

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**COMPLAINANT'S OBJECTIONS TO
THE DECLARATION OF MELISSA CHEN**

Complainant Econocaribe Consolidators, Inc. (“Econocaribe”) rejects to Melissa Chen’s Declaration on the following grounds:

GENERAL OBJECTION

Rule 56(c)(1) of the Federal Rules of Civil Procedure provides that a party asserting that a fact is genuinely disputed must support the assertion by citing to “particular parts of materials in the record, ... affidavits or declarations.” With regard to affidavits or declarations, Rule 56 requires that “an affidavit or declaration used to support or oppose a motion must be made on *personal knowledge*, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” An unsigned affidavit or declaration is an inadmissible document because there is no proof that the declarant saw the document or approved of its contents. *See Fresno Rock Taco, LLC v. Nat'l Sur. Corp.*, No. CV F 11-0845 LJO

BAM, 2012 WL 3260418, at *7 (E.D. Cal. Aug. 8, 2012); *Bradley v. Wal-Mart Stores, Inc.*, 544 F. Supp. 2d 1167 (W.D. Wash. 2008). Melissa Chen’s Declaration was unsigned therefore inadmissible in the summary judgment proceeding.

SPECIFIC OBJECTIONS

Should Melissa Chen be given opportunity to re-execute the Declaration, Econocaribe objects to her Declaration on the following grounds:

Material Objected To:	Grounds for Objections:
<p>Melissa Chen Declaration ¶1 I am over 18 years of age and competent to make this affidavit.</p>	<p>No specific objections.</p>
<p>Melissa Chen Declaration ¶2 I am the owner of Amoy International, L.L.C. (“Amoy”) and its Custodian of Records. If called as a witness, I could and would competently testify to the following of my own personal knowledge in a court of law.</p>	<p>Objection to Exhibit 32. Hearsay, lack of personal knowledge for Exhibit 32. There is no proof that Melissa Chen is the custodian of Krystal Lee’s “backup” gmail account so that she can authenticate Krystal Lee’s statement and there is no proof that Krystal Lee’s gmail was kept in the course of a regularly conducted activity pursuant to F.R.E. Rule 803(6).</p>
<p>Melissa Chen Declaration ¶3 On May 17, 2013, Amoy received an email from a John Chen, claiming to be from Kumquat Tree, Inc. He stated that he saw Amoy’s “info” on its website and needed to ship some containers from Oakland to Xingang. He asked for a quote for 40’ and 40’ HQ and stated that the commodity was auto parts. Krystal Lee, also known as Krystal Lazcano, (“Krystal”), an Amoy employee, responded with a quote, offering a choice between two carriers, Maersk and NYK. See Exhibit “1”.</p>	<p>Misleading. Lack of authentication. The email reads “I saw your info on your website.” There is no proof that what does “your” refer to. There is no time stamp on the purported Krystal Lee’s reply.</p>
<p>Melissa Chen Declaration ¶4 On May 20, 2013, Amoy contracted with Econocaribe to ship four (4) containers, which were described as “Auto Parts” on an Econocaribe bill of lading issued to transport the cargo from Oakland, California to Xingang, China. See Exhibit “2”. Krystal made the booking. The four containers were shipped on board the CMA CGN Vivaldi on May</p>	<p>1) Misleading. When Krystal Lee made the booking, she declared the cargo to be “Auto Parts (New).” 2) Lack of foundation and authentication for Exhibits 4, 5 and 6. 3) Hearsay, lack of personal knowledge for Exhibit 32. There is no proof that Melissa Chen is the custodian of</p>

<p>29, 2013. See Exhibit “3”, Maersk bill of lading. The Maersk bill of lading described the cargo as “Auto Parts.” Based on the information that it received, Amoy believed that the cargo was “auto parts.” See Exhibits “4”, “5”, “6” and “32”. Amoy did not know when it declared the cargo as auto parts that it was baled tires.</p>	<p>Krystal Lee’s “backup” gmail account so that she can authenticate Krystal Lee’s statement and there is no proof that Krystal Lee’s gmail was kept in the course of a regularly conducted activit pursuant to F.R.E. Rule 803(6).</p>
<p>Melissa Chen Declaration ¶5 Prior to shipment, John Chen sent Amoy a packing list and a commercial invoice, showing the cargo to be “Auto Parts.” See Exhibits “4” and “5”. He also completed Amoy’s Shippers Letter of Instruction, which also shows the cargo as “Auto Parts,” see Exhibit “6”, and sent a photograph of the cargo. See Exhibit “32”.</p>	<p>1) Lack of foundation and authentication for Exhibits 4, 5 and 6. 2) Hearsay, lack of personal knowledge for Exhibit 32. There is no proof that Melissa Chen is the custodian of Krystal Lee’s “backup” gmail account so that she can authenticate Krystal Lee’s statement and there is no proof that Krystal Lee’s gmail was kept in the course of a regularly conducted activity pursuant to F.R.E. Rule 803(6).</p>
<p>Melissa Chen Declaration ¶6 On June 17, 2013, I sent an email to Ariel Martinez (“Ariel”) of Econocaribe, informing him that Amoy was having difficulty locating the shipper and believed that there was a problem with the shipment because Amoy was unable to locate the consignee. I asked that this message be forwarded to his manager because Amoy needed assistance on the issue since the containers were arriving in Tianjin that day. See Exhibit “7”.</p>	<p>No specific objection.</p>
<p>Melissa Chen Declaration ¶7 Later that day, I followed up with another email to Econocaribe stating that Amoy had lost contact with the supplier/buyer for the 4 containers and that Amoy had just found out that the commodities were not auto parts, but “recycle” items, meaning cargo that was likely prohibited from entry into China. I said that I was still trying to get more information from the vendor about the items. I also wrote “In this case, can we request if “MSK [Maersk] to allow us some extra time at port of destination or abandon the cargo or return to US seller or resell to other ports in China? Please kindly advise.” [Emphasis added.] See Exhibit “8”. I was asking Econocaribe and Maersk, through Econocaribe, for their assistance and advice in addressing the problem.</p>	<p>No Specific Objection.</p>
<p>Melissa Chen Declaration ¶8 On June 20, 2013, Krystal sent an email to Ariel</p>	<p>Misleading. 1) Inquiry as to the return freight does</p>

<p>asking him to “confirm all charges for this shipment and carrier confirmation for this shipment.” Ariel replied, “All charges for the OFR to Xingang? Or the return back to the US . . .” Krystal immediately replied “Yes, please include all fees including return to US. . .” Ariel replied “Noted, I’ve been working on this with carrier. We are waiting for them to confirm all the charges, I will let you know once they revert the details.” [Emphasis added.] See Exhibit “9”. These emails show my preference to return the cargo back to the United States and I was asking for the fees involved with the return. It wasn’t until May 12, 2014, almost a year later that I received a response from Econocaribe informing me of what the fees were. However, the fees were lumped with other costs. See Exhibit “27”.</p>	<p>not show Amoy’s preference to return. 2) As shown by these emails, Econocaribe did not intentionally ignore Amoy’s request as to the return freight. Econocaribe was “waiting for them to confirm all the charges.”</p>
<p>Melissa Chen Declaration ¶9 The next day, on June 21, 2013, Krystal again emailed Ariel “Please advise if carrier has updated you with the fees?” It was followed shortly by an email that I sent to John Kamada of Econocaribe (“Kamada”). That email stated “the vessel arrived to port few days now, and I understand you are still waiting to hear from MSK but we are running out of time. This is abandoned shipment by shipper/consignee. We can as well abandon it, but we want to keep everything in the good term and to solve this matter instead of dropping it. If you need me to issue abandon letter to MSK to push them for faster response please let me know. We sincerely just want to solve this matter the quickest possible.” [Emphasis added.] See Exhibit “10”. The email activity from Amoy to Econocaribe again showed my commitment to address the cargo problem as soon as possible and not to ignore it. Yet, I wasn’t getting a response to my requests. This email also shows my preference not to abandon the cargo.</p>	<p>Misleading. 1) Inquiry as to the return freight does not show Amoy’s preference to return. 2) As shown by these emails, Econocaribe did not intentionally ignore Amoy’s request as to the return freight. Econocaribe was “waiting on Maersk.”</p>
<p>Melissa Chen Declaration ¶10 Two days later, on June 23, 2013, Kamada replied to my June 21, 2013 email stating that “We are still waiting on Maersk but I would suggest you prepare the abandon letter and have it ready to go.” [Emphasis added.] A week later, on July 1, 2013, not having heard from Kamada, I sent him another email, stating that “the process here is taking really long time and we all don’t know what is happening</p>	<p>Misleading. 1) Kamada did suggest Amoy to prepare an abandonment letter. However, Amoy initiated the idea of abandonment and understood that the letter of abandonment was to put pressure on Maersk. Amoy’s Exhibit 8 and Exhibit 9. 2) Asking whether Amoy could amend</p>

<p>and what MSK is going to do with the containers. There is no word from anyone on how they want to resolve this issue. Meanwhile, please let me know if you can still amend original consignee on the BL with MSK?" [Emphasis added.] Later on July 1, 2013, I exchanged the following emails with Kamada. Kamada: "Given the circumstances, we can probably still revise the Maersk B/L. Do you think that you might find another buyer." I replied "no, we did not find buyer because of the commodity is not permitted to go into China. I wanted to list the buyer on BL of what shipper gave us originally. Please let me know." Kamada answered: "We will call Maersk tomorrow and push them for a response. These types of things usually take a while but I will make sure we expedite it. Hope to have some answers shortly." I replied "Ok, we want to know what MSK would do in this case." See Exhibit "11". After two weeks, there was still no response from Maersk or Econocaribe on how to address the problem, except for Kamada's suggestion to prepare an abandonment letter. He did not reply to my question of whether Econocaribe could amend the original consignees on the BL. Although he said that he would call Maersk and ask for a response, I didn't receive any. These email exchanges show that, even though I expressed a preference not to abandon the cargo, Kamada nevertheless recommended it. I preferred to return the cargo because I wanted to solve the problem "the quickest possible."</p>	<p>the Master Bill of Lading does not show Amoy's preference of returning the cargo. Amoy wanted to list the original Buyer (a Chinese importer) as the consignee. This flatly conflicted her claim that she wanted to return the cargo.</p>
<p>Melissa Chen Declaration ¶11 A week later, on July 9, 2013, which was about three weeks after I first began communicating with Econocaribe, I received an email from Ariel informing me of an email response that Econocaribe received from Maersk China. In that email, Ariel stated that Maersk contacted the consignee who stated that the shipment was not their shipment nor their booking. Ariel advised that the shipper should be informed and that a new consignee should be found. Ariel also informed me that the detention costs were 18360 RMB, which is about \$3,000USD at the rate of 6.3 RMB to the dollar. However, he failed to inform me about the cost of returning the 4 containers, which I had been requesting. Ariel asked me for my comments.</p>	<p>Misleading 1) Amoy was copied the entire message from Maersk and presumably should understand that according to Maersk "[Amoy] need to find a new [consignee] to help them return issue." Amoy could not shift the blame to Econocaribe simply because Econocaribe told him options beside return. Simply put, Amoy got direct instruction from Maersk. 2) Ariel did not inform the return freight because Maersk did not give it the return freight. But as a sophisticated freight forwarder, it could estimate the return freight based on the outbound</p>

<p>Within the hour, I replied stating “why is MSK took so long to take this step. We will not be responsible for the storages for these containers. I have started requesting the assistance since June 17th. Please advise.” [Emphasis added.] Kamada replied stating “Maersk will probably be able to absorb some of these changes. Unfortunately, abandoning the cargo does not relieve the shipper of the potential charges. At this point, the storage charges are not the biggest issue. Since no other consignee can be located, you have the option to return the cargo back to the US or have it sold towards the costs involved (Ocean freight/storage/etc). Please let me know what you would like to do.” [Emphasis added.] I replied ”I was requesting the return of the shipment soonest we found out there was abandon cargo. I don’t understand why this same topic is coming back to us. My emails since Jun 19th was already requesting for these options and waited for carrier’s advice since. This shipment has no choice to either be returned or abandoned, please urgently advise.” [Emphasis added.] See Exhibit “12”. I was frustrated by the lack of direction from Econocaribe and Maersk and the amount of time that it was taking them to respond to my repeated requests to address the issue. I was also frustrated because I was requesting return that the cargo be returned, but I was getting no response. My frustration is seen in this email. To my knowledge, Maersk did not “absorb” any of the charges that Kamada thought it would.</p>	<p>freight and its past experience. Had Amoy tried in good faith to solve the matter, it should have immediately instructed Econocaribe to return the cargo.</p> <p>3) Maersk did absorb the majority of the cost. <i>See</i> John Kamada Declaration.</p>
<p>Melissa Chen Declaration ¶12 Later that day, Kamada replied ”I need you to tell me if it is to be auctioned or returned. In cases like this, the responsibility of the cargo falls on the shipper on the b/l. We have asked Maersk for this information from the first day that you requested it. From the additional free time request to the abandonment letter to todays response from them. I will do all I can to keep the charges at a minimum.” I replied “I am not familiar with MSK about abandonment procedure and costs will be involved. Because even returning to the origin, we also can’t find either of the seller or the middle man at moment. All my intention is to have this problem solved soonest possible. Please help me to check</p>	<p>Misleading.</p> <p>1) Amoy tries to show that it reasonably relied on Econocaribe and Econocaribe gave wrong instruction. However, Econocaribe never thought it was giving instruction. It was asking for Amoy’s decision. See John Kamada’s email cited by Amoy where he stated “I need you to tell me if it is to be auctioned or returned. In cases like this, the responsibility of the cargo falls on the shipper on the b/l.” Econocaribe never wanted to take the responsibility to determine the cargo’s fate – it was up to Amoy’s ultimate</p>

<p>with MSK if you can talk to some one and ask them what will be cheapest way to solve this matter. I still think returning will be the fastest way, please let me know.” [Emphasis added.] See Exhibit “12 ”. These email exchanges show my preference to returning the cargo as soon as possible. They also show that I was not familiar with abandonment procedures and their costs and I was looking to Econocaribe for direction.</p>	<p>decision. 2) Being a sophisticated freight forwarder, NVOCC, and a used rubber dealer, and having recently experienced several large misdeclaration/demurrage situations, Amoy’s reliance on Econocaribe is completely unfounded. See Econocaribe Reply Exhibits 2 and 4.</p>
<p>Melissa Chen Declaration ¶13 The next day, on July 10, 2013, Kamada emailed a question to me: “Can you confirm if the cargo was insured.” I immediately replied “cargo does not have insurance.” Six minutes later, Kamada emailed me: “Ok. The final decision is yours. You can abandon the cargo for sale at destination with the understanding that all charges (ocean freight, de-vanning, storage, etc...) not covered by the sale of goods will be to your account. We do have your abandonment letter but we needed to get Maersk’s stance on the cargo before we proceed. Or You can return the shipment to US for an attempt to re-sell here but this is usually a more expensive alternative. Should you choose to abandon the cargo, we will begin the process immediately. Please understand that the steamship lines move very slowly on these things so we will need to continue to push them. Please let me know and thanks.” See Exhibit “12”.</p>	<p>Clarification: 1) This email shows exactly that Econocaribe always asked for Amoy’s final decision and never gave it own instruction. 2) In response to Melissa Chen’s email saying the she thought return was the fastest way, Kamada did say that return usually was usually more expensive. This is a true statement – return <i>usually</i> is more expensive. Amoy need to consider its special circumstances and assess whether return was more expensive. Amoy is not without the information to make such calculation – it could have estimated the return freight, the subsequent costs, and it also knew from the outset that because it knew that “the commodity is not permitted to go into China.” See Amoy’s Exhibit 11.</p>
<p>Melissa Chen Declaration ¶14 In view of the alternatives that Kamada presented to me, abandoning the cargo at destination with all charges being for Amoy’s account or returning the cargo to the US, which, according to Kamada, was more expensive, I replied “Please proceed with abandonment of containers immediately.” [Emphasis added.] See Exhibit “12”. He knew from my emails that I was seeking the cheapest way to solve the matter and that I was look for his advice on how to do this. From the time I received Kamada’s June 23, 2013 email, see Exhibit “11”, I was led to believe that Amoy could abandon the cargo. I was never told that the letter of abandonment was “only to see if it could pressure Chinese Customs to order disposition.” [See Complainant’s “Undisputed Fact”</p>	<p>Misleading: 1) Econocaribe never took Melissa Chen’s email as asking for instruction. It always presented all the options to Amoy. Econocaribe presented abandonment as an option because Maersk never told Econocaribe that abandonment was <i>not</i> an option. Further, Maersk’s email was relayed to Amoy and Amoy understood that it needed to “find a new [consignee] to help them return issue.” Amoy’s Exhibit 12. 2) Being a sophisticated freight forwarder, NVOCC, and a used rubber dealer, and had recently experienced</p>

<p>No. 24.] If I had been informed that the letter of abandonment was merely a negotiating ploy, I would have insisted that the cargo be re-exported to the United States.</p>	<p>several large misdeclaration/demurrage situations, Amoy's reliance on Econocaribe is completely unfounded. See Econocaribe Reply Exhibits 2 and 4. 3) Amoy understood from the beginning that the abandonment letter was to push Maersk for a faster response. Amoy's Exhibit 9.</p>
<p>Melissa Chen Declaration ¶15 Through Econocaribe's Rule 26 disclosure, I learned that on July 10, Ariel emailed my decision to Maersk Florida: "The customer just confirmed they would like to abandon the containers, Please confirm the procedures and costs to do so." Ariel's email was followed up with emails from him on July 12 and July 15, confirming abandonment of the containers. See Exhibit "13". I would have expected that if Amoy couldn't abandon the cargo, it would have been so informed at this time.</p>	<p>Clarification: Maersk never told Econocaribe that abandonment was not an option. The fact that it was not an option was known only in hindsight, not prospectively. Econocaribe did not act unreasonably.</p>
<p>Melissa Chen Declaration ¶16 Through Econocaribe's Rule 26 disclosure, I also learned, from emails produced by Econocaribe, that on July 9, 2013, Ariel emailed Maersk Florida and asked: "So what are our options here? Since Victory [the Consignee] is not helping out, is our only opinion abandonment? Can we return the containers back to the US without docs at an additional fee? We need a breakdown of procedures and charges for the following options:-Return back to the US (if possible)- Abandon the cargo." See Exhibit "14". Kamada never informed me that he made his recommendations in his July 10, 2013 email without having received a reply from Maersk on what it considered to be the available options to address the cargo issue.</p>	<p>Misleading. 1) Ariel's inquiry on July 9, 2013 as to return charges does not establish that Econocaribe never asked Maersk either in writing or orally whether Amoy could return cargo. It could well be that Maersk never answered Econocaribe's request so Ariel followed up again in writing. However this does not create a disputed fact because this is irrelevant as to whether Amoy had violated the Shipping Act. 2) Econocaribe never told or implied to Amoy that its estimation that return was usually more expensive came from Maersk.</p>
<p>Melissa Chen Declaration ¶17 On July 17, 2013, Kamada forwarded me an email that he received from Maersk Florida earlier that day, which appears to be Maersk's reply to Ariel's July 9, 2013 email. That email stated that "As the cargo owner they absolutely can't abandon the containers, now they must find new buyer at destination or arrange re-export . . . We suggest to them to take quick action to arrange their cargo,</p>	<p>Misleading and misstating the facts. 1) Maersk's email speaks for itself. The possible scenarios presented by Maersk were: (a) not to abandon the cargo within the 90 days window, meaning Amoy needed to find a buyer at the destination or arrange for re-export; (b) waited until the 90 days window expired and let Chinese Customs deem</p>

even if cargo will be returned to origin, auctioned or destroyed in the future due to no one pick up containers. All the fee will be charge to the shipper. According to China Law, When shipment discharge goes past 90 days without pick up by CNE, it will be considered as abandon cargo and can be disposed by China Customs. Due to the cargo nature, China customs will need assistance from the China Inspection and Quarantine Authority to check the cargo first. Only with the result of the inspection, can customs decide what to do with the cargo. We heard usually there are 3 possible ways of finally handling the cargo:

1. Order return to origin (if cargo is found as prohibited or restricted to import to China;
2. Auction (if cargo is found allowed to import to China).
3. Destroy (if cargo is found not in good condition for return and auction.)

[Emphasis added.]

Kamada prefaced his July 17, 2013 email with the statement that "Per Maersk, the containers cannot be abandoned until after 90 days of arrival." [Emphasis added.] I understood that statement to be his interpretation of the Maersk email and guidance to me on how I should understand that email. My understanding of Kamada's statement was that Amoy could abandon the containers after a 90 day waiting period. I replied that "this is the exact information we needed to hear from MSK since early June when I first contacted your office. It seems the shipment will need to be destroyed at port of destination, please advise the procedure ASAP." Ariel responded: "Noted, after the 90 days China customs will determine how they will proceed either of the three options below. I will follow up and keep you posted on any new development." I replied: "I don't think we can wait for 90 days, can you check again please? If waited longer, the cost will go up sky high." Ariel responded: "Noted Melissa, I will check and see but just note this looks like a China Customs regulation. It might be difficult to alter their rules/procedures." I responded "If all waited for 90 days, there will be no possible way for anyone to pay these fees, please let me know and I hope MSK can respond faster?" [Emphasis added.]

the cargo abandoned then dispose it according to the three options (order return to origin. Auction, and destroy).

2) Kamada did not preface any July 17, 2013 email with "per Maersk, the containers cannot be abandoned until after 90 days of arrival." It was written by Ariel Martinez. However, who prefaced the Maersk email was not important. The statement was a true summary of Maersk's email. Melissa Chen should understand Maersk's message.

3) Ariel did follow up with Maersk. *See* Amoy's Exhibit 17.

<p>See Exhibit "15". At this time, I was hoping that Maersk and Econocaribe would address the cargo problem with Chinese Customs before the 90 day period expired. I also believed that a letter of abandonment would solve the cargo problem. Notwithstanding Ariel's representation that he would follow up, he didn't.</p>	
<p>Melissa Chen Declaration ¶18 Through Econocaribe's Rule 26 disclosure, I learned that after receiving the July 17, 2013 email from Maersk Florida, Kamada responded to it by stating that "If I read the below correctly, we only have to re-import if the cargo is found as prohibited. It should not be. We should be able to abandon, auction and or destroy cargo. Is there more to the e-mail that they sent from overseas? I have been involved in a few cases of this nature and we have always been able to abandon at destination?" [Emphasis added.] Florida Maersk responded to Kamada's email: "Hi John, Correct after 90 days it is considered abandoned but then of course come the additional charges as mentioned in correspondence which will be for the account of the shipper. There was no additional information from overseas." See Exhibit "16". Apparently Kamada did not know or believe that a shipper or cargo interest could not abandon the cargo under these circumstances. I was led me to believe that after 90 days, I could abandon the cargo.</p>	<p>Clarification: As Amoy conceded, under the circumstances, John Kamada did think abandonment was an option. Such concession proves that Econocaribe did not acted unreasonably in its effort to mitigate the loss. Then the question is whether Amoy violated the Shipping Act. Amoy's reliance on Econocaribe, either founded or unfounded, has not bearing on the issue of violation of the Shipping Act.</p>
<p>Melissa Chen Declaration ¶19 Through Econocaribe's Rule 26 disclosure, I also learned of an email exchange between Maersk Florida and Kamada on July 18, 2013. Maersk Florida: "John, Just a heads up right now we are looking at \$6400 USD and we still have 2 more months to go. I have sent an email to our overseas office to see if we can jumpstart the abandonment process or if we have to wait for customs. This is in the effort of reducing the charges that are increasing day by day." Kamada's reply: "Hopefully we can put this file to rest as quickly as possible. Please keep us posted." See Exhibit "17". Kamada did not inform me that the total charges accruing on the four containers as of July 18, 2013 was \$6400USD, which was an increase from the July 9, 2013 email. Although I had been asking for the cost of re-</p>	<p>Misleading. 1) Econocaribe did ask Maersk for re-export costs. See Amoy's Exhibit 14. Econocaribe could not inform Amoy re-export costs without receiving any information from Maersk. 2) This email exchange shows that without the benefit of hindsight, abandonment was deemed an option. Therefore Econocaribe did not fail to mitigate the losses.</p>

<p>exporting the four containers since June 20, 2013, see Exhibit 7, Amoy never received a response to its repeated requests for re-export costs until May 12, 2014. See Exhibit “27”.</p>	
<p>Melissa Chen Declaration ¶20 Through Econocaribe’s Rule 26 disclosure, I learned that neither Maersk nor Econocaribe had done anything for almost a month with regard to addressing the cargo problem. On August 14, 2013, almost a month after Kamada’s July 18 email, Ariel sent an email to Maersk Florida: “Can you please confirm the status of this order? As of today how much is storage and how many days do we have until the 90 days are up?” There was no response from Maersk Florida. Kamada sent another followup to Maersk Florida on September 4. Maersk Florida replied as follows: Per our last communication on this 7/30/2013, you were going to put together a formal letter of abandonment so we can ask our colleague in China present this to Customs and see if they’re willing to speed up the 90 day timeline. I never received the letter. You also noted at that time that your agent confirmed the 90 day waiting period. This cargo discharged 6/17/13 so the waiting period should be coming up within next couple of weeks. We’ll go out to MSK China and have then give us all costs to date associated w/this abandoned load.” [Emphasis added.] Kamada replied: “I will have the letter to you shortly.” See Exhibit “18”.</p>	<p>Misleading: 1) Maersk was working with Maersk China in order to deal with Chinese Customs. The process was presumably slow and Melissa understood this. See Amoy's Exhibit 11. 2) Because the abandonment could not be started without hitting the 90 days window, Maersk and Econocaribe’s slow activities are understandable.</p>
<p>Melissa Chen Declaration ¶21 Through Econocaribe’s Rule 26 disclosure, I also learned that on September 6, 2013, Maersk Florida emailed Kamada: “Regret that this situation with abandoned shipment in China does not look very promising. From everything we’re being told, if this cargo is seized by Customs once the 90 days after discharge timeline hits, then it could take China Customs an undetermined amount of time to decide on cargo disposition. MSK China is not able to give us a clear time timeline of how long it may take. They continue to tell us best option is for your agent in country to see about re-export options before this is seized. We’ve already advised that you don’t have commercial documents to present to China Customs. Latest communication from MSK China is telling us that if we go ahead and send them your formal letter</p>	<p>Clarification: 1) This is the first time that both Maersk and Econocaribe knew that after the 90 days window expired, the abandonment process could take an undetermined amount of time. From the hindsight, abandonment is not an option. But reasonableness is not determined from the hindsight. 2) It is not clear whether Econocaribe forwarded this message to Amoy, but even if not, the failure is harmless because Econocaribe did not get the necessary commercial documents from Amoy and Chinese Customs might still take a very long time to re-export the cargo because it was restricted</p>

<p>of abandonment, they can ‘try and find a local agency or CHB in the market to ask about this issue.’ The detention at destination thru 9/5/13 quoted is already 171480.00 RMB and increases 1980 RMB per day. Please get us a letter on Econocaribe letterhead and let’s see if MSK China is able to make any progress.” [Emphasis added.] See Exhibit “19”.</p>	<p>commodity. <i>See Econocaribe Reply Exhibit 5.</i></p>
<p>Melissa Chen Declaration ¶22 Except for requesting an abandonment letter, the content of the September 6 email from Maersk Florida, Exhibit “19”, specifically Maersk’s warning to Kamada that the best option is to see about re-exporting options before the cargo was seized, was not sent to Amoy. See Exhibit “20”. If Amoy was told that its “best option” was to re-export the cargo, before it was seized, I would have done so. Instead, I continued to believe that a letter of abandonment was a proper option that would address the issue. Kamada sent Amoy’s amended abandonment letter to Maersk Florida on September 10. See Exhibit “19”.</p>	<p>Misleading: It is not clear whether Econocaribe forwarded this message to Amoy, but even if not, the failure is harmless because Econocaribe did not get the necessary commercial documents from Amoy.</p>
<p>Melissa Chen Declaration ¶23 Through Econocaribe’s Rule 26 disclosure, I also learned that Maersk Florida, in a September 12, 2013 email to Kamada, asked him “Any chance at all that you have photos of what was loaded at the supplier? Without commercial documentation, this is getting very difficult to resolve.” Kamada sent the photos that day. See Exhibit “21”. They were previously sent to him by me. See Exhibit “22”. On September 13, 2013, Ariel emailed me asking me to provide him the name and information of the actual shipper that booked the shipment, which I did. See Exhibit “23”. These emails show my continuing cooperation and prompt responses to what I believed would address the cargo issue.</p>	<p>Misleading: Amoy tries to show that it made reasonable effort to mitigate the losses. However, Amoy’s effort does not show Econocaribe’s lack of effort. The emails cited by Amoy show that Econocaribe acted promptly in accordance with Maersk’s request and guidance.</p>
<p>Melissa Chen Declaration ¶24 The next communication that Amoy received from Econocaribe was seven months later, an email dated April 15, 2014. Kamada wanted to insure that Amoy received an update on the booking. Because I hadn’t heard from him for seven months, I thought that the letter of abandonment had successfully addressed the cargo issue. However, that was not the case. The email proposed some alternatives with regard to</p>	<p>Misleading and irrelevant. 1) There were other communications during this period. <i>See Econocaribe Reply Exhibit 5.</i> An email was sent by Ariel Martinez to Melissa Chen with updates on the status of detention on November 1, 2013. 2) This is not the first time Amoy misdeclared cargo. Amoy had been</p>

<p>returning the cargo. Maersk China recommended “that return cargo process is initiated right away to avoid possible fines down the road.” [Emphasis added.] See Exhibit “24”. I replied to the email, stating “It has been long time we waited to hear from MKS about this freight. If any suggestions you can help to come up and take care of this problem, please let me know. I want to solve this problem soonest possible.” [Emphasis added.] I also stated in that email that “the total cost listed below is really expensive and I can’t afford to pay them.” I made that statement, not because I was admitting liability for those costs, but because of an email that I received from Econocaribe earlier that day regarding costs and the amount of those costs. I did not believe that I should pay them. I considered those costs had unnecessarily accrued because of Econocaribe’s failure to address the problem from the outset and its failure to keep me properly informed. See, for example paragraph 22 of this Declaration. This was the first time that a demand was made on Amoy for those costs. On April 17, I asked Kamada about the abandonment letter: “Once abandonment letter was sign to carrier, they usually don’t come back to ask to take the container back, can you please check again?” On April 22, Kamada replied that because the cargo was mis-declared, “this is their only option”, meaning re-export to the US. See Exhibit “25”. This was information that he should have told me at the outset or at least when he sent his September 8, 2013 email to me. See Exhibit “20”. This is the first time that Econocaribe asked Amoy to re-export the cargo, which was what Amoy wanted to do from the outset.</p>	<p>demanded for demurrage costs. Amoy also understood that under the terms of Tariff and Terms of Conditions, it would be liable for resulting costs. It is absurd for it to say that “this was the first time that a demand was made on Amoy for those costs.” It knew full well as an experienced shipper, sophisticated NVOCC, and rubber exporter that it would have to pay for overseas storage and demurrage costs.</p> <p>3) Though it might be true that it was the first time that Econocaribe told Amoy that return was the only option, this was also the first time Maersk told Econocaribe that return was the only option. Otherwise Maersk would have insisted Econocaribe for return of cargo in its September 6, 2013 email.</p> <p>4) It is purely speculative that had Melissa Chen known of Maersk’s September 6, 2013 email, she would have had insisted upon return of the cargo.</p> <p>5) Irrelevant because Amoy’s claimed reasonableness in mitigating the losses has nothing to do with the reasonableness or unreasonableness of Econocaribe in mitigating the losses. Econocaribe correctly relayed the information and even if it failed to tell Amoy that the best option was to re-export was harmless because Amoy failed to provide necessary documents to re-export.</p>
<p>Melissa Chen Declaration ¶25 On April 22, I sent Kamada an email informing him that “the problem is bringing it back to US, we don’t have importer for this container. They took too long to get back to us. We have this company as original seller to the people who shipped with us, if MSK is to return, can they list them as importer on MBL?” Kamada replied: “Maersk is ok with showing this customer as the importer on the b/l. Just note that the charges need to be paid up front PRIOR to the cargo returning to Los Angeles. Will this customer be</p>	<p>Misleading and irrelevant.</p> <p>1) Irrelevant because Amoy’s claimed reasonableness in mitigating the losses has nothing to do with the reasonableness or unreasonableness of Econocaribe in mitigating the losses. Econocaribe correctly relayed the information and even if it failed to tell Amoy that the best option was to re-export was harmless because Amoy failed to provide necessary documents</p>

<p>responsible for clearing the freight?” [Emphasis added.] See Exhibit “26”. It was my understanding from this email Maersk required the charges to be paid prior to the cargo being returned to Los Angeles. Those charges to almost \$200,000. This was the first time that a demand was made on Amoy to pay all charges for the cargo before it was returned to Los Angeles. I could not afford to pay those charges, which I consider to be the result of Maersk and Econocaribe’s failure to have addressed the problem earlier. I warned Econocaribe, soon after the cargo discharged, that costs would go “sky high” if quick action wasn’t taken. See Exhibit “15”. My April 22, 2014 email shows that even though Econocaribe and Maersk “took too long to get back to us,” I believed that I could find a shipper. In May and June, 2014, I tried to find a shipper. I contacted several companies to see if they were interested in dealing with the cargo. Three companies, BJ Used Tire & Recycling, Inc., Load n Ship, and R4 Solutions (E-Waste), showed an initial interest and at their request, I sent them photographs. These photographs were sent to my attorney by Econocaribe’s attorney, Neil Mooney. These companies then wanted samples, verification of the exact type of recycled tire and how they were processed, which I was unable to provide. I called four other companies, but they were not interested. I was still working on finding a shipper, up to the time that Econocaribe filed its FMC complaint in August, 2014.</p>	<p>to re-export. 2) Amoy’s understanding as to a demand of upfront payment of return freight and demurrage is not relevant to Econocaribe’s mitigation effort or Amoy’s violation of the Shipping Act.</p>
<p>Melissa Chen Declaration ¶26 On May 12, 2014, Kamada sent me an email where he stated that “the initial D&D (excluding re-export charges) quoted by Maersk was \$171K and we went out and obtained mitigated amount of D&D \$50K plus the re-export charges, total all charges \$67K. As per our discussion on same, this amount fell within the numbers you and I discussed.” See Exhibit “27”. This email is the first time that Econocaribe responded to Amoy’s request for the cost of re-exporting the cargo.</p>	<p>Misleading and irrelevant. 1) Econocaribe could not provide cost of re-exporting the cargo if Maersk did not provide the information to Econocaribe.</p>
<p>Melissa Chen Declaration ¶27 From Econocaribe’s Rule 26 disclosure, I learned that on May 12, 2014, Kamada received an email from Maersk Florida stating: “Abandonment letter</p>	<p>Misleading: 1) Asking for costs relating to return does not show Amoy’s preference to returning the cargo.</p>

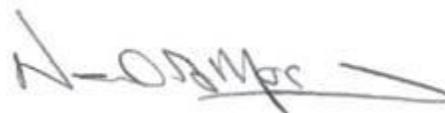
<p>does not release shipper of liability. We requested the formal abandonment letter to see if we could put pressure on China Customs to order disposition. This cargo was mis-declared as ‘auto parts’ when in fact it was ‘used tires’ which is a restricted commodity into China and one which is heavily fined. Maersk did not sit on this. We kept communication flow going asking Maersk China to intervene but it is not uncommon for China Customs to hold onto cargo, sometimes over a year, to render a decision. At that time we made it known that best option was to find a consignee or start re-export, which is what we’re doing now.” On May 14, 2014, Maersk Florida sent Kamada another email stating: “Maersk is not the bad guy here. In fact, your customer declared auto parts and shipped a restricted commodity to China. Of course, they choose to ignore that this is root cause of cargo siting and facing re-export. Actually when this situation first arose, the options provided to Econocaribe were to find a new buyer or re-export but Econocaribe was not able to provide required commercial docs to initiate this process, prior to Customs seizure of the cargo. [Emphasis added.] See Exhibit “28”. Maersk’s email shows that the “best options” that it gave to Econocaribe were to find a new buyer or re-export. Re-export was Amoy’s preference. Nevertheless, Econocaribe suggested that Amoy issue a letter of abandonment.</p>	<p>2) Although Maersk told Econocaribe that the best option was to re-export, Maersk never told Econocaribe that re-export was the only option. Econocaribe’s mitigation was reasonable.</p> <p>3) Amoy could not provide the necessary commercial document.</p> <p>4) Amoy understood from the outset that the abandonment letter was to put some pressure on Maersk or Chinese Customs. <i>See</i> Amoy’s Exhibit 9.</p> <p>5) Maersk’s July 17, 2013 email was correctly relayed to Amoy, Amoy should have formed its own decision based on this.</p>
<p>Melissa Chen Declaration ¶28</p> <p>Through Econocaribe’s Rule 26 disclosure, I learned that on June 9, 2014, Maersk Florida emailed the following to Kamada: “China Customs controls and decides when disposal can be arranged and for that reason, we don’t have a final invoice from Customs. On that basis, Maersk China chose to petition Customs to allow re-export process to mitigate our exposure and costs, rather than to let cargo continue to sit while Customs decides when to order disposition. See Exhibit “29”. That email was followed up by another email of June 11, from Maersk Florida stating: Maersk petitioned disposal from China Customs back in March, 2014, and so far no feedback. See Exhibit “30”. When I read this email, I was surprised to learn that Maersk waited 9 months after the cargo arrived before it petitioned China Customs regarding the disposal of the cargo.</p>	<p>Misleading and irrelevant.</p> <p>1) What Melissa Chen felt after seeing these emails is irrelevant to Amoy’s violation of the Shipping Act and irrelevant to Econocaribe’s mitigation.</p>

<p>Melissa Chen Declaration ¶29</p> <p>On or about May 18, 2014, I had a telephone conference with Kamada. His recollection of our conversation is incorrect. I did not tell him that “this was not the first time that Amoy had shipped used tires by providing false information to another NVOCC”; or that “the previous misdeclaration was also done by the same employee Krystal Lee” or “that as a result of Krystal Lee’s misconduct, Amoy paid other NVOCC damages Amoy caused”; or that she did “the previous misdeclaration willfully.” Krystal Lee was involved in another incident, where she was contacted by Clare Anderson of Sea Consulting, LLC to book 16 containers of wood pulp to Greece in October, 2012. 5 containers were shipped on an MSC vessel and 11 containers were shipped on a ZIM vessel. It turned out that the containers contained reusable paper and wet waste paper instead of wood pulp. Because of the discrepancy, MSC and ZIM made claims against Amoy, which it settled with these carriers. Mr Anderson was found guilty of wire fraud in connection with this and other shipments that he made and was sentenced for that crime. See Exhibit “31”; Request for Judicial Notice. Krystal was not charged with a crime. She committed no misconduct. The previous incident did not involve an NVOCC, but ocean carriers; it did not involve used tires, but reusable paper and wet waste paper. There were no other incidents involving Krystal and other NVOCCs or misdeclarations or baled tires.</p>	<p>Misleading and irrelevant.</p> <ol style="list-style-type: none"> 1) Amoy’s Exhibit 31 is irrelevant because it does not show any connection to Amoy. 2) Amoy’s statement on the internet that it specialized in dealing in used rubber and used tires speaks for itself.
<p>Melissa Chen Declaration ¶30</p> <p>Kamada is also wrong in his recollection that I told him “Krystal Lee did this [meaning the Econocaribe transaction] . . . willfully” or “that Krystal Lee colluded with the shipper of the cargo; that Krystal Lee was terminated because of this misconduct.” I did not tell him that. I know of no facts that Krystal either wilfully misdeclared the cargo or that she colluded with the shipper John Chen to misdeclare the cargo. She handled the booking as she would have for other bookings. She received a packing slip and commercial invoice from the shipper, see Exhibits “4” and “5”. He sent her a completed Amoy Shipper’s Letter of Instruction, Exhibit “6”. He also sent her a photograph of the cargo that she</p>	<ol style="list-style-type: none"> 1) Lack of foundation and authentication for Exhibits 4, 5 and 6. 2) Hearsay, lack of personal knowledge for Exhibit 32. There is no proof that Melissa Chen is the custodian of Krystal Lee’s “backup” gmail account so that she can authenticate Krystal Lee’s statement and there is no proof that Krystal Lee’s gmail was kept in the course of a regularly conducted activity pursuant to F.R.E. Rule 803(6).

<p>requested, which is found in Exhibit "32". Amoy believed that this was a photograph of the cargo.</p>	
<p>Melissa Chen Declaration ¶31 In preparing this Affidavit, I was asked by Amoy's attorney, Mr. Mirkovich to see if there were any more documents or emails pertaining to the booking made by Mr. Chen. Amoy no longer has Krystal's computer because it was attacked by a virus. As a result, I accessed her back-up Gmail account and found additional emails that were exchanged with Mr. Chen. See Exhibit "32". These emails begin on May 17, 2013 and extend to May 24, 2013. They include emails that transmitted the packing list, Exhibit "4" and the commercial invoice, Exhibit "5". A requested picture of the cargo was also included. Part of Exhibit "32" also includes emails found in Exhibit 1. These emails and attachments support my belief that Krystal did not misdeclare the cargo wilfully or that she colluded with Mr. Chen.</p>	<p>Hearsay, lack of personal knowledge for Exhibit 32. There is no proof that Melissa Chen is the custodian of Krystal Lee's "backup" gmail account so that she can authenticate Krystal Lee's statement and there is no proof that Krystal Lee's gmail was kept in the course of a regularly conducted activity pursuant to F.R.E. Rule 803(6).</p>
<p>Melissa Chen Declaration ¶32 Except for documents that were produced by Econocaribe in its Rule 26 disclosure, the documents that are attached as exhibits to my declaration are all business records maintained by Amoy in the course of its business.</p>	<p>Hearsay, lack of personal knowledge for Exhibit 32. There is no proof that Melissa Chen is the custodian of Krystal Lee's "backup" gmail account so that she can authenticate Krystal Lee's statement and there is no proof that Krystal Lee's gmail was kept in the course of a regularly conducted activity pursuant to F.R.E. Rule 803(6).</p>

DATED: January 26, 2015

THE MOONEY LAW FIRM, LLC



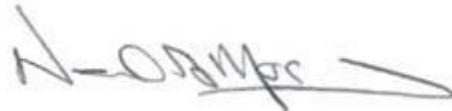
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMPLAINANT'S OBJECTIONS TO THE DECLARATION OF MELISSA CHEN** was sent to the below-mentioned counsel via email on January 26, 2015.

Joseph N. Mirkovich, Esq.
RUSSELL MIRKOVICH & MORROW
Email: jmirkovich@rumlaw.com
Attorneys for Respondent
AMOY INTERNATIONAL LLC.

A handwritten signature in black ink, appearing to read "Neil B. Mooney", is written over a horizontal line.

Neil B. Mooney, Esq.