

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

Complainants,

– vs. –

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

Respondents.

**COMPLAINANTS’ BRIEF IN OPPOSITION TO THE MOTION BY
RESPONDENTS FOR AN EXTENSION OF TIME IN WHICH TO RESPOND TO THE
COMMISSION’S ORDER TO SHOW CAUSE**

Pursuant to Rules 69, 71, and 102 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainants, through their Counsel, Marcus A. Nussbaum, Esq. and Seth M. Katz, Esq., respectfully submit this brief in opposition to the motion by respondents Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc. (collectively “Respondents”) for an extension of time in which to respond to the Commission’s Notice of Default and Order to Show Cause dated March 30, 2016.

As set forth below, the instant motion by Respondents fails to demonstrate the requisite “good cause” required in order to justify an extension of time in which to respond to the Commission’s Notice of Default and Order to Show Cause. While Respondents’ motion seeks to justify their requested relief on the basis of a forthcoming motion to stay these proceedings, said motion is on its face an attempt to muddy the waters and confuse this Commission with irrelevant information and specious allegations of fact, a significant portion of which do not merit a response

herein. Respondents' instant motion feigns that "Empire...is not currently seeking a stay", yet this motion attempts to place the cart before the horse, and indeed argues the merits of a motion to stay, which Complainant's decline to respond to at this time. To the extent that Respondents file a motion for a stay of these proceedings, Complainants shall respond in turn.

The bottom line is that the Respondents have demonstrated themselves to be serial process server evaders; have inexcusably failed to comply with the directives of this Commission, and should be held in default if they fail to respond to the Notice of Default and Order to Show Cause by April 14, 2016. Thus, Respondents' instant motion should be denied in its entirety.

RELEVANT PROCEDURAL HISTORY

The full procedural history and chain of events leading up to Respondents' instant motion are already known to the Commission, as they are set forth in detail in Complainants' Motion for a Default Judgment Against Respondents of February 12, 2016. For the sake of brevity, the undersigned respectfully refers the Commission to that motion for a full recitation of the relevant procedural history and facts, a copy of which is again annexed hereto as **Exhibit "A"** for the Commission's convenience.

Subsequent to the filing of Complainants' Motion for a Default Judgment Against Respondents, the Commission issued a Notice of Default and Order to Show Cause on March 30, 2016 (the "Notice"), directing that the Respondents show cause why an initial decision on default should not be entered against them, a copy of which is again annexed hereto as **Exhibit "B"**. The Notice makes reference to Respondents' prior admission made in their Answer filed in FMC Docket No.: 14-16, that their address is 2303 Coney Island Avenue, Brooklyn, NY 11222, and the Notice further explains that this is the address where the Commission served copies of the Complaint herein by First Class Mail, and made attempted service by United Parcel Service (UPS),

the latter of which was refused by Respondents.¹ The Notice also makes reference to the service effected by Complainants via private process server upon Respondents at their place of business on December 29, 2015.

While the undersigned shall respond separately to Respondents' contemporaneously filed Motion for an Extension of Time requesting the same relief as requested herein (as filed in FMC Informal Docket No. 1953(I)), it bears noting that the Notice of Default and Order to Show Cause in that matter explains that: "It appears likely that when UPS attempted to deliver the packages mailed by the Secretary, Hitrinov and Empire, respondents in another Commission proceeding (i.e. this proceeding), refused delivery because the packages came from the Commission".

Most significantly, the Commission's March 30, 2016 Notice explains that: "...it appears that Hitrinov and Empire have notice of this proceeding and an opportunity to be heard on Complainants' allegations." On this point, Complainants overwhelmingly agree, and add that to the extent that the Notice explains that "[t]here may be some valid reason why they have failed to respond to the Complaint or the motion for default", Complainants submit that said failure is inexcusable, and that the instant motion is simply an attempt by Respondents to avoid having to explain their evasive, obstructive and bad faith litigation tactics to the Commission.

The instant motion skirts around Respondents' inevitable obligation to justify their behavior to the Commission with frivolous argument regarding judicial economy; Respondents' purported right to be heard in a meaningful manner on its arguments in support of a stay (which any such right has already been waived because the time for exercising such right expired long

¹ Respondents' inexcusable rejection of correspondence from this Commission (a Federal Agency which has jurisdiction over the Respondents and their license to do business as an NVOCC) is akin to a tax payer refusing to accept correspondence from the IRS regarding unpaid taxes. It is simply beyond belief that Respondents have so brazenly flouted their statutory obligations to the Commission, and it is submitted that the punishment for doing so must be severe enough so that Respondents come to understand the sacrosanct nature of these proceedings, and be compelled to refrain from further attempts to evade service of process from this Commission.

ago); and the alleged need for Respondents' recently hired counsel to have additional time to respond to the Commission's March 30, 2016 Notice.

ARGUMENT

I. THE MOTION BY RESPONDENTS FAILS TO DEMONSTRATE THE REQUISITE "GOOD CAUSE" REQUIRED IN ORDER TO JUSTIFY AN EXTENSION OF TIME IN WHICH TO RESPOND TO THE COMMISSION'S NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE

A. Standard for Enlargement or Reduction of Time to File Documents

The standard for enlargement or reduction of time to file documents is well known to this Commission and is set forth in Rule 102 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.102, which reads, in relevant part as follows:

"Motions for enlargement or reduction of time for the filing of any pleading...may be granted upon a showing of good cause."

As set forth in detail below, the Respondents' motion fails meet this standard due to their abject failure to demonstrate the requisite good cause required for justifying an extension of time. The aforementioned procedural history establishes that the Respondents have had notice of these proceedings for months, and it is submitted that their eleventh hour application to this Commission has been made *solely* for the purposes of avoiding having to commit to taking a position as to why they ignored the service of process from this Commission. To the extent that the Respondents saw fit to move for a stay of these proceedings, the time for doing so expired long ago. Instead, the Respondents sat on their hands and waived their right to "be heard in a meaningful manner" on any purported argument in support of a stay of these proceedings.

B. The Respondents Have Not Demonstrated Good Cause for an Extension of Time

The asserted basis for Respondents' motion boils down to the following three points:

- That the cars at issue in this matter are allegedly the same cars at issue in previously filed Federal litigation in the District of New Jersey and that litigating claims in two jurisdictions is contrary to judicial economy potentially resulting in inconsistent results and/or alleged double injury;

- Respondents are allegedly entitled to be heard in a meaningful manner on their arguments in favor of a stay; and
- Recently hired counsel needs additional time to respond to the March 30, 2016 Order to Show Cause.

As already set forth herein, Respondents instant motion should be denied because they have had plenty of time to respond to the Commission's correspondence, and thus can only now argue the reasons why a default should not be entered, which they have failed to do as of the time of this writing. Any rights by Respondents to now argue the merits of this matter have been waived. The fact that respondents only now hired an attorney is inexcusable, and Respondents should have done so months ago. Moreover, it is respectfully submitted that it is unlikely that Respondents' forthcoming motion for a stay will be granted. While Complainants shall respond fully to the arguments proffered by Respondents in that motion at the appropriate time, it is worth noting that the Respondents have made an argument regarding the standing of Complainants to bring the instant proceeding in footnote "6" of their brief which should be addressed, to wit: the alleged lack of a "shipper-carrier relationship between Empire and any of the complainants..." Annexed hereto as **Exhibit "C"** is a brief submitted by Respondents' other attorney, Mr. Jon Werner, Esq., who represents Respondents in the pending Federal litigation in the District of New Jersey. The Commission is respectfully referred to page "23" of said brief wherein Mr. Werner, Esq. takes a position exactly opposite to that now argued by Respondents in their instant motion, where he argues that the Complainants herein *are the only ones* who have standing to pursue a claim against the Respondents, and he explains as follows:

"The only persons therefore, who potentially have standing to sue the EUL defendants with respect to the wrongful acts alleged *are the customers of the Kapustin Defendants who purchased the vehicles and were allegedly deprived of their right to take possession of the vehicles by the EUL defendants' actions*...To hold otherwise, and find that the Kapustin Defendants have adequate standing, would result in the unjust enrichment of the Kapustin Defendants *to the potential detriment of the actually aggrieved customers of the Kapustin Defendants.*" (emphasis added)

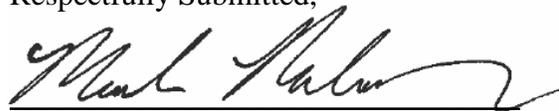
A final brief point on the issue of why argument in favor of a stay of this matter would be unavailing, particularly based upon pending Federal litigation, is that the instant matter solely involves claims for violations of the Shipping Act of 1984, 46 U.S.C. §40101, et. Seq. (the “Shipping Act”). It is well settled that the Commission has exclusive jurisdiction over suits to recover reparations under the Shipping Act. *See, D.L. Piazza Co. v. West Coast Line, Inc.*, 210 F.2d 947 (2d. Cir.). Moreover, Respondents cannot dispute that there are no Shipping Act claims being brought in the pending Federal litigation. The Complainants herein are not parties to that action, and the plaintiffs in the pending New Jersey litigation have alleged claims for breach of contract etc. which are completely separately causes of action from those brought by the Complainants herein, to the extent that they are actually related to the same cars. Thus, any recovery obtained by Complainants herein is not actually double recovery against the Respondents; it will be recovery for different claims.

CONCLUSION

In light of the foregoing, it is submitted that the Respondents have not demonstrated good cause for an extension of time. As such, Complainants respectfully request that the Motion for an Extension of Time be denied.

Dated: April 12, 2016
Brooklyn, New York

Respectfully Submitted,



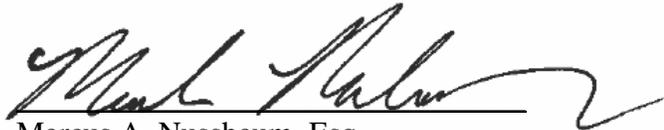
Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainants
marcus.nussbaum@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' BRIEF IN OPPOSITION TO THE MOTION BY RESPONDENTS FOR AN EXTENSION OF TIME IN WHICH TO RESPOND TO THE COMMISSION'S ORDER TO SHOW CAUSE** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).



Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

Dated: April 12, 2016 in Brooklyn, New York.

Exhibit “A”

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

Complainants,

– vs. –

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

Respondents.

**COMPLAINANTS' MOTION FOR A DEFAULT JUDGMENT
AGAINST RESPONDENTS**

Complainants IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV, by and through their attorneys, hereby move the Federal Maritime Commission ("Commission") for an Order pursuant to Rules 62, 65, 69, 70, and 71 of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.62, 502.65, 502.69, 502.70, and 502.71, for a Default Judgment against respondents MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV and EMPIRE UNITED LINES CO., INC. ("Defaulting Respondents"), or in the alternative, that the Commission issue a Notice of Default and Order to Show Cause why an initial decision on default should not be entered against said Defaulting Respondents.

1. Complainants Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov filed their Complaint with the Commission on November 12, 2015 seeking reparations of at least \$80,981.00 plus interest, attorneys' fees, and other damages as appropriate.

2. On or about November 18, 2015, the Commission served Defaulting Respondents

with the Complaint and the Notice of Filing of Complaint and Assignment. A copy of the correspondence from the Commission to Complainants' counsel to that effect, as well as the Notice of Filing of Complaint and Assignment indicating service on November 18, 2015 is annexed hereto as **Exhibit "A"**.

3. On November 24, 2015, the Notice of Filing of Complaint and Assignment for this action was published in the Federal Register, a copy of which is annexed hereto as **Exhibit "A-1"**.

4. On December 4, 2015, Ms. Rachel Dickon, Assistant Secretary of the Commission, advised Complainants' counsel, via email, that Defaulting Respondents "Hitrinov and Empire United Lines in Brooklyn, NY *refused delivery* of [the Commission's] initial UPS mailing. Subsequently [the Commission] sent the notice by U.S. mail." See **Exhibit "B"**.

5. On December 4, 2015, the Assistant Secretary also advised Complainants' counsel, via email that Complainant was free to attempt to effect service upon Defaulting Respondents via process server if the Complainants chose to do so. That correspondence was provided to counsel in response to an inquiry as to what steps the Commission takes under circumstances when a licensed NVOCC refuses to accept correspondence from the Commission (the overnight UPS mailing). That correspondence also explained that the Commission would contact Mr. Gerard Doyle, Esq. who represents Defaulting Respondents in an unrelated FMC matter (Docket 14-16) to inquire as to whether or not Mr. Doyle would accept service of the Complaint on behalf of respondents herein. See **Exhibit "C"**.

6. Per the Commission's guidance set forth above, on December 4, 2015 respondent Michael Hitrinov a/k/a Michael Khitrinov was served while he was present at his other attorney's office (Lyons and Flood LLP) , by leaving a copy of the Complaint and the Notice of Filing of

Complaint and Assignment with a clerk at said law office, who was authorized to accept service. See **Exhibit “D”**.

7. On December 28, 2015, the Assistant Secretary advised Complainants’ counsel, via email, that Mr. Doyle was unable to accept service on behalf of the Defaulting Respondents. See **Exhibit “E”**.

8. On December 29, 2015, Complainants served a copy of the Complaint and the Notice of Filing of Complaint and Assignment upon respondent Empire United Lines Co., Inc. at its principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223. A copy of the affidavit of service is annexed hereto as **Exhibit “F”**.

9. Commission Rule 62(b), 46 C.F.R. § 502.62(b), provides in pertinent part that "A respondent must file with the Commission an answer to the complaint and must serve the answer on complainant as provided in subpart H of this part within 25 days after the date of service of the complaint by the Commission or the Complainant..." Rule 64(b) further states that "Well pleaded factual allegations in the complaint not answered or addressed will be deemed to be admitted..."

10. More than 25 days have passed since the Complaint was served upon Defaulting Respondents. As of the time of this writing, Defaulting Respondents have wholly and entirely failed to file an answer with the Commission; and failed to serve an answer or response of any kind upon Complainants.

11. On January 8, 2016, Complainant received confirmation in writing from the United States Postal Service that respondent Empire United Lines Co., Inc. is located at 2303 Coney Island Avenue, Brooklyn, NY 11223, which is the address where the Commission served Defaulting Respondents via First Class Mail and via UPS Overnight mail as set forth herein (and is also the address listed on the Commission’s website as the address of record for respondents). A copy of

the written confirmation is annexed hereto as **Exhibit “G”**.

12. In light of the foregoing, it is submitted that Defaulting Respondents Empire and Hitrinov have notice of this action and are actively evading service. It is shocking that the respondents would so brazenly refuse to accept service of correspondence from this Commission (a Federal Regulatory Agency which controls respondents’ license and ability to do business) and respondents’ behavior to date speaks volumes as to respondents’ lack of desire to face accusations regarding their illegal actions and resolve this matter.

13. It is further submitted that service of the complaint by the Commission via first class is sufficient to put the respondents on notice of this matter, further warranting that a default judgment be granted against respondents due to their inexcusable failure to answer, appear, or otherwise respond to the complaint herein. See, e.g. *Shipco Transport Inc. v. Jem Logistics, Inc. et al* (FMC Docket: 12-06, Initial Decision on Default dated March 26, 2013).

14. The Commission's website identifies respondent Empire United Lines Co., Inc. as a non-vessel operating common carrier (NVOCC) licensed under Federal Maritime Commission license number 012052.

15. Complainants hereby submit all matters in controversy, of fact as well as of law, against Defaulting Respondents to the Commission, requesting that the Commission find and adjudicate that all material allegations in the Complaint (annexed hereto as **Exhibit “H”**) - as such matters in controversy involve Defaulting Respondents – are true and correct; that Defaulting Respondents failed to appear in this proceeding; that Defaulting Respondents failed to establish any defense to the Complaint; and that Complainants Petra are entitled to recover reparations and other relief from and against Defaulting Respondents as is hereinafter set out.

16. Complainants respectfully request that the Commission adjudicate, find, and order

that Complainants recover from Defaulting Respondents and said Defaulting Respondents pay to Complainants the amount of at least \$80,981.00 plus interest and attorneys' fees, which is the amount of the following items of loss and damage specified in Section VII of Complainants'

Verified Complaint:

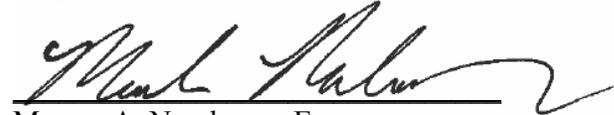
- **Complainant Igor Ovchinnikov:** Direct damages in excess of \$28,960.00 constituting the amounts paid for the purchase of the GMC Acadia referred to in the Verified Complaint plus additional damages for sums arising out of the loan which complainant Ovchinnikov obtained from the bank in Khanty-Mansiysk, Russia, for the purchase of the GMC Acadia, such as interest on the loan and bank fees;
- **Complainant Irina Rzaeva:** Direct damages in excess \$32,101.00 constituting the amounts paid for the purchase of the Jeep Compass referred to in the Verified Complaint and the customs clearance paid for the import of the Jeep Compass, plus additional damages for sums arising out of expenses incurred by complainant incidental to complainant's travel to Kotka, Finland, and for sums arising out of the loan which complainant Rzaeva obtained from the bank in Syktyvkar, Russia, for the purchase of the Jeep Compass, such as interest on the loan and bank fees;
- **Complainant Denis Nekipelov:** Direct damages in excess of \$19,920.00 constituting the amounts paid for the purchase of the Mercedes referred to in the Verified Complaint plus additional consequential damages.

17. In the alternative, Complainants respectfully request that the Commission issue a Notice of Default and Order to Show Cause why a default judgment should not be entered against Defaulting Respondents.

WHEREFORE, Complainants respectfully request that the Commission grant this motion and award damages to Complainants in the amounts described above, or in the alternative, that the Commission issue a Notice of Default and Order to Show Cause why a default judgment should not be entered against Defaulting Respondents.

Dated: February 12, 2016
Brooklyn, NY

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Attorney for Complainants

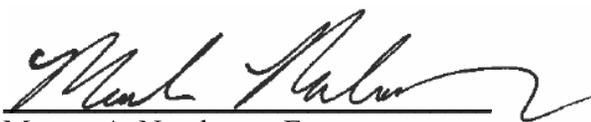
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' MOTION FOR A DEFAULT JUDGMENT AGAINST RESPONDENTS** upon the following, by first class mail, postage prepaid:

Empire United Lines Co. Inc.
2303 Coney Island Avenue
Brooklyn, NY 11223

Michael Hitrinov
2303 Coney Island Avenue
Brooklyn, NY 11223

CarCont, Ltd.
Merituulentie 424, 48310
Kotka, Finland



Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainants
marcus.nussbaum@gmail.com

Dated: February 12, 2016 in Brooklyn, New York.

Exhibit “A”

To Motion for Default Judgment

Marcus A. Nussbaum

From: Magdalene Grant <Mgrant@fmc.gov>
Sent: Wednesday, November 18, 2015 4:19 PM
To: Marcus.nussbaum@gmail.com
Cc: Karen Gregory; Rachel Dickon
Subject: Docket No. 15-11
Attachments: 15-11 transmittal ltr.pdf; 15-11_not_of_filing.pdf

Dear Mr. Nussbaum,

Please find attached a letter of transmittal and a *“Notice of Filing of Complaint and Assignment”* served today, November 18, 2015. A copy of the Notice and complaint was also served on the following Respondents:

Michael Hitrinov aka Michael Khitrnov
Empire United Lines, Co., Inc. – NY
Empire United Lines, Co., Inc. – NJ
CarCont, Ltd.

Hard copies of the attached should be arriving soon. Please feel free to contact us if you have any questions or concerns.

Best regards,

Magdalene Grant
Legal Assistant
Office of the Secretary
Federal Maritime Commission
Washington, DC 20573
TEL: 202-523-5760
FAX: 202-523-0014
mgrant@fmc.gov

(S E R V E D)
(NOVEMBER 18, 2015)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV

v.

**MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov, hereinafter "Complainants," against Michael Hitrinov ("Hitrinov"), Empire United Lines Co., Inc. ("EUL") and CarCont Ltd. ("CarCont"), hereinafter "Respondents." Complainants state that they are individuals residing in the Russian Federation. Complainants allege that Respondent EUL is a New York corporation and a licensed non-vessel-operating common carrier, Respondent CarCont is a company in Finland, and Respondent Hitrinov is the owner of both EUL and CarCont.

Complainants allege that Respondents have violated the Shipping Act, 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, 41106, and the Commission's regulations at 46 C.F.R. Part 515, in connection with shipment of 3 vehicles. Complainants allege that each Complainant purchased a vehicle, which vehicles were shipped to Finland but never released or delivered because of unpaid loans due Respondents by the seller of the vehicles, affiliates G-Auto Sales, Inc. and Effect Auto Sales Inc. Complainant Igor

Ovchinnikov seek damages in excess of \$28,960. Complainant Irina Rzaeva seek damages in excess of \$32,101. Complainant Denis Nekipelov seek damages in excess of \$19,920.

Complainants request that: “(1) Respondents be required to answer the charges herein; (2) that after due hearing, an order be made commanding said Respondent to pay to Complainants by way of reparations for the unlawful conduct . . . with interest and attorney’s fees or such other sum as the Commission may determine to be proper as an award of reparation; (3) that the Commission issue an Order holding that the Respondents . . . violated the Shipping Act of 1984; (4) that the Commission Order the Respondents to provide Empire United Lines Co., Inc.’s house bills of lading for the shipments described herein; and (5) that the Commission issue such other and further order or orders as the Commission determines to be just and proper.”

The full text of the complaint can be found in the Commission’s Electronic Reading Room at www.fmc.gov/15-11.

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by November 17, 2016, and the final decision of the Commission shall be issued by May 16, 2017.

Karen V. Gregory
Secretary

Exhibit “A-1”

To Motion for Default Judgment

any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before December 24, 2015. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email Nicholas_A_Fraser@omb.eop.gov; and to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418-2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0349.

Title: Equal Employment Opportunity ("EEO") Policy, 47 CFR Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not for profit institutions.

Number of Respondents and Responses: 14,179 respondents; 14,179 responses.

Estimated Time per Response: 42 hours.

Frequency of Response:

Recordkeeping requirement; annual reporting requirement; five year reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory

authority which covers this information collection is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended, and Section 634 of the Cable Communications Policy Act of 1984.

Total Annual Burden: 595,518 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality:

There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. Section 73.2080 requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. These same requirements also apply to Satellite Digital Audio Radio Service ("SDARS") licensees.

Revised Information Collection Requirement: In 1997, the Commission determined that SDARS licensees must comply with the Commission's EEO requirements. See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band, 12 FCC Rcd 5754, 5791, 91 (1997) ("1997 SDARS Order"), FCC 97-70. In 2008, the Commission clarified that SDARS licensees must comply with the Commission's EEO broadcast rules and policies, including the same recruitment, outreach, public file, Web site posting, record-keeping, reporting, and self-assessment obligations required of broadcast licensees, consistent with 47 CFR 73.2080, as well as any other Commission EEO policies. See Applications for Consent to the Transfer of Control of Licenses, SM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, 23 FCC Rcd 12348, 12426, 174, and note 551 (2008) ("XM-Sirius Merger Order").

The Commission is making this submission to the Office of Management and Budget for approval to add SDARS licensees to this information collection.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2015-29850 Filed 11-23-15; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 15-11]

Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov v. Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., and Carcont, Ltd.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov, hereinafter "Complainants," against Michael Hitrinov ("Hitrinov"), Empire United Lines Co., Inc. ("EUL") and CarCont Ltd. ("CarCont"), hereinafter "Respondents." Complainants state that they are individuals residing in the Russian Federation. Complainants allege that Respondent EUL is a New York corporation and a licensed non-vessel-operating common carrier, Respondent CarCont is a company in Finland, and Respondent Hitrinov is the owner of both EUL and CarCont.

Complainants allege that Respondents have violated the Shipping Act, 46 U.S.C. 40301, 40302, 40501, 40701, 41102, 41104, 41106, and the Commission's regulations at 46 CFR part 515, in connection with shipment of 3 vehicles. Complainants allege that each Complainant purchased a vehicle, which vehicles were shipped to Finland but never released or delivered because of unpaid loans due Respondents by the seller of the vehicles, affiliates G-Auto Sales, Inc. and Effect Auto Sales Inc. Complainant Igor Ovchinnikov seek damages in excess of \$28,960. Complainant Irina Rzaeva seek damages in excess of \$32,101. Complainant Denis Nekipelov seek damages in excess of \$19,920.

Complainants request that: "(1) Respondents be required to answer the charges herein; (2) that after due hearing, an order be made commanding said Respondent to pay to Complainants by way of reparations for the unlawful conduct . . . with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; (3) that the Commission issue an Order holding that the Respondents . . . violated the Shipping Act of 1984; (4) that the Commission Order the Respondents to provide Empire United Lines Co., Inc.'s house bills of lading for the shipments described herein; and (5) that the Commission issue such other and further order or orders as the Commission determines to be just and proper."

The full text of the complaint can be found in the Commission's Electronic Reading Room at www.fmc.gov/15-11.

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by November 17, 2016, and the final decision of the Commission shall be issued by May 16, 2017.

Karen V. Gregory,
Secretary.

[FR Doc. 2015-29856 Filed 11-23-15; 8:45 am]

BILLING CODE 6731-AA-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Thomas P. Haleas, Clarendon Hills, Illinois, Peter J. Haleas, Evanston, Illinois, Peter E. Haleas Sarasota, Florida, and Sophia M. Haleas, Clarendon Hills, Illinois*, as a group acting in concert; to retain voting shares of Bridgeview Bancorp, Inc., and thereby indirectly retain voting shares of Bridgeview Bank Group, both in Bridgeview, Illinois.

Board of Governors of the Federal Reserve System, November 19, 2015.

Michael J. Lewandowski,
Associate Secretary of the Board.

[FR Doc. 2015-29869 Filed 11-23-15; 8:45 am]

BILLING CODE 6210-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-AD-2015-01; Docket 2015-0002; Sequence 31]

Notice of the 2016 Presidential Transition Directory

AGENCY: Presidential Transition, General Services Administration.

ACTION: Notice of availability of the General Services Administration 2016 Presidential Transition Directory.

SUMMARY: The Presidential Transition Directory Web site is designed to help candidates in the 2016 Presidential election get quick and easy access to key resources about the federal government structure and key policies related to Presidential Transition. The creation of the Presidential Transition Directory is mandated by the Presidential Transition Act of 1963, as amended.

DATES: *Effective:* November 24, 2015.

FOR FURTHER INFORMATION CONTACT: The GSA Presidential Transition Team at presidentialtransition@gsa.gov.

SUPPLEMENTARY INFORMATION: The Presidential Transition Directory (presidentialtransition.usa.gov) Web site is designed to help candidates in the 2016 Presidential election get quick and easy access to key resources about the Federal Government structure and key policies related to Presidential Transition. The creation of the Presidential Transition Directory is mandated by the Presidential Transition Act of 1963, as amended. Connecting resources from the Government Printing Office, Office of Personnel Management, National Archives and Records Administration, U.S. Office of Government Ethics and others, the site will also help future political appointees better understand key aspects of their roles and some of the key policies and aspects of federal service. Additionally, the Directory will be connecting to not-for-profit resources about Presidential Transition to help acquaint potential appointees with the types of problems and challenges that most typically confront new political appointees when they make the transition from prior activities to assuming the responsibility for governance. The site will be continuously updated as new information becomes available to help ensure candidates and their staffs have access to the best information possible as they begin their planning to establish the next management of the Executive Branch of the federal government.

Dated: November 17, 2015.

Mary D. Gibert,

Director, Presidential Transition, U.S. General Services Administration.

[FR Doc. 2015-29920 Filed 11-23-15; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090-00XX; Docket No. 2015-0001; Sequence No. 26]

Information Collection; Simplifying Federal Award Reporting

AGENCY: Federal Acquisition Service; General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new request for an OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No: 3090-00XX; Simplifying Federal Award Reporting.

DATES: Submit comments on or before: January 25, 2016.

ADDRESSES: Submit comments identified by Information Collection 3090-00XX; Simplifying Federal Award Reporting by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Information Collection 3090-00xx; Simplifying Federal Award Reporting". Select the link "Submit a Comment" that corresponds with "Information Collection 3090-00XX; Simplifying Federal Award Reporting". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 3090-00xx; Simplifying Federal Award Reporting" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090-00XX, Simplifying Federal Award Reporting.

Instructions: Please submit comments only and cite Information Collection 3090-00XX; Simplifying Federal Award Reporting, in all correspondence related to this collection. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To

Exhibit “B”

To Motion for Default Judgment

Marcus A. Nussbaum

From: Secretary <secretary@FMC.gov>
Sent: Friday, December 4, 2015 11:21 AM
To: Marcus Nussbaum; Secretary
Cc: Magdalene Grant
Subject: RE: Docket No. 15-11

Mr. Nussbaum,

Thank you for the update and we'll wait to hear from you. I also want to inform you that Mr. Hitronov and Empire United Lines in Brooklyn, NY refused delivery of our initial UPS mailing. Subsequently we sent the notice by U.S. mail.

Rachel E. Dickon
Assistant Secretary
Federal Maritime Commission
Ph 202-523-5725

Exhibit “C”

To Motion for Default Judgment

Marcus A. Nussbaum

From: Rachel Dickon <Rdickon@fmc.gov>
Sent: Friday, December 4, 2015 1:45 PM
To: Marcus Nussbaum
Subject: RE: Docket No. 15-11

Dear Mr. Nussbaum,

The Commission's rules indicate that we will serve by mail or express mail and that the Complainant may also affect service. I do intend to contact Mr. Doyle to see if he will accept service.

If your client is successful serving the N.Y. Secretary of State please provide the information mentioned in paragraph (c) below so that we may note it in the record.

Thank you,

Rachel E. Dickon
Assistant Secretary
Federal Maritime Commission
Ph 202-523-5725

§502.113 Service of private party complaints.

(a) Complaints filed pursuant to §502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to §502.66(b)), small claims complaints filed pursuant to §502.304, and Complainant's memoranda filed in shortened procedure cases pursuant to §502.182, will be served by the Secretary of the Commission.

(b) The Secretary will serve the complaint using first class mail or express mail service at the Respondent's address provided by the Complainant. If the complaint cannot be delivered, for example if the complaint is returned as undeliverable or not accepted for delivery, the Secretary will notify the Complainant.

(c) *Alternative service by Complainant.* The Complainant may serve the Complaint at any time after it has been filed with the Commission. If Complainant serves the complaint, an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service.

(d) The presiding officer may dismiss a complaint that has not been served within thirty (30) days after the complaint was filed. [Rule 113.]

[80 FR 14319, Mar. 19, 2015]

Exhibit “D”

To Motion for Default Judgment



P483907

MARCUS A. NUSSBAUM, ESQ
FEDERAL MARITIME COMMISSION
IGOR OVCHINNIKOV, ETAL

COMPLAINANTS

index No. 15-11
Date Filed
Office No.
Court Date.

- vs -

MICHAEL HITRINOV A/K/A MICHAEL KHITRINOV, ETAL

RESPONDENT

STATE OF NEW YORK, COUNTY OF NEW YORK :SS:

ZANEKEE POW being duly sworn, deposes and says; I am over 18 years of age, not a party to this action, and reside in the State of New York. That on the 04TH day of DECEMBER, 2015 3:53PM at

C/O LAW OFFICE OF LYONS & FLOOD LLP 55 BROADWAY , SUITE 1501
NEW YORK NY 10002

I served a true copy of the NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT, VERIFIED COMPLAINT upon MICHAEL HITRINOV A/K/A MICHAEL KHITRINOV the RESPONDENT therein named by delivering to, and leaving personally with SARAH ANWAR, CLERK AUTHORIZED TO ACCEPT a true copy of each thereof.

Deponent describes the person served as aforesaid to the best of deponent's ability at the time and circumstances of the service as follows:

SEX: FEMALE COLOR: TAN HAIR: BLACK

APP.AGE: 30 APP. HT: 5'6 APP. WT: 140

OTHER IDENTIFYING FEATURES

COMMENTS: I spoke with SARAH ANWAR, CLERK, and inquired whether RESPONDENT MICHAEL HITRINOV A/K/A MICHAEL KHITRINOV was present at the aforesaid location. MS. ANWAR confirmed that RESPONDENT MICHAEL HITRINOV A/K/A MICHAEL KHITRINOV was present at said location but was unavailable at the moment and that she was AUTHORIZED TO ACCEPT service on his behalf. I then served a true copy of the NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT upon MICHAEL HITRINOV A/K/A MICHAEL KHITRINOV the RESPONDENT therein named by delivering to, and leaving personally with SARAH ANWAR, CLERK AUTHORIZED TO ACCEPT a true copy of each thereof.

Sworn to before me this
18TH day of DECEMBER, 2015

LISA M. HAGERMAN
Notary Public, State of New York
No. 01HA4967184
Qualified in NEW YORK
Commission Expires 08/02/2018

ZANEKEE POW DCA LIC #2025377
inSync Litigation Support, LLC
75 MAIDEN LANE 11TH FLOOR
NEW YORK, NY 10038
Reference No: 7-MAN-483907

2a

Exhibit “E”

To Motion for Default Judgment

Marcus A. Nussbaum

From: Rachel Dickon <Rdickon@fmc.gov>
Sent: Monday, December 28, 2015 10:29 AM
To: Marcus Nussbaum; Secretary
Cc: Magdalene Grant
Subject: RE: Docket No. 15-11

Mr. Nussbaum,

I can confirm that I contacted Mr. Doyle by email to ask if he was able to accept service for Mr. Hitrinov and Empire United Lines in this matter. Mr. Doyle wrote back and said he was unable to accept service as he was not representing the parties in Docket No. 15-11.

Thank you,

Rachel

*Rachel E. Dickon
Assistant Secretary
Federal Maritime Commission
Ph 202-523-5725*

From: Marcus Nussbaum [mailto:marcus.nussbaum@gmail.com]
Sent: Thursday, December 24, 2015 12:19 PM
To: Secretary <secretary@FMC.gov>
Cc: Magdalene Grant <Mgrant@fmc.gov>; Rachel Dickon <Rdickon@fmc.gov>
Subject: Re: Docket No. 15-11

Ms. Gregory,

Thank you for the response, and happy holidays. I'll circle back to Ms. Dickon upon her return next week.

Respectfully,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

Exhibit “F”

To Motion for Default Judgment

AFFIDAVIT OF SERVICE

State of

County of

Court

Case Number: 15-11

Complainants:
IGOR OVCHINNIKOV, IRINA RZAEVA and DENIS NEKIPELOV



DCS2015007794

vs.

Respondents:
MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV, EMPIRE UNITED LINES CO., INC. and CARCONT, LTD.

For:
Marcus Nussbaum
P.O. Box 245599
Brooklyn, NY 11224

Received by Delta Court Service on the 7th day of December, 2015 at 11:05 am to be served on **EMPIRE UNITED LINES CO., INC., 2303 CONEY ISLAND AVENUE, BROOKLYN, NY 11223.**

I, Magdi Malaty, being duly sworn, depose and say that on the **29th day of December, 2015 at 9:36 am, I:**

Served a **SUITABLE AGE PERSON** by delivering a true copy of the **NOTICE OF FILING & VERIFIED COMPLAINT** with **JANE DOE EMPLOYEE** at **2303 CONEY ISLAND AVENUE, BROOKLYN, NY 11223.**

Additional Information pertaining to this Service:

12/29/2015 9:36 am The process server inquired from the individual accepting service if this is the office of Empire United Lines Co. Inc. and the individual answered in the affirmative.

The process server inquired from the individual accepting service if Vlada German, Yuliya Mikhailkevich, and Alex Krapivin work at this location and the individual answered in the affirmative.

The process server inquired from the individual accepting service if they would accept service and the individual answered in the affirmative.

Description of Person Served: Age: 38, Sex: F, Race/Skin Color: WHITE, Height: 5'6", Weight: 140, Hair: BROWN, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

State of New York, County of Queens ss:
Subscribed and Sworn to before me on the 31st day
of December, 2015 by the affiant who is
personally known to me.

NOTARY PUBLIC

JOHN A MASTROSIMONE
Notary Public, State of New York
No. 01MA6220696

Qualified in Suffolk County Copyright © 1992-2015 Database Services, Inc. - Process Server's Toolbox V7.1b
Commission Expires April 19, 2018

Magdi Malaty
license# 1210999

Delta Court Service
87-67 148th Street
2nd floor
Jamaica, NY 11435
(718) 739-3020

Our Job Serial Number: DCS-2015007794



Exhibit “G”

To Motion for Default Judgment

The Postal Service does not have a database with the current address of all of its customers. It doesn't need that information since it delivers to addresses, rather than to individuals. However, if a customer moves and files a change of address order, that information is kept at the post office serving the last known address. The disclosure of customer name and address information is contained at section 265.6(d) of our regulations (39 CFR 265), which can be accessed from the FOIA home page. Change of address information about individuals or families is available only to government agency requesters, to persons needing the information to serve legal process who meet certain requirements, or pursuant to a court order.

The Postal Service suggests the following format to be used in conjunction with regulations at 39 CFR 265.6(d)(4)(ii) by persons empowered by law to serve legal process when requesting change of address or boxholder information.

The request should be forwarded to the Postmaster of the last known address.

Postmaster	Date <u>12/23/2015</u>
<u>Brooklyn, NY 11209</u>	
City, State, ZIP Code	

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name: EMPIRE UNITED LINES CO., INC.

Address: 2303 CONEY ISLAND AVENUE, Brooklyn, NY 11223

Note: Only one request may be made per completed form. The name and last known address are required for change of address information. The name, if known and Post Office box address are required for boxholder information. The following information is provided in accordance with 39 CFR 265.6(d)(4)(ii). There is no fee charged for change of address or boxholder information.

1. Capacity of requester (process server, attorney, party representing self): Attorney
2. Statute or regulation that empowers me to serve process (not required for attorney's or a party acting pro se—except a corporation acting pro se must cite statute): N/A
3. The names of all known parties to the litigation: Igor Ovchinnikov, Irina Rzaeva, Denis Nekipelov, Michael Hitrinov and Empire United Lines Co, Inc.
4. The court in which the case has been or will be heard: Federal Maritime Commission, Washington DC
5. The docket or other identifying number if one has been issued: 15-11
6. The capacity in which this individual is to be served (defendant or witness) defendant

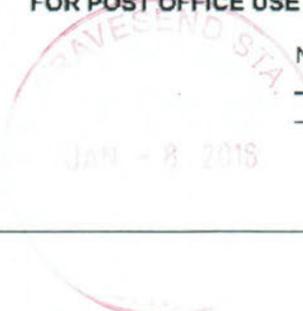
WARNING: THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO \$10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

	P.O. Box 245599
Signature	Address
<u>Marcus A. Nussbaum, Esq.</u>	<u>Brooklyn, NY 11224</u>
Printed Name	City, State, ZIP Code

FOR POST OFFICE USE ONLY

<input checked="" type="checkbox"/> No change of address on file <input type="checkbox"/> Moved and left no forwarding address <input type="checkbox"/> No such address	New Address or Boxholder Name and Street Address <hr/> <hr/>
---	---



RTZ
12/23/15
2

Exhibit “H”

To Motion for Default Judgment



**ORIGINAL
RECEIVED**

2015 NOV 12 PM 3: 01

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: *15-11*

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

Complainants,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

Respondents.

VERIFIED COMPLAINT

Complainants Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov ("Complainants") by their undersigned attorneys, Marcus A. Nussbaum, Esq. and Seth M. Katz, Esq., file this Complaint against the respondents herein, alleging violations of the Shipping act of 1984, 46 U.S.C. §40101, et. Seq. (the "Shipping Act") as follows:

I. Complainant

1. Complainant Igor Ovchinnikov is an individual residing at 22 Obskaya Street, Khanty-Mansiysk, in the Russian Federation.
2. Complainant Irina Rzaeva is an individual residing at 18 Sorvacheva Street, Syktyvkar, in the Russian Federation.
3. Complainant Denis Nekipelov is an individual residing at 45-1-183 Prospect Nastavnikov, St. Petersburg, in the Russian Federation.

II. Respondents

4. Respondent Michael Hitrinov a/k/a Michael Khitrinov ("Hitrinov") is an adult individual and is a resident of the State of New York who maintains a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223.

5. Hitrinov is a "person" pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ("Shipping Act").

6. Hitrinov is also an owner of respondent and shipping company Empire United Lines Co., Inc.

7. Respondent Empire United Lines Co., Inc. ("EUL") is a closely held corporation organized and existing under the laws of the State of New York with a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223. EUL also maintains a place of business at 52 Butler Street, in Elizabeth, New Jersey.

8. Upon information and belief, EUL has bond coverage with Banker's Insurance Company, as required by the Shipping Act. EUL's NVOCC Bond No. is JGINVOC2828.

9. Respondent CarCont Ltd. ("CarCont") is a company with business address Merituulentie 424, 48310, Kotka, Finland, which released the Complainant's vehicle to persons other than Complainants at the direction and request of EUL and Hitrinov. Upon information and belief, CarCont is owned by Hitrinov.

10. Hitrinov is the Chairperson of the Board of CarCont, with signatory authority and direct control over respondent CarCont.

11. The operation and supervision of CarCont's day-to-day activities are conducted by respondent Hitrinov.

12. Respondent EUL is in the business of providing services as an ocean

transportation intermediary, and operates as a non-vessel operating common carrier ("NVOCC").

13. Hitrinov is the president and/or chief operating officer and/or chief executive officer of EUL.

14. Hitrinov is the sole principal of EUL.

15. The operation and supervision of EUL's day-to-day activities are conducted by respondent Hitrinov.

16. At all times hereinafter mentioned, EUL is and was licensed by the Federal Maritime Commission as a non-vessel operating common carrier ("NVOCC") under license number 012052.

17. There is an interlocking relationship between Hitrinov and the two corporate respondents EUL and Carcont as evidenced by:

- a. pervasive control over both corporations;
- b. negotiations by corporate officers of one corporation on behalf of another corporate entity (e.g., Hitrinov negotiating on behalf of EUL and CarCont);
- c. intermingling of activities with substantial disregard of the separate nature of the corporate entities;
- d. serious ambiguity about the manner and capacity in which the various parties and their respective representatives are acting;
- e. common ownership;
- f. common management;
- g. common financing;
- h. commingling of funds;
- i. commingling of loans;
- j. operations in each others' names;
- k. impermissible personal payments and asset transfers;

1. usage of the same internet domain names and email addresses registered to said domains.

18. The closeness of their relationships indicates that individual respondent Hitrinov is the alter ego of the corporate entities and piercing the corporate veil is necessary to avoid injustice and fundamental unfairness.

19. At all times relevant to the instant lawsuit, respondents EUL, CarCont, and Hitrinov were united in interest such that they are one and the same.

20. EUL and CarCont are "affiliates" as defined by 46 CFR §532.3.

21. At all times relevant to the instant lawsuit, EUL and Hitrinov: (a) ordered cargo to port; (b) prepared and/or processed export declarations; (c) booked, arranged for, and confirmed cargo space; (d) prepared and processing delivery orders and/or dock receipts; (e) processed ocean bills of lading; (f) arranged for warehouse storage; (g) cleared shipments in accordance with United States Government export regulations; (h) handled freight or other monies advanced by shippers, and/or remitted or advanced freight or other monies or credit in connection with the dispatching of shipments; (i) coordinated the movement of shipments from origin to vessel; and (j) give expert advice to exporters concerning problems germane to the cargoes' dispatch.

22. At all times relevant to the instant lawsuit, respondent Hitrinov knowingly and intentionally used the corporate form of respondents EUL and CarCont to perpetrate tortious and other wrongful conduct against the Complainants.

III. Jurisdiction

23. The Federal Maritime Commission ("FMC") has subject matter jurisdiction over the claims in this action as this matter relates to contracts for carriage of goods by sea from ports of the United States in foreign trade and thus comes under the Carriage of Goods by Sea Act

("COGSA"), 46 U.S.C.S. § 30701, and the Shipping act of 1984, 46 U.S.C. §40101, et. Seq.

24. Complainants are seeking reparations for injuries caused to them by EUL, Hitrinov, and CarCont as a result of respondents' violations of 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, 41106, and the FMC's regulations at 46 C.F.R. Part 515, by:

- i. Failing to keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established;
- ii. To the extent that respondents have made tariffs open to public inspection in an automated tariff system, the contents of respondents' tariffs fail to (a) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules that in any way change, affect, or determine any part or the total of the rates or charges; and (b) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement;
- iii. Failing to comply with the mandate under the Shipping Act that a new or initial rate or change in an existing rate that results in an increased cost to a shipper may not become effective earlier than 30 days after publication;
- iv. Failing to maintain a rate or charge in a tariff or service contract, or charge or assess a rate, that is below a just and reasonable level;
- v. Failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property;
- vi. Having provided service in the liner trade that is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published the respondent;
- vii. With respect to service pursuant to a tariff, having engaged in unfair and unjustly discriminatory practices in the matter of: (A) rates or charges; (B) cargo classifications; (C) loading and landing of freight; and (D) adjustment and settlement of claims;
- viii. With respect to service pursuant to a tariff, by imposing undue or unreasonable prejudice or disadvantage;
- ix. Unreasonably refusing to deal or negotiate;

- x. Knowingly and willfully accepting cargo from or transporting cargo for the account of an ocean transportation intermediary that does not have a tariff as required by the Shipping Act;
- xi. Imposing undue or unreasonable prejudice or disadvantage with respect to any person; and by unreasonably refuse to deal or negotiate; and
- xii. Detaining and converting Complainants' cargo on the grounds that the principal of Effect/G-Auto (described herein) owed monies to respondents for reasons not related to the shipment of Complainants' cargo. It is an unreasonable and unlawful practice to assert a lien against a shipment for which all freight charges have been paid.

25. EUL is a non-vessel operating common carrier within the meaning of the Shipping Act and is and was licensed by the Federal Maritime Commission as a non-vessel operating common carrier under license number 012052, and thus falls under the jurisdiction of the Commission.

IV. Statement of Facts and Matters Complained of

26. As set forth in detail below, respondents are engaged in the business of exporting used cars (from warehouse to warehouse) from the United States to the states that comprised the former Soviet Union. Respondent EUL shipped Complainants' vehicles from a warehouse operated by EUL in the United States to respondent CarCont's customs bonded warehouse in Kotka, Finland, via ocean going vessel.

27. Respondents EUL, Hitrinov, and CarCont are in the business of providing services as an ocean transportation intermediary, and operate as a non-vessel operating common carrier ("NVOCC"). Respondents arrange for the warehouse to warehouse transport of automobiles overseas for automobile dealerships and personal shippers, and shipped Complainants' automobiles from the United States to a warehouse owned and operated by Hitrinov and CarCont, located in the Port of Kotka, which is a major Finnish sea port that serves the foreign trade of Finland and the United States.

28. Complainants have been forced to bring the instant action as a result of respondents' unlawful conversion of the automobiles owned by Complainants.

29. Empire, as an NVOCC, contracts with its customers as principal, agreeing to transport their goods on a voyage that includes an ocean leg.

30. An NVOCC commonly issues house bills of lading to its customers in its own name, even though it does not operate the ship that will carry the goods on the ocean voyage.

31. The NVOCC buys space on the carrying ship like any other customer, receiving a bill of lading from the owner or charterer of that ship when the goods are loaded on board.

32. Pursuant to rules and regulations promulgated by the FMC including, without limitation, regulations implementing the Shipping Act of 1984, 46 U.S.C. § 40101, et seq, an NVOCC can only charge a shipper prices disclosed in a published tariff filed with the FMC.

33. At all times relevant hereto, a service contract (the "Service Contract") existed between EUL and Mediterranean Shipping Company ("MSC"), which is not a party to this action.

34. Pursuant to the Service Contract between EUL and MSC, EUL was able to obtain container space for Complainants' automobiles aboard a vessel outbound from the Port of Elizabeth, New Jersey, pursuant to the terms of the Service Contract between EUL and MSC.

35. At all times mentioned herein, the business of the companies known as G-Auto Sales, Inc. ("G-Auto") and Effect Auto Sales Inc. ("Effect") which are affiliated with one another, was primarily focused on the sale of used vehicles and the operation of an automobile dealership.

36. At all times mentioned herein, G-Auto/Effect contracted with respondents Hitrinov and EUL to secure shipping and warehouse services related to vehicles sold by G-

Auto/Effect and destined for Kotka, Finland, with the consignee on each shipping bill of lading designated as Defendant CarCont.

Respondents' Unlawful Conversion of the 2009 GMC Acadia Owned by Complainant Igor Ovchinnikov

37. On or about August 21, 2012 complainant Igor Ovchinnikov applied for a loan from a bank in Khanty-Mansiysk, in the Russian Federation (the "Loan"), to finance the acquisition of a 2009 GMC Acadia (VIN#GKLVNED6AJ138200) the ("GMC Acadia"), and for purposes of obtaining funds to pay for customs clearance and other fees related to the purchase and import of the GMC Acadia.

38. On August 22, 2012, after receiving the proceeds of the Loan from the bank, complainant Igor Ovchinnikov purchased the GMC Acadia from G-Auto for a purchase price of \$28,960.00.

39. Upon purchasing vehicle, complainant was provided with an invoice from G-Auto, and a copy of the certificate of title for the vehicle.

40. The funds for the purchase of the GMC Acadia were paid by Complainant Ovchinnikov to G-Auto in three (3) separate wire transactions and the entire amount for the purchase of the GMC Acadia was paid in full by Complainant Ovchinnikov to G-Auto as of October 18, 2012.

41. Prior to export, G-Auto/Effect provided EUL with an original certificate of title for the GMC Acadia so that EUL could perform the customs clearance of the GMC Acadia for export overseas.

42. On or about December 21, 2012, the GMC Acadia was loaded, on board an MSC vessel, and was delivered on or about January 14, 2013 to the customs bonded warehouse owned by Hitriniv/CarCont in Kotka Finland. The EUL booking number for this shipment was

038EUL1046438 and the container number is TCNU8761450.

43. On or about January 15, 2013, Complainant Ovchinnikov contacted CarCont regarding the release of the GMC Acadia and was advised by CarCont that the vehicle would not be released to him.

44. On or about January 15, 2013, Complainant was specifically advised that EUL would not authorize the release of the GMC Acadia because there was an unpaid loan due and owing to EUL by the principal of G-Auto/Effect.

45. The sum of \$1500 representing ocean freight and related charges was paid to EUL by G-Auto per a statement identified as Statement #448, provided by EUL to G-Auto for the ocean freight for two automobiles, to wit: the GMC Acadia, and a 2010 Acura RDX.

46. Upon information and belief, EUL refused to issue individual invoices for the ocean freight for individual automobiles.

47. Subsequent thereto, and after Complainant Ovchinnikov made multiple requests that CarCont release the GMC Acadia to him, Mr. Ovchinnikov was advised by an employee of CarCont that EUL would not authorize the release of the GMC Acadia because there was an unpaid loan due and owing by the principal of Effect/G-Auto to EUL.

48. After investigating the matter further, Complainant Ovchinnikov ascertained that on May 14, 2013, that the GMC Acadia was registered under the name of Vasiliev, Valery Vladirimivich, a Russian citizen residing in St. Petersburg, Russia.

49. EUL, Hitrinov, and CarCont simply converted this automobile and have sold it to a third party in order to satisfy a loan allegedly due and owing from the principal of Effect/G-Auto to EUL and Hitrinov.

Respondents' Unlawful Conversion of the 2011 Jeep Compass Owned by Complainant Irina Rzaeva

50. On or about September 21, 2012 complainant Irina Rzaeva applied for a loan from a bank in Syktyvkar, in the Russian Federation (the "Purchase Loan"), to finance the acquisition of a 2011 Jeep Compass (VIN#1J4NF5FB7BD282296) the ("Jeep Compass"), and for purposes of obtaining funds to pay for customs clearance and other fees related to the purchase and import of the Jeep Compass.

51. On October 5, 2012, after receiving the proceeds of the Purchase Loan from the bank, complainant Irina Rzaeva purchased the Jeep Compass from G-Auto for a purchase price of \$15,920.00.

52. Upon purchasing vehicle, complainant was provided with an invoice from G-Auto, and a copy of the certificate of title for the vehicle.

53. The funds for the purchase of the Jeep Compass were paid by Complainant Rzaeva to G-Auto via a wire transaction and the entire amount for the purchase of the Jeep Compass was paid in full by Complainant Rzaeva to G-Auto on October 8, 2012.

54. Prior to export, Effect/G-Auto provided EUL with an original certificate of title for the Jeep Compass so that EUL could perform the customs clearance of the Jeep Compass for export overseas.

55. On or about November 15, 2012, the Jeep Compass was loaded, on board an MSC vessel, and was delivered on or about December 11, 2012 to the customs bonded warehouse owned by Hitriniv/CarCont in Kotka Finland. The EUL booking number for this shipment was 038EUL1039353 and the container number is TGHU8737440.

56. On or about December 15, 2012 Complainant Rzaeva paid 333,151.29 Russian Rubles or \$16,181.00 U.S. Dollars to the Russian Customs authorities for the customs

clearance/duty for the import of the Jeep Compass.

57. On or about December 16, 2012, Complainant Rzaeva contacted CarCont regarding the release of the Jeep Compass and was advised by CarCont that the vehicle would not be released to her.

58. On or about December 30, 2012, Complainant Rzaeva was specifically advised that EUL would not authorize the release of the Jeep Compass because there was an unpaid loan due and owing to EUL by the principal of G-Auto/Effect.

59. The sum of \$2250 representing ocean freight and related charges was paid to EUL by G-Auto per a statement identified as Statement #439, provided by EUL to G-Auto for the ocean freight for three automobiles, to wit: the Jeep Compass, a 2009 Volkswagen Tiguan, and a 2009 Mercedes-Benz C300.

60. Upon information and belief, EUL refused to issue individual invoices for the ocean freight for individual automobiles.

61. Subsequent thereto, and after Complainant Rzaeva made multiple requests that CarCont release the Jeep Compass to her, Ms. Rzaeva was advised by an employee of CarCont that EUL would not authorize the release of the Jeep Compass because there was an unpaid loan due and owing by the principal of Effect/G-Auto to EUL.

62. In or about March 12, 2013, Complainant Rzaeva made a trip to Kotka, Finland to try to find her vehicle and to file a complaint with the prosecutor's office in Finland. Her efforts to find the vehicle were unsuccessful.

63. Subsequent thereto, in late March of 2013, respondent Hitrinov contacted Complainant Rzaeva directly and admitted to her that he converted her automobile because there was an unpaid loan due and owing by the principal of Effect/G-Auto to EUL.

64. EUL, Hitrinov, and CarCont, simply converted this automobile and have sold it to a third party in order to satisfy a loan allegedly due and owing from the principal of Effect/G-Auto to EUL and Hitrinov.

Respondents' Unlawful Conversion of the 2009 Mercedes-Benz C300 Owned by Complainant Denis Nekipelov

65. On or about October 24, 2012 complainant Denis Nekipelov purchased a 2009 Mercedes-Benz C300 (VIN#WDDGF81X49R073295) the ("Mercedes"), from G-Auto for a purchase price of \$19,920.00.

66. Upon purchasing vehicle, complainant was provided with an invoice from G-Auto, and a copy of the certificate of title for the vehicle.

67. The funds for the purchase of the Mercedes were paid by Complainant Nekipelov to G-Auto via a wire transaction and the entire amount for the purchase of the Mercedes was paid in full by Complainant Nekipelov to G-Auto on October 25, 2012.

68. Prior to export, Effect/G-Auto provided EUL with an original certificate of title for the Mercedes so that EUL could perform the customs clearance of the Mercedes for export overseas.

69. On or about November 15, 2012, the Mercedes was loaded, on board an MSC vessel, and was delivered on or about December 11, 2012 to the customs bonded warehouse owned by Hitrinov/CarCont in Kotka Finland. The EUL booking number for this shipment was 038EUL1039353 and the container number is TGHU8737440.

70. On or about December 16, 2012, Complainant Nekipelov contacted CarCont regarding the release of the Mercedes and was advised by CarCont that the vehicle would not be released to him.

71. The sum of \$2250 representing ocean freight and related charges was paid to EUL

by G-Auto per a statement, identified as Statement #439 provided by EUL to G-Auto for the ocean freight for three automobiles, to wit: the Jeep Compass, a 2009 Volkswagen Tiguan, and a 2009 Mercedes-Benz C300.

72. Upon information and belief, EUL refused to issue individual invoices for the ocean freight for individual automobiles.

73. Subsequent thereto, and after Complainant Nekipelov made multiple requests that CarCont release the Mercedes to him, Mr. Nekipelov was advised by an employee of CarCont that EUL would not authorize the release of the Mercedes because there was an unpaid loan due and owing by the principal of Effect/G-Auto to EUL.

74. EUL, Hitrinov, and CarCont simply converted this automobile and have sold it to a third party in order to satisfy a loan allegedly due and owing from the principal of Effect/G-Auto to EUL and Hitrinov.

Respondents' Additional Unlawful Acts Regarding the Shipment of Complainants' Cargo

75. EUL did not have a tariff on file for the warehouse to warehouse shipments handled by it on behalf of Complainants.

76. EUL did not have a tariff on file for the warehouse to warehouse shipment of 40 foot high cube containers containing two (2) to three (3) automobiles.

77. EUL refused to provide an Empire house bill of lading for the shipment of Complainants' vehicles, although such house bill of ladings were duly demanded.

78. Upon information and belief Complainants believe that EUL has billed amounts in excess of its lawful tariff during the time period alleged herein.

79. During the time period alleged herein, EUL and Hitrinov accepted money for the warehouse to warehouse shipment of the vehicles described herein, then subsequently refused to

release the vehicles.

80. At all times alleged herein, EUL and Hitrinov failed to provide Complainants and any other necessary parties with proper and lawful documents of ownership, titles, house bills of lading, nor did they ever provide shipping invoices nor the terms and conditions of transport even though EUL and Hitrinov were paid for the warehouse to warehouse shipment of the vehicles described herein. Respondents failed to deal in good faith, and respondents failed to provide proof of ownership with a correct original Empire house bill of lading and contract of transport in a timely manner to the Complainants.

V. Violations of the Shipping Act

A. EUL violated 46 U.S.C. § 40701(a) failing to maintain a rate or charge in a tariff or service contract, or charge or assess a rate, that is below a just and reasonable level.

B. EUL violated 46 U.S.C. §41102(c) by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and by failing to provide Complainants and any other necessary parties with: (1) proper and lawful documents of ownership; (2) shipping invoices and house bills of lading; and (3) the terms and conditions of transport; (4) failing to deal in good faith and further failing to provide proof of ownership.

C. EUL violated 46 U.S.C. §§ 41104(2), 41104(3), 41104(4), 41104(8), 41104(9) 41104(10), and 41104(10) by: (i) having provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published the respondent; (ii) by retaliating against Complainants by resorting to unfair and unjustly discriminatory methods; (iii) by, with respect to service pursuant to a tariff, having engaged in unfair and unjustly discriminatory practices in the matter of rates or charges, cargo

classifications, loading and landing of freight and adjustment and settlement of claims, (iv) with respect to service pursuant to a tariff, by imposing undue or unreasonable prejudice or disadvantage; (v) by unreasonably refusing to deal or negotiate; (vi) and by knowingly and willfully accepting cargo from or transporting cargo for the account of an ocean transportation intermediary that does not have a tariff as required by the Shipping Act.

D. EUL violated 46 U.S.C. §§ 41106(2) and 41106(3) by imposing undue or unreasonable prejudice or disadvantage with respect to any person; and by an unreasonable refusal to deal or negotiate.

E. EUL has violated 46 U.S.C. 41102(c) by detaining and converting Complainants' automobiles on the grounds that the principal of G-Auto/Effect owed monies to respondents for reasons not related to the instant shipments. It is an unreasonable and unlawful practice to assert a maritime lien against a shipment for which all freight charges have been paid.

VII. Injury to Complainants

A. As a result of respondents' aforementioned violations of the Shipping Act of 1984, the complainants have sustained and continue to sustain injuries and damages as follows:

- **Complainant Igor Ovchinnikov:** Direct damages in excess of \$28,960.00 constituting the amounts paid for the purchase of the GMC Acadia plus additional damages for sums arising out of the loan which complainant Ovchinnikov obtained from the bank in Khanty-Mansiysk, Russia, for the purchase of the GMC Acadia, such as interest on the loan and bank fees;
- **Complainant Irina Rzaeva:** Direct damages in excess \$32,101.00 constituting the amounts paid for the purchase of the Jeep Compass and the customs clearance paid for the import of the Jeep Compass, plus additional damages for sums arising out of expenses incurred by complainant incidental to complainant's travel to Kotka, Finland, and for sums arising out of the loan which complainant Rzaeva obtained from the bank in Syktyvkar, Russia, for the purchase of the Jeep Compass, such as interest on the loan and bank fees;
- **Complainant Denis Nekipelov:** Direct damages in excess of \$19,920.00 constituting the amounts paid for the purchase of the Mercedes plus additional consequential damages;

The full extent of damages can only be determined after obtaining discovery in this matter, and after final calculation of interest due and owing to Complainants on this sum and calculation of the legal fees incurred by complainants due to respondents' violations of the Shipping Act.

VIII. Prayer for Relief

- A. Statement regarding ADR procedures: Alternative dispute resolution procedures were not used prior to filing the Complaint and Complainants have not consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.
- B. **WHEREFORE**, Complainants pray that: (1) respondents be required to answer the charges herein; (2) that after due hearing, an order be made commanding said respondent to pay to Complainants by way of reparations for the unlawful conduct hereinabove described, the sums described herein, with interest and attorney's fees, costs and expenses, or such other sum as the Commission may determine to be proper as an award of reparation; (3) that the Commission issue an Order holding that the respondents MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV individually, EMPIRE UNITED LINES CO., INC., and CARCONT, LTD. violated the Shipping Act of 1984; (4) that the Commission Order the respondents to provide the Empire United Lines Co. Inc. house bills of lading for the shipments described herein; and (5) that the Commission issue such other and further order or orders as the Commission determines to be just and proper.

- C. Complainants request a hearing on this matter, and further request that the hearing be held in Washington, D.C.



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Dated: November 7, 2015

VERIFICATION

IGOR OVCHINNIKOV declares and states that he is a Complainant in this proceeding, and that the foregoing annexed VERIFIED COMPLAINT is true to the best of his information and belief, and that the grounds to his belief as to those matters therein not stated upon personal knowledge, is based upon information which has otherwise been provided to Complainant and which Complainant believes to be true.

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

Executed on November 6th, 2015.



IGOR OVCHINNIKOV

VERIFICATION

IRINA RZAEVA declares and states that she is a Complainant in this proceeding, and that the foregoing annexed VERIFIED COMPLAINT is true to the best of her information and belief, and that the grounds to her belief as to those matters therein not stated upon personal knowledge, is based upon information which has otherwise been provided to Complainant and which Complainant believes to be true.

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

Executed on November 07, 2015.



IRINA RZAEVA

VERIFICATION

DENIS NEKIPELOV declares and states that he is a Complainant in this proceeding, and that the foregoing annexed VERIFIED COMPLAINT is true to the best of his information and belief, and that the grounds to his belief as to those matters therein not stated upon personal knowledge, is based upon information which has otherwise been provided to Complainant and which Complainant believes to be true.

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

Executed on November 08, 2015.



DENIS NEKIPELOV

Exhibit “B”

S	E	R	V	E	D
March 30, 2016					
FEDERAL	MARITIME	COMMISSION			

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV

v.

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE

On November 12, 2015, complainants Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov commenced this proceeding by filing a Verified Complaint with the Secretary. Respondent Empire United Lines (Empire) is licensed by the Commission as a non-vessel-operating common carrier (NVOCC). Respondent Michael Hitrinov a/k/a Michael Khitrinov is Empire's sole principal and officer. *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (Sept. 15, 2015) (Initial Decision on Respondents' Motion for Partial Summary Decision), exceptions filed, Jan. 15, 2016. The Complaint alleges that Hitrinov owns CarCont, Ltd. (CarCont), a company located in Kotka, Finland, and is "the Chairperson of the Board of CarCont, with signatory authority and direct control over respondent CarCont." (Complaint ¶¶ II.9-11.)

The Complaint alleges that Respondents violated 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, and 41106 of the Shipping Act and Federal Maritime Commission (FMC or Commission) regulations at 46 C.F.R. Part 515, and that Ovchinikov has suffered direct damages in excess of \$28,960.00, that Rzaeva has suffered direct damages in the excess of \$32,101.00, and that Nekipelov has suffered direct damages in excess of \$19,920.00. Complainants further allege that the full extent of their damages can only be determined after discovery has been conducted and interest due to them and the cost of their legal fees calculated. (Complaint at 15-16.)

HITRINOV AND EMPIRE

On November 18, 2015, the Secretary Issued a Notice of Filing of Complaint and sent the Notice and the Complaint by United Parcel Service (UPS) to Hitrinov and Empire at the address identified in the Complaint as Empire's principal place of business: 2303 Coney Island Avenue, Brooklyn, NY 11223. I take official notice of Commission records indicating that 2303 Coney Island Avenue, Brooklyn, NY 11223, is Empire's address on file with the Commission's Bureau of Certification and Licensing. See <http://www2.fmc.gov/oti/NVOCC.aspx> (last visited March 25, 2016). I also take official notice of the Answer filed by Hitrinov and Empire in FMC Docket No. 14-16 stating that their address is 2303 Coney Island Avenue, Brooklyn, NY 11222. *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (Jan. 21, 2015) (Answer). The USPS web site states that 11223 is the correct zip code for this address. See <https://tools.usps.com/go/ZipLookupResultsAction!input.action?resultMode=1&companyName=&address1=2303+Coney+Island+Avenue&address2=&city=Brooklyn&state=NY&urbanCode=&postalCode=&zip=>.

UPS returned both envelopes sent by the Commission for the following reason: "The receiver did not want the product and refused delivery." The Commission also published the Notice of Filing of Complaint and Assignment in the Federal Register. *Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov v. Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., and CarCont, Ltd., Notice of Filing of Complaint and Assignment*, 80 Fed. Reg. 73186 (Nov. 24, 2015). Complainants engaged special process servers to serve the Complaint on Hitrinov and Empire. (Complainants' Motion for a Default Judgment Against Defendants Exh. D (Hitrinov served December 4, 2015); Exh. F (Empire served December 29, 2015).) See 46 C.F.R. § 502.113(b) (permitting complainant to effect proper service). Therefore, it appears that Hitrinov and Empire have notice of this proceeding and an opportunity to be heard on Complainants' allegations. Hitrinov and Empire have not answered or otherwise responded to the Complaint.

On February 14, 2016, Complainants filed a motion for decision on default against Hitrinov and Empire. Complainants served the motion by mailing it first class to Hitrinov and Empire at 2303 Coney Island Avenue, Brooklyn, NY 11223, and to CarCont in Kotka, Finland. (Complainants' Motion for a Default Judgment against Respondents, Certificate of Service.) Respondents have not responded to the motion for decision on default.

Respondents Hitrinov and Empire are currently in default. There may be some valid reason why they have failed to respond to the Complaint or the motion for default. Therefore, they will be granted additional time to respond to the Complaint and to show cause why judgment should not be entered against them. If Hitrinov and Empire fail to respond to this Order by April 14, 2016, an initial decision on default may be entered against them in the amount of \$80,981.00 plus interest, attorney fees, and other damages as appropriate.

In their answer filed in Docket No. 14-16, Hitrinov and Empire stated that their email address is michael@eulines.com. *Baltic v. Hitrinov and Empire, Inc.*, FMC No. 14-16 (Jan. 21, 2015) (Answer and Counterclaim of Respondents Michael Hitrinov and Empire United Lines Co., Inc.) (filed). In addition to other methods of providing notice, the Office of Administrative Law Judges will send a PDF copy of this Notice of Default and Order to Show Cause to Hitrinov and Empire at their email address.

CARCONT

On November 18, 2015, the Secretary sent the Complaint and Notice by FedEx to CarCont at the address identified in the Complaint as CarCont's principal place of business: Merituulentie 424, 48310, Kotka, Finland. FedEx was unable to deliver to CarCont and subsequently returned the Complaint and Notice to the Commission.

Complainants do not ask for default against CarCont. Furthermore, it does not seem that the record would support a finding that CarCont has notice of this proceeding. Complainants may choose to serve the Complaint on CarCont pursuant to Commission Rule 502.113(c) as they did with Hitrinov and Empire. If Complainants do so, "an affidavit setting forth the method, time and place of service must be filed with the Secretary within five days following service." 46 C.F.R. § 502.113(c) (2015). Otherwise, Commission Rules provide that "[t]he presiding officer may dismiss a complaint that has not been served within thirty (30) days after the complaint was filed." 46 C.F.R. § 502.113(d). Complainants should advise the Commission of their intention regarding CarCont.

ORDER

For the reasons stated above, it is hereby

ORDERED that on or before April 14, 2016, respondents Hitrinov and Empire serve and file their answer or answers to the Verified Complaint. It is

FURTHER ORDERED that on or before April 14, 2016, respondents Hitrinov and Empire show cause why an initial decision on default should not be entered against them.



Clay G. Guthridge
Administrative Law Judge

Exhibit “C”

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ARDAK AKISHEV, et al.,

Plaintiff,

-against-

SERGEY KAPUSTIN, et al.,

Defendants

13 Civ. 7152 (NLH) (AMD)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
DISMISS PURSUANT TO RULE 12(b)**

Lyons & Flood, LLP

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INTRODUCTION

This Memorandum of Law is respectfully submitted in support of Cross-Claim Defendants MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV and EMPIRE UNITED LINES CO., INC.'s (hereinafter "the EUL defendants") motion for an Order pursuant to Rule 12(b) dismissing the First Amended Crossclaim Complaint for lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient service of process, and failure to state a claim upon which relief can be granted, and granting such other, further, and different relief as the Court may deem just and proper.

The plaintiffs, as substituted parties, are now seeking to prosecute the First Amended Crossclaim Complaint against the EUL defendants. This pleading must be dismissed as a matter of law because at the time it was filed the EUL defendants were not parties to this case and thus, were not subject to this Court's jurisdiction. That pleading was, in effect, a nullity and cannot be resurrected in this Court. If the plaintiffs wish to proceed with claims against the EUL defendants they must commence a new action in an appropriate forum where the EUL defendants are subject to personal jurisdiction.

FACTS

The complete facts supporting this motion are set forth in the accompanying Certification of Jon Werner dated January 12, 2016 ("Werner Cert.") to which the Court is respectfully referred. However, for the sake of providing context, the below brief summary of facts is presented.

This action was commenced on November 25, 2013 by the filing of a Complaint against a number of defendants including Sergey Kapustin, Irina Kapustina, Michael Goloverya G Auto Sales, Inc., Global Auto, Inc., Effect Auto Sales, Inc., Global Cars, Inc., and SK Imports, Inc.

and the EUL defendants. Werner Cert. at ¶ 8.

On April 4, 2014, without seeking leave from the Court as required under Rule 15(a), the plaintiffs filed a First Amended Complaint which added eight additional plaintiffs to the cause of action but named the same defendants. Werner Cert. at ¶ 9.

On April 23, 2014, Mr. Kapustin was sued by the EUL defendants in the Eastern District of New York with respect to the same case or controversy underlying the EDNY action. That case is captioned as *Empire United Lines Co., Inc. et al. v. SK Imports, Inc. et al.*, 14 Civ. 2566 (SLT) (RER) and remains pending before Judge Townes and is consolidated for discovery purposes (but not trial) with the EDNY action. See **Exhibit G** to Werner Cert. On June 18, 2014, Mr. Kapustin filed an answer to the April 23, 2014 Complaint in which a number of affirmative defenses were raised but no counterclaims were asserted. See **Exhibit H** to Werner Cert.

On June 12, 2014 plaintiffs represented to the Court that they had served the EUL defendants in compliance with Rule 4(e). In reality however, the service reported to the Court was defective, insofar as it relied upon “nail and mail” service procedures pursuant to CPLR § 308 when no showing had been made that personal service could not be effected with due diligence, the mailing itself, upon information and belief, appears not to have ever actually taken place, and the affidavits of service reflect no attempt made by the process server (who has a history of discipline by the NYC Department of Consumer Affairs for failing to abide by regulations regarding the licensing of process servers) to verify that Michael Hitrinov resided or worked at the address at which service was attempted and was not in active service in the U.S. military, all of which render the attempted service null and void. Werner Cert. at ¶¶ 10-17.

After making this attempt at serving the EUL defendants the plaintiffs took no steps towards obtaining a default with respect to the EUL defendants. Werner Cert. at ¶ 18. Therefore,

the EUL defendants were never in default.

On September 30, 2014, the Kapustin interests filed an Answer to the plaintiffs First Amended Complaint, and on October 7, 2014 (the same day that Mr. Kapustin filed for Chapter 13 bankruptcy), Global Auto, Inc., G Auto Sales, Inc., and Effect Auto Sales, Inc. (hereinafter the “Kapustin corporations”) filed an Amended Answer asserting cross-claims against the EUL defendants. Werner Cert. at ¶ 23.

Over the next year the Kapustin corporations took no steps whatsoever to serve the EUL defendants with the cross-claims, and in fact, never even asked the Clerk of the Court to issue summons with respect to the EUL defendants. Werner Cert. at ¶ 26.

On September 11, 2015, this Court issued a Final Default Judgment against Mr. Kapustin as well as the Kapustin corporations and SK Imports, Inc. (the “Kapustin Defendants”). Werner Cert. at ¶ 48.

On October 9, 2015, the Kapustin Defendants filed a First Amended Crossclaim Complaint which asserted new cross-claims against the EUL defendants (hereinafter referred to as the “Cross-Claims”).

On October 12, 2015, plaintiffs purportedly entered into an Assignment of Claims between themselves and the Kapustin Defendants, the purpose of which was to assign to the plaintiffs any causes of action those entities might possess against the EUL defendants and CarCont, Ltd. Werner Cert. at ¶ 55.

On October 13, 2015, plaintiffs filed a motion to substitute themselves in the place of the Kapustin Defendants with respect to the cross-claims asserted against the EUL defendants. The plaintiffs’ motion was subsequently granted by this Court on December 10, 2015. Werner Cert. at ¶¶ 56 and 63.

On November 16, 2015, affidavits of service were filed by counsel for the Kapustin Defendants in which it was claimed that substituted service of the Cross-Claims was effected on the EUL defendants and CarCont, Ltd. on November 9, 2015 by leaving the papers with a woman said to be named Yelena (last name unknown), who was claimed to be a co-worker of Michael Hitrinov, as well as an authorized agent to accept service of process on behalf of Empire United Lines Co., Inc. and CarCont, Ltd. Werner Cert. at ¶ 58.

However, there are no women matching the name and description provided employed on behalf of Empire United Lines Co., Inc., nor are any employees of Empire United Lines Co., Inc. authorized agents to accept service of process on behalf of the company, on behalf of CarCont, Ltd. or on behalf of Michael Hitrinov. Just like the process server retained by plaintiffs earlier, the process server retained by counsel for the Kapustin Defendants has been found in violation of the rules regarding service of process by the NYC Department of Consumer Affairs). Werner Cert. at ¶¶ 59-60.

On November 17, 2015 the plaintiffs in this case filed a notice of voluntary dismissal formally dismissing all claims plaintiffs possessed against the EUL defendants and defendant CarCont, Ltd. with prejudice and without costs. Werner Cert. at ¶ 61.

On December 14, 2015, the undersigned filed a notice of appearance on behalf of the EUL defendants and filed a stipulation extending the time to answer or otherwise respond to the First Amended Crossclaim Complaint until January 12, 2016. Werner Cert. at ¶ 64.

SUMMARY OF THE ARGUMENT

Plaintiffs obtained final judgment against the Kapustin Defendants and dismissed their case against the EUL defendants with prejudice. The Kapustin Defendants failed to serve upon the EUL defendants the cross-claims they asserted against the EUL Defendants in their answer

filed in plaintiffs' case on October 7, 2014, within 120 days following the filing, and at any time thereafter, and hence became a nullity when this Court entered final judgment against the Kapustin Defendants in September of 2015, and regardless of whether plaintiffs managed to serve the EUL defendants in plaintiffs' case because Rule 5(a)(2) required the Kapustin Defendants to serve the EUL defendants even though the EUL defendants may have failed to appear in plaintiffs' case following the alleged attempted service of the amended complaint upon the EUL defendants in May of 2014.

The EUL defendants' failure to appear is of no consequence as the case against them is dismissed with prejudice. The Kapustin Defendants' failure to serve the EUL defendants in compliance with Rule 5(a)(2) is of great consequence as the Kapustin Defendants' failure to do so mandates the dismissal of their cross-claims without prejudice to commence another case if and when they are so advised and so inclined.

Plaintiffs' attempted service on the EUL defendants in May of 2014 failed to comply with CPLR § 308 and cases decided thereunder and is a nullity. Plaintiffs' attempted service on the EUL defendants in November of 2015 is a nullity insofar as the Kapustin Defendants' cross-claims became a nullity before such attempted service. In short, this Court has no jurisdiction over the EUL defendants and ought to dismiss the cross-claims against them.

Were the Court to assert such jurisdiction notwithstanding the foregoing, the EUL defendants respectfully point out that dismissal of the cross-claims is likewise appropriate for the following reasons: (i) Kapustin waived his cross-claims under Rule 13(a) via his failure to assert them as counterclaims in the EDNY case, (ii) the Kapustin Defendants' cross-claims improperly exceed the scope permitted by Rule 13(g) as they are unrelated to the claims asserted by plaintiffs, (iii) the Kapustin Defendants' alleged claims for contribution and indemnification are

barred as a matter of law by the doctrines of *in pari delicto* and unclean hands, (iv) venue is improper in this district under *Daimler*, and (v) the Kapustin Defendants' purported assignment could not, as a matter of New Jersey law, transfer the alleged tort claims to plaintiffs.

ARGUMENT

POINT I

THE CROSS-CLAIMS ARE PROCEDURALLY DEFECTIVE AND A NULLITY, AND THEREFORE, MUST BE DISMISSED FOR LACK OF PERSONAL JURISDICTION AND LACK OF SUBJECT MATTER JURISDICTION

A motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction may challenge the court's jurisdiction on either "factual" or "facial" grounds. *Turicentro, S.A. v. American Airlines Inc.*, 303 F.3d 293, 300 n.4 (3d Cir.2002). In considering a factual attack, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). By contrast, when determining facial attacks, *e.g.*, attacks which contest the sufficiency of allegations of jurisdiction in the complaint, the court must accept as true the allegations set forth in the complaint. *Turicentro*, 303 F.3d at 300. On a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), the claimant bears the burden of showing that jurisdiction exists. *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir.1991).

The Cross-Claims must be dismissed as a matter of law because this Court lacked jurisdiction over the EUL defendants at the time they were filed. This lack of jurisdiction is premised on the following chronology of events:

a. **Without proper service there is no personal jurisdiction**

It is well-settled in the Third Circuit that “[a] district court’s power to assert *in personam* authority over parties is dependent not only on compliance with due process but also on compliance with the technicalities of Rule 4.” *Grand Entm’t Group Ltd. v. Star Media Sales, Inc.*, 988 F.2d 476, 492 (3d Cir. 1993). “Notice to a defendant that he has been sued does not cure defective service, and an appearance for the limited purpose of objecting to service does not waive the technicalities of the rule governing service.” *Id.* In other words, even if a defendant has notice of a lawsuit against it, such notice neither validates an otherwise defective service nor waives the defendant’s right to object to that service. *Id.*; *see also Lampe v. Xouth, Inc.*, 952 F.2d 697, 700-01 (3d Cir. 1991) (“A court obtains personal jurisdiction over the parties when the complaint and summons are properly served upon the defendant. Effective service of process is therefore a prerequisite to proceeding further in a case.”) “Without proper service, the court does not obtain personal jurisdiction over a defendant, and the case may not proceed to judgment.” *Lin v. Pa. Machine Works, Inc.*, 1998 WL 111788, at *3 (E.D. Pa. Mar. 3, 1998) (citing *Ayres v. Jacobs & Crumplar, P.C.*, 99 F.3d 565, 568 (3d Cir. 1996)).

As discussed more fully in POINT I (b) below, the Kapustin corporations failed to serve the cross-claims upon the EUL defendants, and thus, because the Kapustin corporations failed to fulfill the requirements of Rule 5(a)(2) and Rule 4(m) this Court never had a legal basis to assert personal jurisdiction over the EUL defendants or CarCont, Ltd.

That the claims at issue are styled as cross-claims does not alter the analysis. *See, e.g., Boyd v. Arizona*, 469 F.Appx. 92 (3d Cir. 2012) (no viable crossclaim exists against a defendant who was never a real party to the action) (citing *Gomez v. Gov’t of V.I.*, 882 F.2d 733, 736 (3d Cir. 1989) (“a named defendant who has not been served is not a ‘party’ within the meaning of

Rule 54(b).”)

Since the EUL defendants have never properly been served with process in this case, they were never properly parties in this action, and any proceedings in this case which affected their interests have to be deemed a nullity. *Shields v. Consolidated Rail Corporation*, 530 F.Supp.400 (S.D.N.Y. 1981) (observing that where one defendant “has not yet made a general appearance, the cross-claims asserted against it are, in effect, a nullity.”) Again, as noted above, the EUL defendants were never served with the cross-claims by the Kapustin corporations, and no appearance was made in this case by the EUL defendants prior to December 14, 2015.

Moreover, this Court had no power to allow plaintiffs to substitute for the Kapustin Defendants with respect to the Cross-Claims. Simply put, there were no valid Cross-Claims to be substituted because the EUL defendants were never made a party to this case. *See, e.g., Small v. Seldows Stationery*, 617 F.2d 992 (3d Cir. 1980) (complaint and cross-claim dismissed against party who was never served with either for failure to prosecute); *Bayonne Drydock & Repair Corp. v. Wartsila North America, Inc.*, 2013 WL 3286149 (D.N.J. 2013) (finding that where cross-claims had not been served and the party subject to the cross-claims had not appeared, there were no live cross-claims against the party); *Barnett v. City of Yonkers*, 731 F.Supp. 594 (S.D.N.Y. 1990) (no service of a cross-claim means the court has no jurisdiction over that party and mandates dismissal); *Rx for Fleas, Inc. v. Zarro*, 1994 WL 419845 (S.D.N.Y. 1994) (denying motion to assert cross-claims where defendant never served with complaint) (“[W]hile [defendant] is a named party to the instant action, he has never actually been served, and thus, is not a participant in this suit.”)

b. The EUL defendants have never been served in this case

The EUL defendants were never properly served with process by any of the parties to this case, and thus, this Court has never properly asserted personal jurisdiction over the EUL defendants.¹

On December 8, 2015, plaintiffs' counsel represented to this Court that the EUL defendants were properly served with process in this case. They were not. The only attempts made by plaintiffs to serve the EUL defendants are those described in the plaintiffs' June 12, 2014 letter to Magistrate Judge Donio, in which plaintiffs represented that they had served the EUL defendants in compliance with Rule 4(e). In reality, however, the service reported to the Court was defective, insofar as it relied upon "nail and mail" service procedures pursuant to CPLR § 308 when (i) no showing had been made that personal service could not be effected with due diligence, (ii) the mailing itself, upon information and belief, appears not to have ever actually taken place, and the (iii) affidavits of service reflect no attempt made by the process server to verify that Michael Hitrinov resided or worked at the address at which service was attempted and was not in active service in the U.S. military, all of which render the attempted service null and void. Werner Cert. at ¶¶ 10-17.

The affidavits of service themselves actually state that the process server involved "was **unable** to effect service [*emphasis supplied*]" upon the EUL defendants. Werner Cert. at ¶ 10 and **Exhibit C**. Despite the acknowledged failed attempt to serve the EUL defendants and

¹ The EUL defendants did not waive any rights to raise defenses to the First Amended Crossclaim Complaint, including defenses based on the insufficient service of process, by entering into the December 14, 2015 stipulation and order extending the time to respond to that pleading. Nor can the December 14, 2015 stipulation and order be construed to be a waiver of any arguments regarding the insufficiency of service of process by the plaintiffs of their pleadings in this case. *See, e.g., Orange Theatre Corp. v. Rayherstz Amusement Corp.*, 139 F.2d 871, 874 (3d Cir. 1944), *cert. denied* 322 U.S. 740 (1944). In any event, with the plaintiffs' claims against the EUL defendants now dismissed with prejudice, any failure by the EUL defendants to appear in this case to respond to the plaintiffs' claims is moot.

CarCont, Ltd., plaintiffs' counsel filed the affidavits of service with the Court as summons returned executed in order to create the impression that service had actually been effected upon the EUL defendants and CarCont, Ltd. Werner Cert. at ¶ 14.

The explanation provided by plaintiffs' counsel as to why this method of service was proper was a citation to the case of *Prime Capital Grp., Inc. v. Klein*, 2008 WL 2945966 (D.N.J. July 29, 2008), which they claimed supported the proposition that service was properly effected under Rule 4(e) because "nail and mail" procedures under New York state law (CPLR § 308) were complied with. Werner Cert. at ¶ 15.

However, the plaintiffs' reliance upon New York state law regarding service of process (CPLR § 308) is unavailing because that permits service via "nail and mail" procedures only where actual personal service cannot be made with due diligence. A single prior attempt to serve does not satisfy the due diligence requirement under CPLR § 308. This due diligence requirement is strictly observed by New York courts. *See, e.g., Lemberger v. Khan*, 18 A.D.3d 447, 794 N.Y.S.2d 416 (2d Dep't 2005) (explaining that the due diligence requirement of CPLR 308(4) must be strictly observed, given the reduced likelihood that a summons served pursuant to that section will be received); *O'Connell v. Post*, 27 A.D.3d 630, 811 N.Y.S.2d 441 (2d Dep't 2006).

Moreover, no proof was ever provided to this Court as to whether 7410 Ridge Blvd, Apt. 3F, Brooklyn, NY was the actual place of business, dwelling place or usual place of abode of Michael Hitrinov, whether Michael Hitrinov was an appropriate person upon which service of Empire United Lines Co., Inc. and CarCont, Ltd. could be made, what the actual papers claimed to be served were, and whether such papers were in fact mailed as claimed. Nor does Mr. Tantuccio state in his affidavit whether he verified that Michael Hitrinov resided or worked at

the address at which service was attempted and was not in active service in the U.S. military, or how many copies of the “SUMMONS & VERIFIED COMPLAINT” were left at the door as described. The actual pleading claimed to have been served was not verified and the reference to the documents in the singular suggests only one copy of the papers was left at the door. Thus, it is impossible to tell which of the three parties claimed to have been served were actually served, if any, based on the affidavits of service. Werner Cert. at ¶ 16.

It is perhaps relevant to note that the process server involved has a history of discipline by the NYC Department of Consumer Affairs for failing to abide by regulations regarding the licensing of process servers. *See Exhibit E* to Werner Cert. In any event, since the claimed service on the EUL defendants on May 20, 2014, the plaintiffs took no steps towards obtaining a default with respect to the EUL defendants. Werner Cert. at ¶ 18. Thus, the EUL defendants were never in default in this case at any time.

When the Kapustin corporations filed their Amended Answer on October 7, 2014 asserting cross-claims against the EUL defendants, they made no effort whatsoever to serve the EUL defendants with this pleading. In fact they never even requested that the Clerk of the Court issue summons with respect to the EUL defendants. Werner Cert. at ¶ 26. Rule 5(a)(2) specifically provides that although “[n]o service is required on a party who is in default for failing to appear ... a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.” *Fluor Eng’rs and Constructors, Inc. v. S. Pac. Transp. Co.*, 753 F.2d 444, 449 & n. 7 (5th Cir. 1985) (before a party appears in the lawsuit, a cross-claim should be served with a summons pursuant to FRCP 4 whereas service pursuant to Rule 5 is appropriate once a party has appeared); *see also Bayonne Drydock & Repair Corp. v. Wartsila North America, Inc.*, 2013 WL 3286149 (D.N.J. 2013) (“Prior to a party appearing in a lawsuit, a

cross-claim should be served along with a summons pursuant to Rule 4 of the FRCP”), and *Luyster v. Textron, Inc.*, 266 F.R.D. 54 (S.D.N.Y. 2010).

Prior to December 14, 2015, the EUL defendants never appeared in this case. Thus, any cross-claims were required to be served on the EUL defendants together with a summons pursuant to Rule 4, and absent such service, the cross-claims were ineffective and a nullity.

Rule 4(m) provides that “[i]f a defendant is not served within 120 days after the complaint is filed, the court ... must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

More than a year has passed without any attempt being made by the Kapustin corporations to serve the EUL defendants or extend their time to do so. By failing to prosecute, the Kapustin corporations have abandoned these claims and they must be dismissed.² *See, e.g., Ariel Maritime Group, Inc. v. Züst Bachmeier of Switzerland, Inc.*, 762 F.Supp. 55 (S.D.N.Y. 1991) (cross-claim dismissed where no service past 120 days, no responsive pleadings, no appearance by counsel); *Budget Rent-A-Car System, Inc. v. Chappell*, 304 F.Supp.2d 639 (E.D. Pa. 2004) (cross-claim dismissed where it was never served).

Again, as noted above, the EUL defendants were not served with the cross-claims filed by the Kapustin corporations within 120 days as required by Rule 4, and no responsive pleadings were filed or appearances made by counsel. Thus, the cross-claims asserted by the Kapustin corporations must be dismissed.

² To the extent necessary dismissal of those cross-claims is now sought by the EUL defendants pursuant to Rule 12(b)(5).

c. **The filing of the First Amended Crossclaim Complaint was a nullity**

“Federal Rules of Civil Procedure 12(b) and 13(g) require that cross-claims be stated in a pleading, and under Federal Rule of Civil Procedure 7(a) cross-claims should be contained in defendant’s answer.” *Langer v. Monarch Life Insurance Co.*, 966 F.2d 786, 810 (3rd Cir. 1992); *see also In re Cessna Distributorship Antitrust Litigation*, 532 F.2d 64, 67 & n.7 (8th Cir. 1976). The Kapustin Defendants did not seek leave from this Court to amend their October 7, 2014 Amended Answer to add or modify the cross-claims asserted against the EUL defendants. Since the Amended Answer was itself an amendment of the earlier filed Answer to the plaintiffs’ April 4, 2014 First Amended Complaint, leave of the Court was required for such an amendment pursuant to Rule 15(a)(2). Since, as noted above, a Final Default Judgment has already been entered against the Kapustin Defendants in this case, any application to further amend the Amended Answer would be futile and therefore, must be denied.

Moreover, as noted above, on November 17, 2015 the plaintiffs’ claims against the EUL defendants in this case were voluntarily dismissed with prejudice. Werner Cert. at ¶ 61. Thus, the EUL defendants are no longer parties to this case and any motion seeking leave to amend must take into consideration the fact that a cross-claim cannot be asserted against a party who has been dismissed prior to the assertion of the cross-claim. *See Wake v. United States*, 89 F.3d 53, 62-63 (2d Cir. 1996); *Ventre v. Datronic Rental Corporation*, 1996 WL 5211 (N.D. Ill. 1996); *Glaziers and Glassworkers Union v. Newbridge Securities*, 823 F. Supp. 1188, 1190 (E.D. Pa. 1993); *see also* 6 Wright, Miller & Kane, Federal Practice and Procedure § 1431 (2d ed. 1990) (stating “No cross-claim may be brought against a person who has been eliminated or who has withdrawn from the action, since he no longer is a party.”). In *Wake*, the Second Circuit upheld the district court’s denial of a defendant’s motion to amend its answer to assert a cross-claim

where the remaining defendants had been dismissed at the time the motion to amend was filed. *Wake*, 89 F.3d at 62-63.

Since the Kapustin Defendants were legally required to seek leave to amend in order to assert the Cross-Claims and since the EUL defendants are now no longer parties to this action, any attempt to seek leave to amend at this point would be futile and must be denied.

d. The Court lacks subject matter jurisdiction

Furthermore, since the Cross-Claims are not part of the same “case or controversy” as the plaintiffs’ claims, this Court lacks any basis to assert supplemental jurisdiction over the Cross-Claims. When a district court has original jurisdiction over a claim, 28 U.S.C. § 1367 grants that court supplemental jurisdiction over sufficiently related claims. Section 1367(a) provides in relevant part that “in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” The plaintiffs’ claims against the Kapustin Defendants were premised upon Federal question jurisdiction and a specific grant of jurisdiction under the RICO statute.

Thus, the Court’s subject matter jurisdiction over the Cross-Claims could exist, if at all, only by virtue of the exercise of supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). That the Cross-Claims are not part of the same case or controversy as the plaintiffs’ claims is obvious because the First Amended Crossclaim Complaint itself explains that the Cross-Claims were previously filed in the EDNY action and are now being filed in this Court. *Werner Cert.* at ¶ 53.

In the EDNY action, Judge Townes denied the plaintiffs’ motion to intervene in part on the basis that the plaintiffs’ proposed claims were too unrelated to the claims being litigated

between the Kapustin corporations and the EUL defendants. In her decision denying the plaintiffs' motion to intervene, Judge Townes stated:

The Complaint pertains primarily to a maritime dispute between Plaintiffs and Defendants. Judging from Defendants' response to the Plaintiffs' motion for preliminary injunctive relief, the instant action may also involve questions of whether Defendants had a security interest in automobiles purchased by Plaintiffs, in whole or in part, with funds loaned them by Defendants. However, Applicants' proposed pleading – which accompanied the motion to intervene, as required by Fed. R. Civ. P. 24(c) – focused primarily on dealings between Plaintiffs and their customers, including Applicants. Although the claims Applicants seeks to litigate may touch on some of the same questions facts as the main action, most of the facts and claims alleged in Applicants' proposed pleading have, at most, marginal relevance to the claims and defenses raised in this action.

* * *

As noted above, Applicants seek to re-focus this litigation away from issues concerning the relationship between Plaintiffs and Defendants and onto issues relating to Plaintiffs' dealings with its customers. Applicants have no knowledge of the facts central to the main action, or any interest in resolving the legal issues raised in this action. Furthermore, the defendants named in Applicant's proposed pleading reside in districts outside the Eastern District of New York, and none of the acts attributed to those defendants took place in this district.

See **Exhibit B** to Werner Cert. at pp. 15-17.

The plaintiffs' claims sounded in RICO and consumer fraud, whereas the Cross-Claims solely concern the commercial dispute between the Kapustin Defendants and the EUL defendants. Therefore, since the Cross-Claims do not “form part of the same case or controversy” as the plaintiffs' claims, this Court lacks any basis for the exercise of supplemental jurisdiction under 28 U.S.C. § 1367(a).³

³ Even if the Cross-Claims were part of the same case or controversy as the plaintiffs' claims in this case, this Court has discretion to decline to exercise supplemental jurisdiction over the Cross-Claims pursuant to 28 U.S.C. § 1367(c)(3), which provides in relevant part:

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

e. **Additional bases for dismissal of the Cross-Claims**

1. **The Cross-Claims should be dismissed under Rule 12(b)(6)**

A. **The Cross-Claims were waived pursuant to Rule 13(a)**

With respect to Mr. Kapustin the Cross-Claims must be dismissed for the additional reason that they have been waived by virtue of Rule 13(a).

Rule 13(a) requires a party to assert as a counterclaim any cause of action that is available against the opposing party that arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. The failure to plead a compulsory counterclaim bars a later independent action on that claim. *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974); *New York Life Ins. Co. v. Deshotel*, 142 F.3d 873, 882 (5th Cir. 1998); 6 Wright, Miller & Kane, Federal Practice and Procedure § 1417 (3d ed. 2010). The Cross-Claims alleged by Mr. Kapustin in this case were claims that he had against the EUL defendants at the time he was answering the second EDNY action. Since they arose out of the same transaction or occurrence that was the subject matter of the second EDNY action, it was compulsory for Mr. Kapustin to allege them as counterclaims. His failure to do so constitutes a waiver of the Cross-

-
- (1) the claim raises a novel or complex issue of State law,
 - (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
 - (3) the district court has dismissed all claims over which it has original jurisdiction, or
 - (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). See also *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966); *Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc.*, 140 F.3d 478 (3d Cir. 1998); *Borough of West Mifflin v. Lancaster*, 45 F.3d 780 (3d Cir. 1995). Here, the Cross-Claims as currently plead substantially predominate over the claims over which this Court had original jurisdiction since the Cross-Claims relate to a commercial dispute between the Kapustin Defendants and the EUL defendants that involves numerous transactions and shipments beyond the particular transactions involving the individual plaintiffs in this case. Moreover, this Court would be justified in declining to exercise supplemental jurisdiction over the Cross-Claims because the Kapustin Defendants can just as easily file their Cross-Claims as a separate case and thereby avoid a protracted jurisdictional battle.

Claims and precludes him from asserting such claims now in this case.

B. The Cross-Claims improperly exceed the scope under Rule 13(g)

The Cross-Claims generally also improperly exceed the scope permitted by Rule 13(g) and must be dismissed on that basis as well. Rule 13(g) provides in relevant part that: “[a] pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action.”

Here, there was no property that was the subject matter of the original action and the transactions or occurrences that were the subject matter of the original action were the alleged fraudulent business practices and RICO violations of the Kapustin corporations and their principals. Thus, putting aside the issue of claims for contribution and/or indemnity (the merits of which as a matter of law are addressed below), the Kapustin corporations could only validly assert cross-claims against the EUL defendants which related to the underlying transactions or occurrences, *i.e.* the sale of vehicles to the plaintiffs.

The original cross-claims asserted by the Kapustin corporations in this action were properly limited pursuant to Rule 13(g) because they sought relief only with respect to the claims of five of the individual plaintiffs whose vehicles allegedly could not be delivered by the Kapustin corporations because they were “converted” by the EUL defendants. *See* Document No. 88 at ¶ 566.

By contrast, the Cross-Claims now being asserted are impermissibly outside the transactions or occurrences that were the subject matter of the original action, since they relate to a commercial dispute between the Kapustin Defendants and the EUL defendants. There is no

relationship between that commercial dispute and the claims asserted by the plaintiffs in this action. In fact, it was this very lack of any substantial connection between the two types of claims which caused Judge Townes to decline the plaintiffs' original attempts to intervene in the EDNY action. See **Exhibit B** to Werner Cert. at pp. 15-17. Thus, the Cross-Claims as currently plead must be dismissed for exceeding the scope permitted under Rule 13(g).

C. The Cross-Claims ought to be dismissed as a matter of law under the doctrines of *in pari delicto* and unclean hands

Even if the Cross-Claims were limited to seeking contribution and/or indemnification from the EUL defendants for the Kapustin Defendants' liability to the plaintiffs, the Cross-Claims would still be subject to dismissal. This is because the Kapustin Defendants cannot seek contribution and/or indemnity with respect to their liability to the plaintiffs from the EUL defendants in this case.

While it is well-settled that a claim for common law or implied indemnification may arise “without agreement, and by operation of law to prevent a result which is regarded as unjust or unsatisfactory.” W. Keeton, D. Dobbs, R. Keeton, D. Owens, Prosser Keeton on the Law of Torts § 51 at 341 (5th ed. 1984). New Jersey courts have generally applied the doctrine of implied indemnification only when there is (1) a “special relationship” between the parties, and (2) the party to be indemnified is entirely without fault. See *Adler's Quality Baker, Inc. v. Gaseteria Inc.*, 32 N.J. 55 (N.J. 1960); *Cartel Capital Corp. v. Fireco of New Jersey*, 81 N.J. 548, 566 (N.J. 1980) (“A person who, without personal fault, has become subject to tort liability for the unauthorized or wrongful conduct of another, is entitled to indemnity from the other”)

Here, this Court does not even need to reach the question of whether a sufficient “special relationship” existed between the Kapustin Defendants and the EUL defendants, because it is

clear from the Final Default Judgment issued against them in this case, that the Kapustin Defendants are not entirely without fault. Unlike a normal case involving breach of contract or tort claims, the plaintiffs' claims against the Kapustin Defendants were brought under RICO and consumer fraud statutes. The Final Default Judgment which was entered against the Kapustin Defendants on September 11, 2015 was specifically premised on violations of consumer fraud statutes and the existence of a RICO conspiracy:

[T]he Court found that Global Defendants were responsible for executing and masterminding the "bait and switch" fraud scheme targeting online unsophisticated foreigners from the former Soviet Union and other countries by advertising vehicles for sale below the market value. Plaintiffs presented evidence that the advertised and "sold" cars were not in Global Defendants' possession and often already owned by unrelated third parties at the time of the "sale." Once the customer wired the money, Global Defendants failed to deliver the vehicles that the customer paid for and refused to issue any refunds. Global Defendants then offered customers different cars, for a higher price, thus extorting more money from the customers. Eventually, even on the "switch" vehicles that were ultimately, sometime after 6-8 months of first wire, shipped to Global Defendants' warehouse in Finland, Global Entities refused to "release" vehicles and charged hidden fees, misrepresented odometer readings, withheld the information that the vehicle had been declared 'total loss' after an accident or flooded by hurricane Sandy with "salvage" title issued.

* * *

[T]he Court find that Plaintiffs were directly and proximately harmed by Global Defendants' predicate acts of racketeering, including wire fraud, mail fraud, and Travel Act violations, which resulted in ascertainable losses to the Plaintiffs.

See Document No. 265 at pp. 8 and 10.

Regardless of whether the allegations in the Cross-Claims regarding the EUL defendants' conversion of certain vehicles are credited, it is obvious that the Kapustin Defendants, by intentionally making misrepresentations to their customers and refusing to refund the money advanced by their customers were the sole wrongdoers who were responsible for their liability to

the plaintiffs in this case. Even if the EUL defendants were responsible for the inability of the Kapustin Defendants in some isolated cases from being able to deliver certain vehicles to their customers, the Kapustin Defendants are the primary wrongdoers because they failed to refund any of the payments for such vehicles received from their customers.

Moreover, how could this Court, after finding that the Kapustin Defendants were engaged in an illegal racketeering enterprise and massive internet fraud scheme, subsequently find that the Kapustin Defendants are entitled to recover profits which they would have realized from the sale of vehicles “converted” by the EUL defendants as alleged in the Cross-Claims? Obviously any profits which the Kapustin Defendants would have earned would have been the illegitimate fruits of their fraudulent business practices.

That the plaintiffs, via substitution, are the ones now seeking to prosecute the Cross-Claims does not change the outcome. The plaintiffs stand in the shoes of Mr. Kapustin and the Kapustin corporations with respect to the Cross-Claims. Thus, that the plaintiffs may be blameless is immaterial. *See, e.g., Official Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 356 (3d Cir. 2001) (affirming dismissal of claims brought by creditors’ committee based on causes of action against alleged co-conspirators of debtor which engaged in Ponzi scheme due to application of *in pari delicto* doctrine, even over argument that doctrine should not be applied because pursuit of the causes of action would benefit innocent creditors).

Therefore, since the Cross-Claims cannot be asserted by Mr. Kapustin due to their waiver under Rule 13(a), and in any event are outside the scope of Rule 13(g) to the extent they seek anything but contribution and/or indemnity, and non-recoverable as a matter of law to the extent they seek contribution and/or indemnity, the Cross-Claims must be dismissed for failure to state a claim pursuant to Rule 12(b)(6).

2. The Cross-Claims should be dismissed under Rule 12(b)(2) & (3) for lack of personal jurisdiction and improper venue

Finally, dismissal of the Cross-Claims is warranted pursuant to Rule 12(b)(2) & (3), because the EUL defendants are not subject to the personal jurisdiction of this Court in any event, and this Court is not the proper venue for the Cross-Claims.

The only basis for the assertion of personal jurisdiction over the EUL defendants alleged in the First Amended Crossclaim Complaint is that they have conducted business in and have continuous and systematic contacts with the State of New Jersey. *See Exhibit J* to Werner Cert. at ¶ 24. In *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), the U.S. Supreme Court explained that the assertion of general personal jurisdiction over an out of state defendant requires affiliations with the forum to be so continuous and systematic as to render it essentially “at home.” Under *Bauman*, that essentially limits the assertion of general personal jurisdiction to the location where a corporation is formally incorporated or its principal place of business are located. Since, as alleged in the First Amended Crossclaim Complaint, the EUL defendants are domiciled in New York with a principal place of business in New York, they are “at home” only in New York and therefore, this Court lacks any valid basis for the assertion of personal jurisdiction over the EUL defendants, mandating dismissal under Rule 12(b)(2).

The First Amended Crossclaim Complaint only contains boilerplate allegations regarding why this Court is the appropriate venue for the Cross-Claims. *See Exhibit J* to Werner Cert. at ¶ 25. These were the same boilerplate allegations that were used by the Kapustin corporations in the EDNY action to claim that venue was appropriate in the EDNY. *See Exhibit F* to Werner Cert. at ¶ 22.

In reality there is no basis for the Cross-Claims to be venued in this Court, since the relevant events underpinning the Cross-Claims all took place in New York or overseas in Finland. New York is the location where the EUL defendants reside and maintain their principal place of business. While the EUL defendants did rent a warehouse in the past that was located in New Jersey and used that warehouse as a staging area for the storage of vehicles that would subsequently be shipped internationally, the Cross-Claims are not centered around the shipping services provided by the EUL defendants, but are instead focusing on the alleged “conversion” of vehicles by the EUL defendants. This alleged “conversion” of vehicles took place in Finland and at the direction of the EUL defendants from their base of operations in New York. No part of the underlying events took place in the District of New Jersey, let alone the Camden Vicinage.

POINT II

THE KAPUSTIN DEFENDANTS LACK STANDING TO RECOVER AGAINST THE EUL DEFENDANTS

The Kapustin Defendants lack the requisite Article III standing to proceed against the EUL defendants in this case, whether premised under a theory of contribution and/or indemnity or a direct claim for breach of contract or a tort claim for conversion etc. Therefore, the Cross-Claims should be dismissed for lack of subject matter jurisdiction and for failure to state a claim pursuant to Rules 12(b)(1) and 12(b)(6).

At the outset it should be noted that constitutional standing “requires an injury-in-fact, which is an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *See, e.g., Reilly v. Ceridian Corp.*, 664 F.3d 38 (3d Cir. 2011). Thus, allegations of “possible future injury” are not sufficient to satisfy Article III. *Id.*

Here, the Kapustin Defendants, by their own allegations in the Cross-Claims, aver that the vehicles claimed to have been “converted” by the EUL defendants were already contracted for sale to customers. *See Exhibit J* to Werner Cert. at ¶¶ 4, 5, 44, 45, and 71. Thus, the Kapustin Defendants admit that they did not own any of the vehicles allegedly “converted” and thus, have not themselves suffered any direct losses or injuries flowing from the alleged wrongful acts of the EUL defendants.

The only persons therefore, who potentially have standing to sue the EUL defendants with respect to the wrongful acts alleged are the customers of the Kapustin Defendants who purchased the vehicles and were allegedly deprived of their right to take possession of the vehicles by the EUL defendants’ actions. In fact this is just what occurred in this case when certain of the plaintiffs alleged claims directly against the EUL defendants.

To hold otherwise, and find that the Kapustin Defendants have adequate standing, would result in the unjust enrichment of the Kapustin Defendants to the potential detriment of the actually aggrieved customers of the Kapustin Defendants. The Kapustin Defendants have already received payment for all the vehicles from their customers for the allegedly “converted” vehicles. They wrongfully refused to return these monies (which necessarily included the profits on the sales) even after it became apparent that they would be unable to deliver the purchased vehicles as promised.

Now, after having apparently secreted, spent or diverted these funds, the Kapustin Defendants want to receive recovery for, not only the profits they claim they would have realized had the sale of the vehicles proceeded unimpeded by the EUL defendants’ acts, but also the costs they incurred to purchase those vehicles in the first place. In other words, the Kapustin Defendants argue that they should be entitled to have paid nothing for the vehicles and to also

have received the profits from the sale of the vehicles twice, despite having never actually delivered the vehicles sold to their customers. This is a greater than double recovery by the Kapustin Defendants, and should not be permitted by this Court.

POINT III

**THE ASSIGNMENT OF TORT CLAIMS IS INVALID AS A
MATTER OF NEW JERSEY LAW AND THUS, THE TORT
BASED CROSS-CLAIMS ARE NULL AND VOID**

The assignment of tort claims is invalid as a matter of New Jersey law made applicable by the terms of the assignment itself and is to this extent null and void.

The Assignment of Claims⁴ dated October 12, 2015 which was entered into between the plaintiffs and the Kapustin Defendants specifically provided that it was “negotiated and delivered in the State of New Jersey and shall in all respects be governed by, and construed in accordance with, the laws of the State of New Jersey, including all matters of construction, validity and performance, without giving effect to its conflict of laws provisions.” *See* Document No. 279-3 at ¶ 10.

This is problematic for the plaintiffs because New Jersey law forbids the assignment of any causes of action other than for breach of contract as a matter of public policy under the doctrine of champerty. *See, e.g., Conopco, Inc. v. McCreadie*, 826 F. Supp. 855, 865-67 (D.N.J. 1993) (collecting cases). The effect of the assignment is that under New Jersey law all tort based claims sought to have been assigned are deemed null and void.

Thus, by virtue of this Court's granting of the plaintiffs' motion to substitute themselves in the place of the Kapustin Defendants with respect to the Cross-Claims, the plaintiffs have lost any standing whatsoever with respect to all counts of the Cross-Claims except for Count I which sounds in breach of contract. This change in standing has caused this Court to lose subject matter jurisdiction with respect to the Cross-Claims with the exception of Count I. *See, e.g., County of Morris v. Nationalist Movement*, 273 F.3d 527, 533 (3d Cir. 2001) ("If developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot.") (quoting *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-99 (3d Cir. 1996)).

CONCLUSION

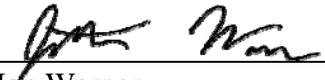
For the foregoing reasons, the EUL defendants respectfully request that this Court issue an Order pursuant to Rule 12(b) dismissing the First Amended Crossclaim Complaint for lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient service of process, and failure to state a claim upon which relief can be granted, and granting such other, further, and different relief as the Court may deem just and proper.

⁴ It should also be noted that the October 12, 2015 Assignment of Claims was technically in violation of this Court's July 2, 2015 Order of Preliminary Injunction and Asset Freeze, which specifically prohibited the Kapustin Defendants from "removing, withdrawing, drawing upon, pledging from, transferring, setting off, receiving, changing, selling, assigning, liquidating, or otherwise disposing of Defendants' interest in, directly or indirectly, in any assets located in the United States and in foreign countries, including but not limited any motor vehicles, real estate, cash funds, funds held in any bank accounts in the United States and foreign countries in the amount of up to \$1,500,000.00 (one million five hundred dollars)." The plaintiffs in this case never formally sought leave from this Court to enter into the Assignment of Claims, and instead merely moved to substitute themselves as parties in the stead of the Kapustin Defendants after the Assignment of Claims had been entered into.

Dated: January 12, 2016

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KHITRINOV and EMPIRE UNITED LINES CO.,
INC.

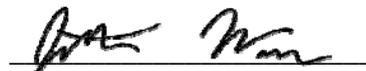
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CERTIFICATE OF SERVICE

Jon Werner, an attorney duly admitted to practice before this Honorable Court, affirms that on this 12th day of January 2016 he served true copies of the foregoing, via CM/ECF.



Jon Werner

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