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15 **UNITED STATES DISTRICT COURT**
16 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

17 DAVID SCHROEDER, on his own behalf
and on behalf of all others similarly
18 situated,

19 Plaintiff,

20 v.

21 NIPPON YUSEN KABUSHIKI KAISHA;
22 NYK LINE (NORTH AMERICA) INC.;
EUKOR CAR CARRIERS, INC.;
23 COMPANIA SUD AMERICANA DE
VAPORES, S.A.;
24 KAWASAKI KISEN KAISHA, LTD.;
'K' LINE AMERICA, INC.;
25 MITSUI O.S.K. LINES, LTD.;
MITSUI O.S.K. BULK SHIPPING (USA),
26 INC.;
NISSAN MOTOR CAR CARRIER CO.,
27 LTD.;
WORLD TRANSPORT CO., LTD.;
28 WORLD LOGISTICS SERVICE (U.S.A.),
INC.;

Case No. '13CV1319 H DHB

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF FEDERAL
ANTITRUST LAWS AND
STATE OF CALIFORNIA
UNFAIR COMPETITION
LAWS**

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 TOYOFUJI SHIPPING CO., LTD.;
2 WALLENIUS LINES, AB;
3 WILH. WILHEMSEN HOLDING, ASA;
4 WILH. WILHELMSSEN, ASA;
5 WALLENIUS WILHELMSSEN
6 LOGISTICS AMERICAS, LLC;
7 WWL VEHICLE SERVICES AMERICAS
INC.;
AMERICAN SHIPPING AND
LOGISTICS INC.; and
AMERICAN AUTO LOGISTICS, INC.,

Defendants.

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CLASS ACTION COMPLAINT

1 Plaintiff David Schroeder (“Plaintiff”), for his complaint, allege upon
2 personal knowledge as to himself and his own actions, and upon information and
3 belief, including the investigation of counsel, as follows:

4 **NATURE OF ACTION**

5 **Summary of Material Fact**

6 1. This is an antitrust class action pursuant to section 1 of the Sherman
7 Act, 15 U.S.C. §§ 1-7, and a class action brought pursuant to the laws of California
8 brought by Plaintiff, on his own behalf and on behalf of classes of persons and
9 entities in California who indirectly purchased from any Defendant or current or
10 former subsidiary or affiliate, vehicle carrier services for personal use (not resale),
11 incorporated into the price of the a new vehicle purchased or leased during the
12 from and including January 2008 through such time as the anticompetitive effects
13 of Defendants’ conduct ceased (the “Class Period”).

14 2. Defendants are automotive carriers who transport large numbers of
15 cars and trucks including agriculture and construction equipment vehicles
16 (collectively, “Vehicles”) using specialized cargo vessels for transport across water
17 (“Vehicle Carriers”). Vehicle Carriers use a specialized cargo ship that has the
18 capacity to set a ramp at dockside, bow and/or stern, and roll on and off most types
19 of wheeled vehicles. Within the shipping industry, such cargo ships are referred to
20 as a Roll-on/Roll-off Cargo Vessel or a “RORO or ro-ros” and are used to carry
21 Vehicles from port to port. “Vehicle Carrier Services” refers to the paid
22 transportation of Vehicles by RORO. Defendants are: Compania Sud Americana
23 De Vapores S.A. (“CSAV”); EUKOR Car Carriers, Inc., and American Shipping
24 and Logistics Inc., (together hereafter “ECC”); Kawasaki Kisen Kaisha, Ltd. (“K’
25 Line”); ‘K’ Line America, Inc. (“K’ Line America”); Mitsui O.S.K. Lines, Ltd.
26 and Mitsui O.S.K. Bulk Shipping (USA), Inc., (together “MOL”); Nissan Motor
27 Car Carrier Co., Ltd., World Transport Co., Ltd., and World Logistics Service
28 (U.S.A.), Inc. (collectively hereafter “Nissan MCC”); Nippon Yusen Kabushiki

CLASS ACTION COMPLAINT

1 Kaisha (“Nippon Line”); NYK Line (North America), Inc. (“Nippon Line NA”);
2 Toyofuji Shipping Co., Ltd. (“Toyofuji”); Wallenius Wilhelmsen Logistics AS
3 (“WWL”); Wilh. Wilhelmsen Holding, ASA (“WW ASA”); Wallenius
4 Wilhelmsen Logistics America, LLC and WWL Vehicle Services Americas Inc.
5 (together “WWL America”); Wallenius Lines, AB (“Wallenius”); and (all as
6 defined below, and collectively the “Defendants”).

7 3. The aforementioned Defendants provide, market, and/or sell Vehicle
8 Carrier Services in California. These providers of Vehicle Carrier Services
9 globally and in California control over 70% of Vehicle Carrier Services market and
10 have engaged in a five year-long conspiracy to fix, raise, maintain and/or stabilize
11 Vehicle Carrier Services prices, and allocate the market and customers in
12 California for Vehicle Carrier Services.

13 4. On September 12, 2012, the Japan Fair Trade Commission (“JFTC”)
14 began investigating approximately ten Vehicle Carriers on suspicion of forming a
15 global cartel to raise the prices of shipping overseas. It has been reported that the
16 United States Department of Justice’s Antitrust Division (“DOJ”) is investigating
17 unlawful, anticompetitive conduct amid allegations that Vehicle Carriers have
18 colluded on prices they charged auto exporters and allocated orders among
19 themselves despite pressure to cut prices by automakers whose profit margin have
20 been shrinking since the 2008 global financial crisis.

21 **Summary of Claims**

22 5. Defendants and their co-conspirators colluded and conspired to
23 suppress and eliminate competition in the Vehicle Carrier Services market by
24 agreeing to fix, stabilize and maintain the prices of, Vehicle Carrier Services in
25 California. The combination and conspiracy engaged in by the Defendants and
26 their co-conspirators resulted in unreasonable restraint of interstate and foreign
27 trade and commerce in violation of the Sherman Act, 15 U.S.C. §§ 1-7 and
28 California Unfair Competition statutes.

CLASS ACTION COMPLAINT

1 6. As a direct result of the anticompetitive and unlawful conduct alleged
2 herein, Plaintiff and the Class paid artificially inflated prices for Vehicle Carrier
3 Services incorporated into the price of a new imported Vehicles purchased or
4 leased in California during the Class Period, and have thereby suffered antitrust
5 injury to their business or property.

6 **PARTIES**

7 **Plaintiff**

8 7. Plaintiff David Schroeder is a California resident who purchased
9 Vehicle Carrier Services indirectly from one or more Defendants.

10 **Defendants**

11 8. Defendant CSAV is a Chilean company. CSAV, directly and/or
12 through its subsidiaries provided, marketed and/or sold Vehicle Carrier Services
13 throughout California, including in this District, during the Class Period.

14 9. Defendant ECC is a South Korean company. ECC directly and/or
15 through its subsidiaries provided, marketed and/or sold Vehicle Carrier Services
16 throughout California, including in this District, during the Class Period. ECC is a
17 joint venture between Wilh. Wilhelmsen ASA, Wallenius, Hyundai Motor
18 Company and Kia Motors Corporation.

19 10. Defendant WW ASA is a Norwegian company. WW ASA, directly
20 and/or through its subsidiaries, provided, marketed and/or sold Vehicle Carrier
21 Services throughout California, including in this District, during the Class Period.

22 11. Defendant WWL is a Norwegian company. WWL, directly and/or
23 through its subsidiaries, provided, marketed and/or sold Vehicle Carrier Services
24 throughout California, including in this District, during the Class Period.

25 12. Defendant Wallenius Lines AB is a Swedish Company. Wallenius
26 Lines AB, directly and/or through its subsidiaries, provided, marketed and/or sold
27 Vehicle Carrier Services throughout California, including in this District, during
28 the Class Period.

CLASS ACTION COMPLAINT

1 13. Defendant American Shipping and Logistics group (“ASL”) consists
2 of several companies, all of which are established on a joint venture basis between
3 Wilh. Wilhelmsen ASA and Wallenius. All companies in the ASL group are
4 headquartered in the U.S. and consist of liner service operating companies, ship
5 owning companies, and logistics services companies. The primary operating
6 companies in the ASL Group are:

7 a. American Roll-on Roll-off Carrier, LLC (ARC) is the largest U.S.
8 Flag ro-ro carrier and the third largest U.S. Flag carrier overall in
9 international trade. ARC is a U.S. based company owned 50/50 by
10 Wilh. Wilhelmsen ASA and Wallenius. ARC is the vessel-operating
11 company in ASL Group, and provides ro-ro liner services in the US -
12 international trades.

13 b. Defendant American Auto Logistics, LP (AAL) delivers total door-to-
14 door logistics solution services, and is the contract service provider to
15 the U.S. Government under the Global POV Contract . Under this
16 program, AAL via its global network, transports vehicles and provides
17 POV storage for military and U.S. government personnel stationed
18 abroad. It is a resident of California.

19 14. Defendant Wallenius Wilhelmsen Logistics America, LLC is a joint
20 venture between Wilh. Wilhelmsen ASA and Wallenius established in 1999 and is
21 a resident of New Jersey. It is an operating company within both the shipping
22 segment and the logistics segment. It operates most of the Wilh. Wilhelmsen
23 ASA’s and Wallenius’ owned vessels. The company provides global transportation
24 services for the automotive, agricultural, mining and construction equipment
25 industries and its services consist of supply chain management, ocean
26 transportation, terminal services, inland distribution and technical services.
27 Wallenius Wilhelmsen Logistics is the contracting party in customer contracts with
28 industrial manufacturers for cars, agricultural machinery etc.

CLASS ACTION COMPLAINT

1 15. Defendant WW Holding is a Norwegian Company. WW Holding,
2 directly and/or through its subsidiaries, provided, marketed and/or sold Vehicle
3 Carrier Services throughout California, including in this District, during the Class
4 Period. .

5 16. Defendant ‘K’ Line is a Japanese company. “K” Line directly and/or
6 through its subsidiaries, marketed and/or sold “Vehicle Carrier Services”
7 throughout California, including in this District, during the Class Period.

8 17. Defendant ‘K’ Line America is a wholly owned subsidiary of ‘K’
9 Line and a resident of New Jersey. ‘K’ Line America provided, marketed and/or
10 sold “Vehicle Carrier Services” throughout California, including in this District,
11 during the Class Period.

12 18. Defendant Mitsui O.S.K. Lines is a Japanese company. It and its
13 wholly owned subsidiary Defendant Mitsui O.S.K. Bulk Shipping (USA), Inc., a
14 resident of New Jersey, together directly and/or through their subsidiaries,
15 provided, marketed and/or sold Vehicle Carrier Services throughout California,
16 including in this District, during the Class Period.

17 19. Defendant Nissan Motor Car Carrier Co., Ltd. is a Japanese company.
18 that directly and/or through its subsidiaries, provided, marketed and/or sold
19 Vehicle Carrier Services throughout California, including in this District, during
20 the Class Period.

21 20. Defendant World Transport Co., Ltd., is a Japan company who serves
22 as the transportation sales agency business on behalf of Def. Nissan Motor Car
23 Carrier Co., Ltd., that directly and/or through one or more of its subsidiaries
24 provided, marketed and/or sold Vehicle Carrier Services throughout California,
25 including in this District, during the Class Period.

26 21. Defendant World Logistics Service (U.S.C.), Inc., a wholly owned
27 subsidiary a of World Transport Co., Ltd and thus, included at all times relevant
28 herein with Nissan MMC, is a resident of California. Nissan MMC directly and/or

CLASS ACTION COMPLAINT

1 through their subsidiaries, provided, marketed and/or sold Vehicle Carrier Services
2 throughout California, including in this District, during the Class Period.

3 22. Defendant Nippon Line is a Japan company. Nippon Line provided,
4 marketed and/or sold Vehicle Carrier Services throughout California, including in
5 this District, during the Class Period.

6 23. Defendant Nippon Line America is a wholly owned subsidiary of
7 Nippon Line and a resident of New Jersey. Nippon Line America provided,
8 marketed and/or sold Vehicle Carrier Services throughout California, including in
9 this District, during the Class Period.

10 24. Defendant Toyofuji is a Japanese company. Toyofuji, directly and/or
11 through its subsidiaries, marketed and/or sold Vehicle Carrier Services throughout
12 California, including in this District, during the Class Period.

13 **JURISDICTION AND VENUE**

14 25. This Court has federal question jurisdiction pursuant to the Sherman
15 Act, the Clayton Act, 15 U.S.C. §§ 15 and 26, 28 U.S.C. §§ 1331 and 1337, and it
16 has supplemental jurisdiction over the California state law claims pursuant to 28
17 U.S.C. § 1367.

18 26. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)
19 because sufficient diversity of citizenship exists between parties in this action, the
20 aggregate amount in controversy exceeds \$5,000,000, and there are 100 or more
21 Class members.

22 27. Venue is proper in this district pursuant to Section 12 of the Clayton
23 Act (15 U.S.C § 22), and 28 U.S.C. §§ 1391 (b), (c), and (d), because a substantial
24 part of the events giving rise to Plaintiff's claims occurred in this District, a
25 substantial portion of the affected interstate trade and commerce discussed below
26 has been carried out in this District, and one or more of the Defendants, are
27 licensed to do business in, are doing business in, had agents in, or are found or
28 transact business in California and this District.

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1 28. This Court has in personam jurisdiction over the Defendants because
 2 each, either directly or through the ownership and/or control of its subsidiaries,
 3 *inter alia*: transacted business in the United States, including in this District;
 4 directly or indirectly sold or marketed Vehicle Carrier Services throughout
 5 California, including in this District; had substantial aggregate contacts with the
 6 United States as a whole, including in this District; or were engaged in an illegal
 7 price-fixing conspiracy that was directed at, and had a direct, substantial,
 8 reasonably foreseeable and intended effect of causing injury to, the business or
 9 property of persons and entities residing in, located in, or doing business
 10 throughout California, including in this District. The Defendants also conduct
 11 business in California, including in this District, and they have purposefully
 12 availed themselves of the laws of the United States.

13 29. The Defendants' conspiracy and unlawful conduct described herein
 14 adversely affected persons and entities in California who purchased cars for
 15 personal use and not for resale, including Plaintiff and the Class.

16 **CLASS ACTION ALLEGATIONS**

17 30. Plaintiff brings this action on behalf of himself and as a class action
 18 under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure seeking
 19 damages and equitable and injunctive relief on behalf of the following class (the
 20 "Class"):

21 All persons and entities in California who indirectly purchased, from any
 22 Defendant or any current or former subsidiary or affiliate thereof, or any co-
 23 conspirator, Vehicle Carrier Services for personal use and not for resale,
 24 incorporated into the price of a new Vehicle purchased or leased during the
 Class Period.

25 31. Excluded from the Class are Defendants, their parent companies,
 26 subsidiaries and affiliates, any co-conspirators, federal governmental entities and
 27 instrumentalities of the federal government, states and their subdivisions, agencies
 28

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1 and instrumentalities, and persons who purchased Vehicle Carrier Services
2 directly.

3 32. In the last three years, over 4.5 million new cars and trucks were sold
4 by new car dealerships in California and approximately 70% of those cars were
5 manufactured by foreign car manufacturers (BMW, VW, Hyundai/Kia, Nissan,
6 Honda and Toyota). A substantial number of these foreign new cars were
7 imported into the United States using Vehicle Carrier Services. While Plaintiff
8 does not know the exact number of the members of the Class, Plaintiff believes
9 there are (at least) thousands of members in the Class.

10 33. Common questions of law and fact exist as to all members of the
11 Class. This is particularly true given the nature of Defendants' conspiracy, which
12 was generally applicable to all members of the Class, thereby making appropriate
13 relief with respect to the Class as a whole. Such questions of law and fact common
14 to the Class include, but are not limited to:

- 15 (a) Whether the Defendants and their co-conspirators engaged in a
16 combination and conspiracy among themselves to fix, raise, maintain
17 or stabilize the prices of Vehicle Carrier Services sold in the United
18 States;
- 19 (b) The identity of the participants of the alleged conspiracy;
- 20 (c) The duration of the alleged conspiracy and the acts carried out
21 by Defendants and their co-conspirators in furtherance of the
22 conspiracy;
- 23 (d) Whether the alleged conspiracy violated the Sherman Act, as
24 alleged in the First Claim for Relief;
- 25 (e) Whether the alleged conspiracy violated California state
26 statutes, as alleged in the Second and Third Claims for Relief;
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28

1 (f) Whether the conduct of the Defendants and their co-
2 conspirators, as alleged in this Complaint, caused injury to the
3 business or property of Plaintiff and the members of the Class;

4 (g) The effect of the alleged conspiracy on the prices of Vehicle
5 Carrier Services sold in California during the Class Period;

6 (h) Whether Plaintiff and members of the Class had any reason to
7 know or suspect the conspiracy, or any means to discover the
8 conspiracy;

9 (i) Whether the Defendants and their co-conspirators fraudulently
10 concealed the conspiracy's existence from the Plaintiff and the
11 members of the Class; and

12 (j) The appropriate relief for the Class.

13 34. Plaintiff's claims are typical of the claims of the members of the
14 Class, and Plaintiff will fairly and adequately protect the interests of the Class.
15 Plaintiff and all members of the Class are similarly affected by Defendants'
16 wrongful conduct in that they paid artificially inflated prices for Vehicle Carrier
17 Services purchased indirectly from the Defendants and/or their co-conspirators.

18 35. Plaintiff's claims arise out of the same common course of conduct
19 giving rise to the claims of the other members of the Class. Plaintiff's interests are
20 coincident with, and not antagonistic to, those of the other members of the Class.
21 Plaintiff is represented by counsel who are competent and experienced in the
22 prosecution of antitrust and class action litigation.

23 36. The questions of law and fact common to the members of the Class
24 predominate over any questions affecting only individual members, including legal
25 and factual issues relating to liability and damages.

26 37. Class action treatment is a superior method for the fair and efficient
27 adjudication of the controversy, in that, among other things, such treatment will
28 permit a large number of similarly situated persons to prosecute their common

CLASS ACTION COMPLAINT

1 claims in a single forum simultaneously, efficiently and without the unnecessary
2 duplication of evidence, effort and expense that numerous individual actions would
3 engender. The benefits of proceeding through the class mechanism, including
4 providing injured persons or entities with a method for obtaining redress for claims
5 that it might not be practicable to pursue individually, substantially outweigh any
6 difficulties that may arise in management of this class action.

7 38. The prosecution of separate actions by individual members of the
8 Class would create a risk of inconsistent or varying adjudications, establishing
9 incompatible standards of conduct for Defendants.

10 **FACTUAL ALLEGATIONS**

11 **RORO Ships and Market for Vehicle Carrier Services**

12 39. RO/RO ships are vessels designed to carry wheeled cargo, such as
13 automobiles, trucks, and other wheeled vehicles that can be driven on and off the
14 ship on their own wheels. This is in contrast to LOLO (Lift-on/Lift-off) vessels
15 which are used to load and unload cargo. RORO vessels have built-in ramps
16 which allow the cargo to be efficiently "rolled on" and "rolled off" the vessel when
17 in port. While smaller ferries that operate across rivers and other short distances
18 often have built-in ramps, the term RORO is reserved for larger ocean-going
19 vessels. The ramps and doors may be stern only, or bow and stern for quick
20 loading. New automobiles that are transported by ship are often moved on a large
21 type of RORO called a Pure Car Carrier ("PCC") or Pure Car Truck Carrier
22 ("PCTC").

23 40. Although shipping industry cargo is normally measured by the metric
24 ton, RORO cargo is typically measured in units of lanes in meters (LIMs). This is
25 calculated by multiplying cargo length in meters by the number of decks and by its
26 width in lanes (lane width differs from vessel to vessel and there are several
27 industry standards). A PCCs' cargo capacity is measured in car equivalent units
28 (CEUs).

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1 41. Since 1970 the market for exporting and importing cars has increased
2 dramatically and the number and type of ROROs has increased. In 1973,
3 Defendant KKK Line built *European Highway*, the first PCC, which carried 4,200
4 automobiles. PCCs are distinctive with a box-like superstructure running the entire
5 length and breadth of the hull, fully enclosing the cargo. They typically have a
6 stern ramp and a side ramp for dual loading of thousands of vehicles. These vessels
7 have a usual speed of 16 knots at “eco-speed.”

8 42. Defendants and their co-conspirators provided Vehicle Carrier
9 Services to foreign car manufacturers for transportation of Vehicles sold in
10 California by transporting cars manufactured elsewhere for export to and sale in
11 California.

12 43. Plaintiff and members of the proposed Class purchased Vehicle
13 Carrier Service indirectly from one or more of the Defendants by virtue of his
14 purchase or lease of a new Vehicle in California during the Class Period.

15 44. Defendants include the five shipping lines that control about 70
16 percent of the global market for carrying cars.

17 45. The annual market for Vehicle Carrier Services in the United States is
18 nearly a billion dollars.

19 **The Market Structure and Characteristics**
20 **Support the Existence of a Conspiracy**

21 46. The structure and other characteristics of the market for Vehicle
22 Carrier Services have made collusion among Defendants particularly attractive.
23 Specifically, the Vehicle Carrier Services market: (1) is highly concentrated; (2)
24 has high barriers to entry; (3) is highly interchangeable; (4) is rife with
25 opportunities to meet and conspire; and (5) has excess capacity.

26 ***1. The Market for Vehicle Carriers Is Highly Concentrated***

27 47. A concentrated market is more susceptible to collusion and other
28 anticompetitive practices. According to a September 6, 2012 Bloomberg article,

1 citing Nomura Holdings Inc., Defendants controlled over 70 percent of the Vehicle
2 Carrier Services market during the Class Period.

3 **2. *The Market for Vehicle Carrier Services Has High Barriers to Entry***

4 48. There are substantial monetary and industry barriers that preclude or
5 reduce entry into the Vehicle Carrier Services market. Highly specialized
6 equipment and industry knowledge are required such as RORO cargo ships,
7 purposely built as car carriers. These characteristics restrict the use of the ships to
8 the Vehicle Carrier Services market.

9 49. A new entrant into the business would face costly and lengthy start-up
10 costs, including multi-million dollar costs associated with manufacturing or
11 acquiring a fleet of Vehicle Carriers and other equipment, fuel, transportation and
12 distribution infrastructure and skilled labor. It is estimated that the capital cost of a
13 RORO is at least \$95 million.¹ Therefore, Vehicle Carrier Services market
14 involves economies of scale and scope which present barriers to entry. Vehicle
15 Carrier Services also require the establishment of customer routes based on long
16 established relationships with foreign car manufacturers and with highly unionized
17 ports in California. Well-established routes and long term business relationships
18 creates an additional barrier to entry.

19 50. Defendants also own related shipping or transportation businesses
20 they can utilize to provide additional services to clients, such as the operation of
21 dedicated shipping terminals and inland transportation in California.

22 **3. *There is Inelasticity of Demand for Vehicle Carrier Services***

23 51. “Elasticity” is a term used to describe the sensitivity of supply and
24 demand to changes in one or the other. A global Vehicle Carrier Services cartel, as
25 alleged here, profits from raising prices above competitive levels because demand
26 for Vehicle Carrier Services is inelastic. Normally, increased prices would result

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28 ¹ Asaf Ashar, *Marine Highways’ New Direction*, J. OF COM. 38 (Nov. 21 2011).

1 in declining sales, revenues, and profits as customers purchased substitute products
2 or declined to buy altogether. However, the inelastic demand for the Vehicle
3 Carrier Services facilitates collusion, allowing Defendants to raise their prices
4 without triggering customer substitution and lost sales revenue.

5 52. Vehicle Carrier Services are inelastic because a RORO is the only
6 ocean vessel that has the carrying capacity for a large number of Vehicles and
7 foreign car manufacturers must employ Vehicle Carrier Services to transport their
8 vehicles to California, regardless of whether prices are kept at supra-competitive
9 levels. There is simply no substitution.

10 ***4. The Services Provided by Vehicle Carriers Are Interchangeable***

11 53. Defendants' Vehicle Carrier Services are similar and, hence,
12 interchangeable making it easier to unlawfully agree on the price for and allocation
13 of transportation services and to effectively collude to set prices. These factors
14 make it easier to form an unlawful cartel.

15 54. Defendants' Vehicle Carrier Services are so similar that Vehicle
16 Carrier Service customers make decisions based primarily on price, which further
17 facilitate Defendants' conspiracy by making coordination on price much simpler.

18 55. Pricing for Vehicle Carrier Services (per vehicle) remained relatively
19 flat from 2001 to 2006. In 2001, the per vehicle price was approximately \$301.30,
20 while in 2006 the per vehicle price was \$305.79, an increase of less than 2%.
21 Beginning just prior to the Class Period, the price of Vehicle Carrier Services has
22 increased by 23% and has far outpaced any increase in demand during the Class
23 Period.

24 56. In the absence of an unlawful price-fixing conspiracy, according to
25 the laws of supply and demand, prices would not increase at a rate greater than the
26 rate of demand, yet that is exactly what happened in the Vehicle Carrier Services
27 market during the Class Period and has triggered investigations by JFTC, the DOJ,
28 and other international antitrust commissions.

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1 **5. *Ample Opportunities to Meet and Conspire***

2 57. Defendants attended industry events where they have had the
3 opportunity to meet and collude as to pricing. Trade shows for shipping
4 companies around the globe, include the Breakbulk conferences² and the biennial
5 RO/RO trade show in Europe.

6 58. Defendants KKK Line and Nippon Line are also members of the
7 Transpacific Stabilization Agreement (TSA), which consists of “major ocean
8 container shipping lines that carry cargo from Asia to ports and inland points in the
9 U.S.” See “About TSA” at <http://www.tsacarriers.org/about.html> available as of
10 (June 6 2013). The TSA Forum provides an opportunity to meet, exchange market
11 information, and jointly conduct market research and to purportedly develop
12 voluntary, non-binding guidelines for rates and charges.

13 59. Defendants KKK Line, Nippon Line, and MOL have already been
14 fined by the DOJ, JFTC, EC and various other antitrust commissions for their roles
15 in a conspiracy to fix air freight forwarding fees across several continents.

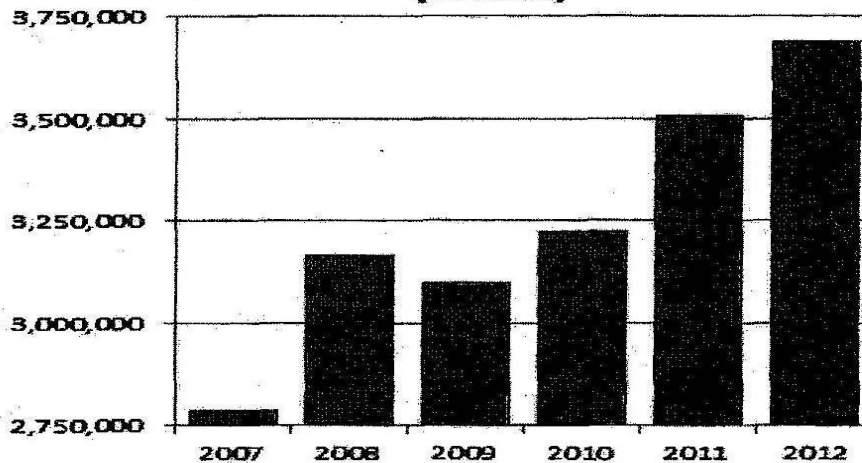
16 60. Defendants routinely enter into joint “vessel sharing” or “space
17 charter” agreements and are the majority of all agreements registered with the
18 Federal Maritime Commission (“FMC”). These agreements provide an
19 opportunity for Defendants to discuss Vehicle shipping markets, routes, and rates
20 and engage in illegal price fixing and bid rigging conspiracies.

21 **6. *The Market for Vehicle Carrier Services Has Excess Capacity***

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24 ² Breakbulk Magazine provides its readers with project cargo, heavy lift and Rory logistics
25 intelligence including news, trending, data and metrics. Breakbulk Magazine’s global events
26 include Breakbulk Transportation Conferences & Exhibitions, which “are the largest
27 international events focused on traditional breakbulk logistics, heavy-lift transportation and
28 project cargo trade issues.” The conferences provide opportunities to “meet with specialized
cargo carriers, ports, terminals, freight forwarders, heavy equipment transportation companies
and packers.” See: <http://www.breakbulk.comfbreakbulk-global-events/> available as of (June 6,
2013).

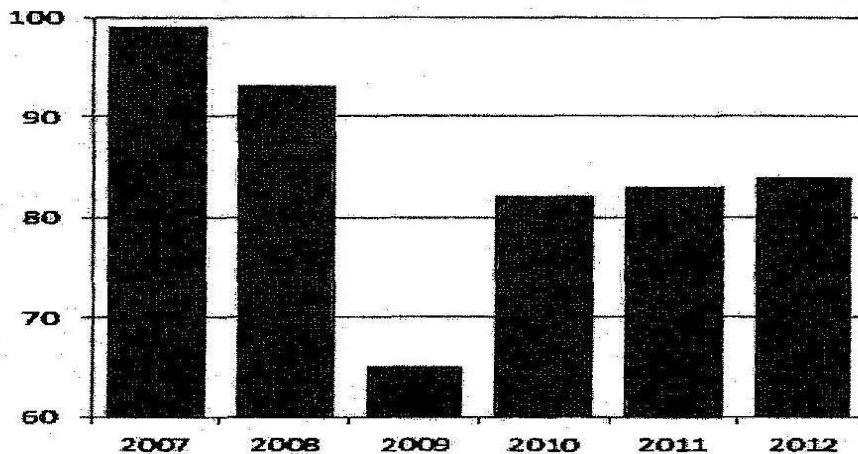
1 61. While the capacity of Vehicle Carriers to transport cars has increased
 2 since 2007, the utilization rate of Vehicle Carriers Services has fallen, and
 3 remained stable at a rate of approximately 83% since 2010. Therefore, the market
 4 for Vehicle Carrier Services has operated in a state of excess capacity since 2008.
 5 The tables below demonstrate that.

6 **Capacity of Vehicle Carriers**
 7 **(in cars)**



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 15 Source: The Car Carrier Market, 2004-2012; Hennes
 16 Shipping AS

17 **Vehicle Carrier Fleet Utilization Rate**
 18 **(% of ships used in operations)**



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 22
 23
 24
 25 Source: The Platou Report 2004-2012

1 62. In the face of such excess capacity, Defendants have lowered a
2 carrier's speed to conserve on fuel costs (referred to as "eco-speed"). By using
3 "eco-speed," Defendants are able to use more ships at the same time, thereby
4 decreasing capacity and creating artificial capacity shortages.

5 63. Defendants' actions of using "eco-speed" and vessel sharing are
6 colluding to reduce output in order to increase prices despite overcapacity in the
7 Vehicle Carrier Services market. By acting in concert pursuant to their conspiracy,
8 Defendants decreased the availability of Vehicle Carrier Services in the market,
9 which caused prices to rise artificially during the Class Period.

10 64. Defendants' practices of eco-speeding and vessel sharing represent
11 concerted, collusive efforts to reduce output in order to increase prices despite
12 overcapacity in the Vehicle Carrier Services market. By acting in concert,
13 Defendants decreased the availability of Vehicle Carrier Services in the market,
14 which caused prices to rise artificially during the Class Period.

15 **Collusion in the Vehicle Carrier Services Market**

16 65. There is strong evidence of Defendants' collusion in raising and fixing
17 prices and allocating markets. Such evidence includes: (1) Defendants raising
18 prices at a rate that exceeded demand; (2) Defendants previously colluded in the
19 freight forwarding services and paid substantial fines as a result; and (3) the DOJ,
20 JFTC and other antitrust commissions are investigating Defendants' price fixing
21 conduct in the Vehicle Carrier Services industry.

22 ***1. Defendants Raised Prices at a Rate that Far Exceeded Demand***

23 66. Prices for Vehicle Carrier Services have been generally increasing
24 since 2006 from \$320 in 2000 to over \$400 in 2012.

25 ***2. Defendants Previously Colluded in Different Markets***

26 67. In 2007, the DOJ launched an investigation into price fixing among
27 international air freight forwarders, including Defendants' affiliates and
28 subsidiaries.

1 68. On September 30, 2011, MOL Logistics (Japan) Co., Ltd. plead guilty
2 to Sherman Act violations as a result of the DOJ’s freight forwarding
3 investigation, resulting in more than \$120 million in criminal fines to date. MOL
4 Logistics (Japan) Co. Ltd., conspired by participating in meetings, conversations,
5 and communications to discuss certain components of freight forwarding service
6 fees to be charged on air cargo shipments from Japan to the United States; and by
7 agreeing on one or more components of the freight forwarding service fees to be
8 charged on air cargo shipments from Japan to the United States.

9 69. On March 8, 2013, the DOJ announced that “K” Line Logistics, Ltd.
10 and Yusen Logistics Co., Ltd., a subsidiary of Defendant Nippon Line, agreed to
11 pay criminal fines of \$3,501,246 and \$15,428,207, respectively, for their roles in a
12 conspiracy to fix certain freight forwarding fees for cargo shipped by air from the
13 United States to Japan.

14 70. On March 19, 2009, the JFTC ordered 12 companies to pay \$94.7
15 million in fines for violations of the Japanese Antimonopoly Act (“AMA”).
16 Included among the 12 companies were “K” Line Logistics, Ltd., a subsidiary of
17 Defendant KKK Line, Yusen Air & Sea Services Co., Ltd., a subsidiary of
18 Defendant KKK Line, and MOL Logistics (Japan) Co., Ltd., a subsidiary of
19 Defendant MOL.

20 71. The JFTC concluded that the companies had, over a five-year period,
21 met and agreed to, among other things, the amount of fuel surcharges, security
22 charges, and explosive inspection charges that they would charge their
23 international air freight forwarding customers. The agreements were, according to
24 the JFTC, negotiated at meetings of the Japan Aircargo Forwarders Association.

25 72. On March 28, 2012, the European Commission (“EC”) fined 14
26 international groups of companies a total of \$219 million, including Yusen Shenda
27 Air & Sea Service (Shanghai) Ltd., a subsidiary of Defendant Nippon Line.
28 According to the EC, “[i]n four distinct cartels, the cartelists established and

1 coordinated four different surcharges and charging mechanisms, which are
2 component elements 4 of the final price billed to customers for these services.”

3 **3. *DOJ and JFTC Are Investigating Price-Fixing in the Vehicle Carrier***
4 ***Services Market***

5 73. On September 6, 2012, the JFTC executed raids at the Japanese
6 offices of Nippon Line, MOL, KKK Line, WWL, and ECC as part of an
7 investigation into price-fixing of Vehicle Carrier Services in violation of Japan’s
8 Antimonopoly Act.

9 74. On September 7, 2012, Defendant WW ASA also reported that it had
10 received a request for information and that its subsidiaries, WWL and ECC had
11 been visited as part of an investigation related to the Japan Antimonopoly Act.
12 ECC also received requests for information from the DOJ. According to
13 Defendant WW ASA, the purpose of the requests “is to ascertain whether there is
14 evidence of any infringement of competition law related to possible price
15 cooperation between carriers and allocation of customers.”

16 75. The Japanese Business Daily reported that the shipping affiliates of
17 Toyota Motor Corp. and Nissan Motor Co. were also among the companies raided
18 by the JFTC. Toyota Motor Corp’s shipping affiliate is Defendant ToyoFuji, and
19 Nissan Motor Co.’s affiliate is Defendant Nissan MMC.

20 76. Defendant CSAV issued a statement in mid-September revealing that
21 its employees had received subpoenas from the DOJ as follows: “[t]he
22 investigation seeks to inquire into the existence of antitrust law violations related
23 to cooperation agreements on prices and allocation of clients between car carriers.”

24 77. Shortly after the September 2012 raids, the DOJ confirmed that in
25 coordination with the European Commission and the JFTC “[t]he antitrust division
26 is investigating the possibility of anticompetitive practices involving the ocean
27 shipping of cars, trucks, construction equipment, and other products.”

28 ///

CLASS ACTION COMPLAINT

PLAINTIFF AND THE CLASS SUFFERED ANTITRUST INJURY

1
2 78. The Defendants’ price-fixing conspiracy had the following effects,
3 among others:

4 (a) Price competition has been restrained or eliminated with respect
5 to Vehicle Carrier Services;

6 (b) The prices of Vehicle Carrier Services have been fixed, raised,
7 maintained, or stabilized at artificially inflated levels;

8 (c) Indirect purchasers of Vehicle Carrier Services have been
9 deprived of free and open competition; and

10 (d) Indirect purchasers of Vehicle Carrier Services paid artificially
11 inflated prices.

12 79. During the Class Period, Plaintiff and the members of the Class paid
13 supra-competitive prices for Vehicle Carrier Services. Car manufacturers and
14 automobile dealers passed on the inflated charges to purchasers and lessees of new
15 Vehicles in California. Those overcharges have unjustly enriched Defendants.

16 80. The market for Vehicle Carrier Services and the market for Vehicles
17 are inextricably linked and intertwined because the market for Vehicle Carrier
18 Services exists to serve the new car market in California. The demand for new
19 cars creates the demand for Vehicle Carrier Services. According to a July 19, 2012
20 *Union Tribune* news article, California auto dealers sold 1.3 million new cars in
21 California in 2011 alone. According to the California New Car Dealership
22 Association (“NCDA”) 1.6 million new cars and light trucks were sold in
23 California in 2012 and the NCDA expects 1.75 million new cars to be sold in
24 California in 2013. According to NCDA, 69% of these new cars sold were from
25 foreign car manufacturers.

26 81. The manufacturer and dealer markets for new cars are subject to
27 vigorous price competition, have thin net margins, and are therefore at the mercy
28 of their input costs. Increases in the price of Vehicle Carrier Services leads to

CLASS ACTION COMPLAINT

1 corresponding increases in prices for new Vehicles at the manufacturing and dealer
2 levels. When downstream distribution markets are highly competitive, as they are
3 in the case of new cars, overcharges are passed through to ultimate consumers,
4 such as the indirect-purchaser Plaintiff and the Class.

5 82. Hence, the inflated prices of Vehicle Carrier Services in new cars
6 resulting from Defendants' price-fixing conspiracy have been passed on to Plaintiff
7 and the other members of the Class in California by manufacturers and dealers.

8 83. The purpose of the conspiratorial conduct of the Defendants and their
9 co-conspirators was to raise, fix, rig or stabilize the price of Vehicle Carrier
10 Services and, as a direct and foreseeable result, the price of new Vehicles shipped
11 by Vehicle Carriers.

12 84. The precise amount of the overcharge impacting the prices of new
13 Vehicles shipped by Vehicle Carrier can be measured and quantified. Commonly
14 used and well-accepted economic models can be used to measure both the extent
15 and the amount of the supra-competitive charge passed-through the chain of
16 distribution. Thus, the economic harm to Plaintiff and the members of the Class
17 can be quantified.

18 85. By reason of the alleged violations of the antitrust laws and other laws
19 alleged herein, Plaintiff and the members of the Class have sustained injury to their
20 businesses or property, having paid higher prices for Vehicle Carrier Services than
21 they would have paid in the absence of the Defendants' illegal contract,
22 combination, or conspiracy, and, as a result, have suffered damages in an amount
23 presently undetermined. This is an antitrust injury of the type that the antitrust laws
24 were meant to punish and prevent.

25 **PLAINTIFF' CLAIMS ARE NOT BARRED BY THE STATUTE OF**
26 **LIMITATIONS**

27 86. Plaintiff repeats and re-alleges the allegations set forth above.

28 87. Plaintiff and members of the Class had no knowledge of the

1 combination or forth therein, until shortly before the filing of this Complaint.
2 Plaintiff and members of the Class did not discover, and could not have discovered
3 through the exercise of reasonable diligence, the existence of the conspiracy
4 alleged herein any earlier than September 6, 2012, the date the JFTC announced
5 raids of certain Defendants' offices for their role in the criminal price-fixing
6 conspiracy alleged herein.

7 88. Plaintiff and members of the Class are consumers who had no direct
8 contact or interaction with the Defendants, and had no means from which they
9 could have discovered the combination and conspiracy described in this Complaint
10 before the September 6, 2012 raids.

11 89. No information in the public domain was available to Plaintiff and
12 members of the Class prior to the announced raids on September 6, 2012 that
13 suggested that the Defendants were involved in a criminal conspiracy to fix the
14 price charged for Vehicle Carrier Services. Plaintiff and members of the Class
15 through the exercise of due diligence had no means of obtaining any facts or
16 information concerning any aspect of Defendants' dealings with OEMs or other
17 direct purchasers, much less the fact that they had engaged in the combination and
18 conspiracy alleged herein.

19 90. For these reasons, the statute of limitations as to Plaintiff and the
20 Class's claims did not begin to run, and has been tolled with respect to the claims
21 that Plaintiff and members of the Class have alleged in this Complaint.

22 **Fraudulent Concealment Tolled the Statute of Limitations**

23 91. In the alternative, the statute of limitations is tolled by the doctrine of
24 fraudulent concealment. Prior to September 6, 2012, JFTC announced raids of
25 certain Defendants' offices for their role in the criminal price-fixing conspiracy,
26 Plaintiff and members of the Class were unaware of Defendants' unlawful conduct,
27 and did not know before then that they were paying supra-competitive prices for
28 Vehicle Carrier Services throughout the United States and California during the

CLASS ACTION COMPLAINT

1 Class Period. No actual or constructive information was made available to Plaintiff
2 and members of the Class.

3 92. The affirmative acts in furtherance of the conspiracy, were wrongfully
4 concealed and carried out in a manner that precluded detection. Defendants met
5 and communicated in secret and agreed to keep the facts about their collusive
6 conduct from being discovered by any member of the public or by the direct
7 purchasers with whom they did business.

8 93. Because the alleged conspiracy was both self-concealing and
9 affirmatively concealed by Defendants and their co-conspirators, Plaintiff and
10 members of the Class had no knowledge of the alleged conspiracy, or of any facts
11 or information that would have caused a reasonably diligent person to investigate
12 whether a conspiracy existed, until September 6, 2012, when the JFTC announced
13 raids of certain Defendants' offices for their role in the criminal price-fixing
14 conspiracy alleged herein.

15 94. For these reasons, the statute of limitations applicable to Plaintiff' and
16 the Class's claims were tolled and did not begin to run until September 6, 2012.

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of Section 1 of the Sherman Act**

19 95. Plaintiff repeats and re-alleges the allegations set forth above.

20 96. Defendants and unnamed conspirators entered into and engaged in a
21 contract, combination, or conspiracy in unreasonable restraint of trade in violation
22 of Section 1 of the Sherman Act (15 U.S.C. § 1).

23 97. The acts done by each of the Defendants as part of, and in furtherance
24 of, their contract, combination, or conspiracy were authorized, ordered, or done by
25 their officers, agents, employees, or representatives while actively engaged in the
26 management of Defendants' affairs.

27 98. During the Class Period, Defendants and their co-conspirators entered
28 into a continuing agreement, understanding and conspiracy in restraint of trade to

CLASS ACTION COMPLAINT

1 artificially fix, raise, stabilize, and control prices for Vehicle Carrier Services,
2 thereby creating anticompetitive effects.

3 99. The anticompetitive acts were intentionally directed at the United
4 States market for Vehicle Carrier Services and had a substantial and foreseeable
5 effect on interstate commerce by raising and fixing prices for Vehicle Carrier
6 Services throughout the United States.

7 100. The conspiratorial acts and combinations have caused unreasonable
8 restraints in the market for Vehicle Carrier Services.

9 101. As a result of Defendants' unlawful conduct, Plaintiff and other
10 similarly situated indirect purchasers in the Class who purchased Vehicle Carrier
11 Services have been harmed by being forced to pay inflated, supra-competitive
12 prices for Vehicle Carrier Services.

13 102. In formulating and carrying out the alleged agreement, understanding
14 and conspiracy, Defendants and their co-conspirators did those things that they
15 combined and conspired to do, including but not limited to the acts, practices and
16 course of conduct set forth herein.

17 103. Defendants' conspiracy had the following effects, among others:

18 (a) Price competition in the market for Vehicle Carrier Services has
19 been restrained, suppressed, and/or eliminated in the United States;

20 (b) Prices for Vehicle Carrier Services provided by Defendants and
21 their co-conspirators have been fixed, raised, maintained, and
22 stabilized at artificially high, non-competitive levels throughout the
23 United States; and

24 (c) Plaintiff and members of the Class who purchased Vehicle
25 Carrier Services indirectly from Defendants and their co-conspirators
26 have been deprived of the benefits of free and open competition.

27 104. Plaintiff and members of the Class have been injured and will
28 continue to be injured in their business and property by paying more for Vehicle

CLASS ACTION COMPLAINT

1 Carrier Services purchased indirectly from Defendants and the co-conspirators than
2 they would have paid and will pay in the absence of the conspiracy.

3 105. The alleged contract, combination, or conspiracy is a per se violation
4 of the federal antitrust laws.

5 106. Plaintiff and members of the Class are entitled to an injunction against
6 Defendants, preventing and restraining the violations alleged herein.

7 **SECOND CLAIM FOR RELIEF**

8 **Violations of California Business and Professions Code §§ 16700 *et seq.***

9 107. Plaintiff repeats and re-alleges the allegations set forth above.

10 108. During the Class Period, Defendants and their co-conspirators
11 engaged in a continuing contract, combination or conspiracy with respect to the
12 provision of Vehicle Carrier Services in unreasonable restraint of trade and
13 commerce and in violation of California Business and Professions Code §§ 16700
14 *et seq.*

15 109. The contract, combination, or conspiracy consisted of an agreement
16 among the Defendants and their co-conspirators to fix, raise, inflate, stabilize,
17 and/or maintain at artificially supra-competitive prices for Vehicle Carrier Services
18 and to allocate customers for Vehicle Carrier Services in California.

19 110. In formulating and effectuating this conspiracy, Defendants and their
20 co-conspirators performed acts in furtherance of the combination and conspiracy,
21 including:

- 22 (a) participating in meetings and conversations among themselves
23 in the United States and elsewhere during which they agreed to price
24 Vehicle Carrier Services at certain levels, and otherwise to fix,
25 increase, inflate, maintain, or stabilize effective prices paid by
26 Plaintiff and members of the Damages Class with respect to Vehicle
27 Carrier Services provided in California;

28 CLASS ACTION COMPLAINT

1 (b) allocating customers and markets for Vehicle Carrier Services
2 provided in California in furtherance of their agreements; and

3 (c) participating in meetings and conversations among themselves
4 in the United States and elsewhere to implement, adhere to, and police
5 the unlawful agreements they reached.

6 111. Defendants and their co-conspirators engaged in the actions described
7 above for the Purpose of carrying out their unlawful agreements to fix, increase,
8 maintain, or stabilize prices and to allocate customers with respect to Vehicle
9 Carrier Services.

10 112. Defendants' anticompetitive acts described above were knowing,
11 willful and constitute violations or flagrant violations of California Business and
12 Professions Code §§ 16700 *et seq.*

13 113. During the Class Period, Defendants and their co-conspirators entered
14 into and engaged in a continuing unlawful trust in restraint of the trade and
15 commerce described above in violation of Section 16720 of the California
16 Business and Professions Code. Defendants, and each of them, have acted in
17 violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and
18 allocate markets for, Vehicle Carrier Services at supra-competitive levels.

19 114. The aforesaid violations of Section 16720 of the California Business
20 and Professions Code consisted, without limitation, of a continuing unlawful trust
21 and concert of action among the Defendants and their co-conspirators, the
22 substantial terms of which were to fix, raise, maintain, and stabilize the prices of,
23 and to allocate markets for, Vehicle Carrier Services.

24 115. The combination and conspiracy alleged herein has had, *inter alia*, the
25 following effects: price competition in the provision of Vehicle Carrier Services
26 has been restrained, suppressed, and/or eliminated in the State of California; prices
27 for Vehicle Carrier Services provided by Defendants and their co-conspirators
28 have been fixed, raised, stabilized, and pegged at artificially high, non-competitive

1 levels in the State of California and throughout the United States; and those who
2 purchased Vehicle Carrier Services directly or indirectly from Defendants and their
3 co-conspirators have been deprived of the benefit of free and open competition.

4 116. As a direct and proximate result of Defendants' unlawful conduct,
5 Plaintiff and members of the Class have been injured in their business and property
6 in that they paid more for Vehicle Carrier Services than they otherwise would have
7 paid in the absence of Defendants' unlawful conduct. As a result of Defendants'
8 violation of Section 16720 of the California Business and Professions Code,
9 Plaintiff and members of the Class seek treble damages and their cost of suit,
10 including a reasonable attorney's fees, pursuant to Section 16750(a) of the
11 California Business and Professions Code.

12 **THIRD CLAIM FOR RELIEF**

13 **Violations of California Business and Professions Code §§ 17200 *et seq.***

14 117. Plaintiff repeats and re-alleges the allegations set forth above.

15 118. Defendants have engaged in unfair competition or unfair,
16 unconscionable, deceptive or fraudulent acts or practices in violation of California
17 Business and Professions Code § 17200 *et seq.*

18 119. During the Class Period, Defendants marketed, sold, or distributed
19 Vehicle Carrier Services in California, and committed and continue to commit acts
20 of unfair competition, as defined by Sections 17200 *et seq.* of the California
21 Business and Professions Code, by engaging in the acts and practices specified
22 above.

23 120. This claim is instituted pursuant to Sections 17203 and 17204 of the
24 California Business and Professions Code, to obtain restitution from these
25 Defendants for acts, as alleged herein, that violated Section 17200 of the California
26 Business and Professions Code, commonly known as the Unfair Competition Law.

27 121. The Defendants' conduct as alleged herein violated Section 17200.
28 The acts, omissions, misrepresentations, practices and non-disclosures of

CLASS ACTION COMPLAINT

1 Defendants, as alleged herein, constituted a common, continuous, and continuing
2 course of conduct of unfair competition by means of unfair, unlawful, and/or
3 fraudulent business acts or practices within the meaning of California Business and
4 Professions Code, Section 17200, et seq., including, but not limited to, the
5 following: (1) the violations of Section 1 of the Sherman Act, as set forth above;
6 (2) the violations of Section 16720, et seq., of the California Business and
7 Professions Code, set forth above;

8 122. Defendants' acts, omissions, misrepresentations, practices, and non-
9 disclosures, as described above, whether or not in violation of Section 16720, et
10 seq., of the California Business and Professions Code, and whether or not
11 concerted or independent acts, are otherwise unfair, unconscionable, unlawful or
12 fraudulent;

13 123. Defendants' acts or practices are unfair to purchasers of Vehicle
14 Carrier Services (or Vehicles transported by them) in the State of California within
15 the meaning of Section 17200, California Business and Professions Code; and

16 124. Defendants' acts and practices are fraudulent or deceptive within
17 the meaning of Section 17200 of the California Business and Professions Code.

18 125. Plaintiff and members of the Class are entitled to full restitution
19 and/or disgorgement of all revenues, earnings, profits, compensation, and benefits
20 that may have been obtained by Defendants as a result of such business acts or
21 practices.

22 126. The illegal conduct alleged herein is continuing and there is no
23 indication that Defendants will not continue such activity into the future.

24 127. The unlawful and unfair business practices of Defendants, and each
25 of them, as described above, have caused and continue to cause Plaintiff and the
26 members of the Class to pay supra-competitive and artificially-inflated prices for
27 Vehicle Carrier Services (or Vehicles transported by them). Plaintiff and the
28

CLASS ACTION COMPLAINT

1 members of the Class suffered injury in fact and lost money or property as a result
2 of such unfair competition.

3 128. The conduct of Defendants as alleged in this Complaint violates
4 Section 17200 of the California Business and Professions Code.

5 129. As alleged in this Complaint, Defendants and their co-conspirators
6 have been unjustly enriched as a result of their wrongful conduct and by
7 Defendants' unfair competition. Plaintiff and the members of the Class are
8 accordingly entitled to equitable relief including restitution and/or disgorgement of
9 all revenues, earnings, profits, compensation, and benefits that may have been
10 obtained by Defendants as a result of such business practices, pursuant to the
11 California Business and Professions Code §§ 17203 and 17204.

12 **PRAYER FOR RELIEF**

13 Accordingly, Plaintiff respectfully requests that:

14 A. The Court determine that this action may be maintained as a class
15 action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure,
16 and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the
17 Federal Rules of Civil Procedure, be given to each and every member of the Class;

18 B. That the unlawful conduct, contract, conspiracy, or combination
19 alleged herein be adjudged and decreed:

20 (a) An unreasonable restraint of trade or commerce in violation of
21 Section 1 of the Sherman Act;

22 (b) A per se violation of Section 1 of the Sherman Act; and

23 (c) An unlawful combination, trust, agreement, understanding
24 and/or concert of action in violation of the California state statutes as
25 set forth herein.

26 C. Plaintiff and the members of the Class recover damages, to the
27 maximum extent allowed under such laws, and that a joint and several judgment in
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CLASS ACTION COMPLAINT

1 favor of Plaintiff and the members of the Class be entered against Defendants in an
2 amount to be trebled to the extent such laws permit;

3 D. Plaintiff and the members of the Class recover damages, to the
4 maximum extent allowed by such laws, in the form of restitution and/or
5 disgorgement of profits unlawfully gained from them;

6 E. Defendants, their affiliates, successors, transferees, assignees and
7 other officers, directors, partners, agents and employees thereof, and all other
8 persons acting or claiming to act on their behalf or in concert with them, be
9 permanently enjoined and restrained from in any manner continuing, maintaining
10 or renewing the conduct, contract, conspiracy, or combination alleged herein, or
11 from entering into any other contract, conspiracy, or combination having a similar
12 purpose or effect, and from adopting or following any practice, plan, program, or
13 device having a similar purpose or effect;

14 F. Plaintiff and the members of the Class be awarded restitution,
15 including disgorgement of profits Defendants have obtained as a result of their acts
16 of unfair competition and acts of unjust enrichment;

17 G. Plaintiff and the members of the Class be awarded pre- and post-
18 judgment interest as provided by law, and that such interest be awarded at the
19 highest legal rate from and after the date of service of this Complaint;

20 H. Plaintiff and the members of the Class recover their costs of suit,
21 including reasonable attorneys' fees, as provided by law; and

22 I. Plaintiff and members of the Class have such other and further relief
23 as the case may require and the Court may deem just and proper.

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CLASS ACTION COMPLAINT

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully Submitted,

DATED: June 6, 2013

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CLASS ACTION COMPLAINT

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NIPPON:19934.complaint

CLASS ACTION COMPLAINT

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
DAVID SCHROEDER, on his own behalf
and on behalf of all others similarly
situated,
(b) County of Residence of First Listed Plaintiff Riverside
(c) Attorneys (Firm Name, Address, and Telephone Number)
Betsy C. Manifold
Wolf Haldenstein Alder Freeman & Herz LLP
750 B Street, Suite 2770, San Diego, CA 92101, 619/239-4599

DEFENDANTS
NIPPON YUSEN KABUSHIKI KAISHA, et al.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) '13CV1319 H DHB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. section 1
Brief description of cause:
Violations of Federal Antitrust Laws and California Unfair Competition Laws

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 06/09/2013 SIGNATURE OF ATTORNEY OF RECORD /s/Betsy C. Manifold

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.