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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 07-10

KAWASAKI KISEN KAISHA, LTD. ("K" Line)

v.

FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC.;
GEMINI SHIPPERS ASSOCIATION, INC.; SARA MAYES; and HAROLD SACHS

MOTION TO DISMISS

Pursuant to Rules 12 and 64 of the Federal Maritime Commission ("FMC") Rules of Practice and Procedure, 46 C.F.R. §§ 502.12 and 502.64, and Rule 12(b)(6) of the Federal Rules of Civil Procedure, Respondents Sara Mayes ("Mayes") and Harold Sachs ("Sachs") hereby, in lieu of answer, move to dismiss the Complaint as it relates to them for failure to state a claim upon which relief can be granted.

As demonstrated more fully in the accompanying memorandum of points and authorities in support of this motion, the Complaint contains no allegations that Respondent Sachs engaged in any conduct or committed any act in violation of The Shipping Act of 1984, as amended (hereinafter, the "Act"). Indeed, the only allegation in the Complaint directly relating to Respondent Sachs is that he is the Executive Director of Respondent Fashion Accessories Shippers Association, Inc. ("FASA"). In addition, the Complaint does not request any specific remedy or relief against Respondent Sachs requiring his presence in this proceeding. To the extent the Commission were to grant any of the requested relief – in the form of injunctive or declaratory relief generally applicable to the industry, or specifically relating to FASA – Respondent Sachs would be bound by such relief in any event. Since the Complaint fails to state

a claim against Respondent Sachs upon which relief can be granted, the Complaint should be dismissed as to Respondent Sachs.

The Complaint also fails to state a viable claim for relief against Respondent Mayes. The Complaint contains no allegations that Respondent Mayes, acting in her individual capacity, engaged in any conduct or committed any act in violation of the Act. For example, all of the allegations relating to the execution of the services contracts at issue clearly indicate that Respondent Mayes was acting in her corporate capacity as President of FASA d/b/a Gemini Shippers Association – not in her individual capacity. There is no suggestion in the Complaint that the corporate veil should be pierced to impose liability upon Respondent Mayes in her individual capacity, much less the allegations of any facts to support such a claim.

In addition, the Complaint does not request any specific remedy or relief against Respondent Mayes requiring her presence in this proceeding. To the extent the Commission were to grant any of the requested relief – in the form of injunctive or declaratory relief generally applicable to the industry, or specifically relating to FASA – Respondent Mayes would be bound by such relief in any event. Since the Complaint fails to state a claim against Respondent Mayes upon which relief can be granted, the Complaint should be dismissed as to Respondent Mayes.

Respectfully submitted,



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SARA MAYES and HAROLD SACHS

DATE: December 14, 2007

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by depositing same in the United States mail, first class postage prepaid, and by email transmission (with the exception of Thomas Aldridge of "K" Line America, Inc.), this 14th day of December 2007:

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And we are providing a courtesy copy of the foregoing document by messenger delivery and by email transmission to ALJ Clay Guthridge as follows:

The Honorable Clay G. Guthridge
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Linda D. Thomas
