsequent revisions thereto.

GG. However, the Tariff should also apply to V.I.P. The crux of the Wharves Board’s reasoning for imposing its Tariff on Off-Port Parking Users is principally focused on the benefit they receive from the Wharves Board’s generation of Cruise Line business in the Port of Galveston, which attracts passengers to park at their private facilities. This benefit is enjoyed by Complainants and V.I.P. alike, but the Tariff – as worded – favors V.I.P. by exempting same from any charges whatsoever. Accordingly, the Tariff is unreasonable and discriminatory, and creates an improper allocation of the cost of the Wharves’ Board’s services among the recipients of those services.

**During the pendency of this Action, the Wharves Board Deletes Off-Port Parking User Category, and alternatively seeks to now charge Complainants Access Fees on a Per Trip Basis contained in the 2014 Tariff.**

HH. On September 22, 2014, the Wharves Board purportedly approved a change to the 2014 Tariff, which they claim “rescinds” the effectiveness of the 261% increase in Off-Port Parking User Access Fees contained in the 2014 Tariff, because it allegedly “appeared” to the Wharves Board that they “were treating private parking lot owners differently from motel/hotel operators who are charged a per trip access fee.” (Ex. J, 9/22/14 Monthly Meeting Agenda.) As a result of the deletion, the Wharves Board indicated that those formerly being charged Off Port Parking User Access Fees will now incur Per Trip Access Fees previously published in the 2014 Tariff. The Wharves Board declared that the change would take effect approximately a week later on October 1, 2014. However, as of the date of this filing – October 22, 2014 – the Wharves Board has not published this change to the 2014 Tariff – online or otherwise.

II. Notwithstanding the foregoing, upon information and belief, the following table summarizes the Access Fees that Complainants understand the Wharves Board intends to charge after they “modified” their 2014 Tariff:

Category	Access Fee Charges		Increase
	Tariff	2014 Tariff	
Charter Buses	\$50.00/per trip	\$60.00/per trip	20%
Commercial passenger vehicles (except buses) with seating capacity of 15 or more persons	\$20.00/per trip	\$30.00/per trip	50%
Commercial passenger vehicles (except buses) with seating capacity of less than 15 persons	\$10.00/per trip	\$20.00/per trip	100%
Taxicabs with City of Galveston permits	-	-	0%

JJ. However, while attempting to rectify the 2014 Tariff’s facially disparate treatment of private parking lots (like Complainants) versus certain commercial passenger vehicles (such as hotel shuttles), Respondents now seek to impose an unsubstantiated 100% increase in Per-Trip Access Fees from the former Tariff, and continue to exempt taxicabs from any charge whatsoever. First, the 2014 Tariff remains unjust and discriminatory on its face; even as modified it still favors taxicabs over other similarly situated commercial passenger vehicles accessing the Cruise Terminal like those operated by Complainants.

KK. Second, Respondents’ “modification” of the 2014 Tariff still fails to resolve Complainants’ previous and outstanding discriminatory practice complaints in regard to Access Fee enforcement issues. Upon information and belief, Respondents have historically failed to charge and/or collect Access Fees from a material percentage – if not a majority – of commercial vehicles that have accessed the Cruise Terminal since the Tariff’s inception. As such, Respondents have forced Complainants to subsidize other non-paying users’ share of Cruise Terminal costs, providing those users with an undue preference or advantage over Complainants.

Indeed, even in their meeting on September 22, 2014, Defendants' representative(s) conceded that they "still have enforcement issues" with regard to Access Fees. Accordingly, any increase in Access Fees from the former Tariff – regardless of whether charged on a Per-Space or Per-Trip basis – will place Complainants in not only a continued, but also a greater disadvantage than before.

LL. Third, the Wharves Board failed to conduct, arrange for, or even consider any study or analysis that would enable them to evaluate their anticipated revenue from charging Complainants on a Per-Trip instead of on Per-Space basis. Instead, the Port Director, Michael J. Mierzwa, simply stated:

"[t]he feeling from the staff is that this \$20.00 [Per-Trip Access Fee] will get us the revenues we sought when we went to the \$28.88 Per-Space-Per-Month [Access Fee]. At this time next year, we will look at the same things that we looked at when we determined the Per-Parking-Space Fee; the expenses of what it costs to run the Cruise Terminal operation, and the money we are getting from Access Fees and the money that the Port is paying in to offset that 'delta' that we had between 'these are our expenses – this is what we are making from our cruise line operating agreement – and this is the delta that needed to be paid for out of parking,' and we will take a look at the revenue generated and adjust the [Per Trip Access Fees] either up or down; but I'm gonna need a year to look at the numbers before I can come back with an amendment to the Tariff."

MM. The modified 2014 Tariff continues to be unlawful because Respondents are still attempting to recover the same amounts of money from Complainants by a different means. Respondents' lack a rational basis for their decision to charge Complainants \$20.00 Per-Trip Access Fees under the 2014 Tariff. By the Port Director's own admission, their decision to "modify" the 2014 Tariff was based entirely on the staffs' "feeling" and, therefore, is irrational beyond contention.

NN. Further, the increase in Per-Trip Access Fees is just as unlawful as the Per-Space increase, because Respondents predicated their need to charge more in both instances upon the alleged loss contained in the Port of Galveston Analysis of Access Fees that inaccurately reflects

an approximate 1.5M loss experienced by the Cruise Terminal. As such, the costs that the Wharves Board seeks to impose on Complainants still are not reasonably related to services rendered by Respondents. To the contrary, by imposing an arbitrary and irrational increase on Complainants under such dubious pretenses, Respondents as marine terminal operators, failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and unreasonably discriminate, prejudice, and place the Complainants at a disadvantage.

#### **V. Violations of the Shipping Act of 1984**

A. The actions of the Respondents' constitute violations of the Shipping Act of 1984, including: unjust, unreasonable and unlawful practices in violation of of 46 U.S.C. § 41102(c); giving unreasonable preference or advantage, and/or imposing undue or unreasonable prejudice or disadvantage with respect to persons in violation of 46 U.S.C. § 41106(2); and, unreasonably refusing to deal or negotiate with Complainants in violation of 46 U.S.C. § 41106(3), for which the Complainants have suffered and continue to suffer substantial damages.

B. Specifically, Respondents have violated the above provisions because Complainants have been charged monthly Access Fees based upon the total number of parking spaces in their respective lots that are excessive and not reasonably related to the value of services rendered to Complainants by Respondents. Further, Respondents now intend to charge Complainants Per-Trip Access Fees that are likewise excessive and not reasonably related to the value of services rendered to Complainants by Respondents. Through application of such "tax," Complainants have been forced to subsidize costs associated with services provided to other users of the Cruise Terminal's facilities.

C. To the extent that the Cruise Terminal's cash reserves have been, or will be used to approximate either GPFC or the Port of Galveston's total operating expenses, the charges levied against Complainants to build such revenues are not reasonably related to the operating expense associated with the Wharves Board's operations at the Cruise Terminal.

D. Despite Complainants' requests that the Wharves Board take action to remedy the unfair and prejudicial treatment of Complainants such that the Access Fees assessed to them represent a reasonable approximation of the services actually received, the Wharves Board has continued to implement the foregoing undue and unreasonable preferences in favor of Cruise Terminal parking lots (which Carnival Cruise Line has an interest in), taxi cabs not being charged Access Fees under the Tariff, hotels transporting passengers to the Cruise Terminal not being charged Access Fees under the Tariff, and private parking lots to which the Tariff does not apply, to the prejudice and disadvantage of Complainants.

E. Respondents have unreasonably refused to deal or negotiate with Complainants regarding their recent string of modifications to their Tariff with respect to Access Fees. As indicated above, the Respondents refusal to negotiate is based upon intentionally misleading information about the Cruise Terminal's financial condition and not any legitimate business rationale and therefore is unreasonable.

F. There is no transportation factor justifying the foregoing unjust and unreasonable practices, undue or unreasonable prejudices against Complainants, or the undue or unreasonable preferences advantaging other users of the Cruise Terminal.

G. Further, Respondents violations of the Shipping Act include, but are not limited to:

1. Unreasonably, unjustifiably, unfairly, and with undue prejudice, refusing to observe, implement, enforce and collect Access Fees from all Commercial Passenger Vehicles accessing the Cruise Terminal;
2. Imposing an unreasonable, unduly prejudicial, and discriminatory allocation of the Cruise Terminal's costs upon Complainants, but not other users of the Respondent's services under Tariff Circular No. 6, Item 111– Other Licenses and Permits;
3. Unreasonably and unjustifiably modifying and/or increasing the Access Fee (for the third time in nine months) under the Tariff for Complainants;
4. Unreasonably discriminating against Complainants by imposing an unfair and disproportionate increase in Access Fees in comparison to increases, if any, imposed on other users of Respondents' services under Tariff Circular No. 6, Item 111 – Other Licenses and Permits;
5. Unreasonably, unjustifiably, and with undue prejudice, not permitting Complainants' shuttle buses to enter the Cruise Terminal through the "back" gate at the intersection of 3<sup>rd</sup> Street and Old Industrial Road in the same manner that Respondents allow their own shuttle buses to proceed and deliver customers directly to the front door; and
6. Unreasonably, unjustifiably, and with undue prejudice, requiring Complainants to unload their customers at a lower level, several hundred feet away from where Respondents' drop off, which has no protection from inclement weather, is not in compliance with ADA standards and guidelines, necessitates customers crossing aggressive incoming traffic to enter the facility.

## **VI. Injury to Complainants**

A. As a result of the Respondents' aforementioned violations of the Shipping Act, Complainants have sustained and/or will sustain injuries and damages, including, but not limited to higher costs, unreasonable Access Fees, decreased occupancy and revenue, loss of goodwill, and reduced and/or eliminated profit margin. Complainants' collectively estimate their damages to be in the millions of dollars if the Tariff is enforced. A more precise amount will be determined at hearing.

## **VII. Prayer for Relief**

**WHEREFORE**, Complainants respectfully request from this Honorable Commission that Respondents, Board of Trustees of the Galveston Wharves and The Galveston Port Facilities Corporation, be required to answer these amended charges, and that after due investigation and hearing, Respondents be ordered to:

- i. Cease and desist from the above described violations of the Shipping Act of 1984;
- ii. Establish and put in force such practices as this Honorable Commission determines to be lawful and reasonable;
- iii. Award reparations to Complainants for the unlawful conduct described above, including the amount of actual injury, plus interest, costs, and attorney's fees;
- iv. Award any and all other damages that me be determined to be just and proper; and
- v. All other and such relief unto which Complainants may show themselves justly entitled.

## **VIII. Place of Hearing**

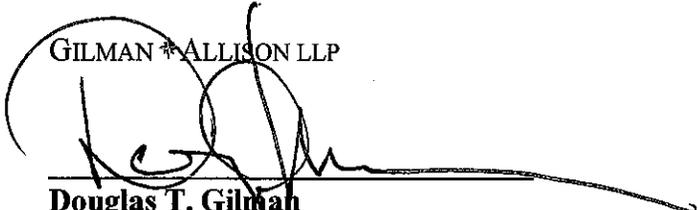
The Complainants desire the Hearing to be held in Galveston, Texas.

## **IX. Alternate Dispute Resolution**

The Commission's informal dispute resolution procedures were utilized by the parties prior to the filing of this Amended Complaint. *See* 46 CFR § 502.62(E). On September 5, 2014, the parties mediated with Ms. Rebecca Fenneman of the Office of Consumer Affairs and Dispute Resolution. Mediation was unsuccessful.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed this document on this **24<sup>th</sup> day of October, 2014**, and that a true and correct copy of the foregoing was served on all counsel of record *via* certified mail – return receipt requested and email, as indicated below:

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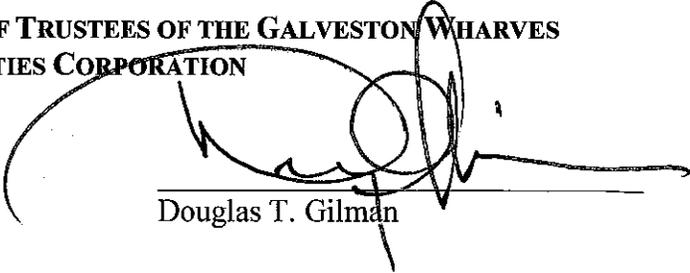
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