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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

<hr/>)	IN ADMIRALTY
TOKIO MARINE AMERICA)	
INSURANCE COMPANY,)	
)	CIVIL ACTION NO.
Plaintiff,)	
v.)	COMPLAINT FOR:
)	
A.P. MOELLER - MAERSK A/S d/b/a)	1. NON-DELIVERY OF
MAERSK LINE; and DOES 1 through)	CARGO;
10, inclusive,)	2. NEGLIGENCE/WILFUL
)	MISCONDUCT
Defendants)	3. BREACH OF BAILMENT
<hr/>)	4. BREACH OF CONTRACT

Plaintiff TOKIO MARINE AMERICA INSURANCE COMPANY, for causes of action against A.P. MOELLER - MAERSK A/S d/b/a MAERSK LINE; and DOES 1 through 10, inclusive, (“Defendants”), alleges as follows:

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JURISDICTIONAL ALLEGATIONS

1. This action involves admiralty or maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and is within this court's admiralty and maritime jurisdiction. As well, this court has jurisdiction as a Federal Question under 28 U.S.C. § 1331, in that the dispute arises under federal law, including the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701 et. seq. and/or the Harter Act, 46 U.S.C. Appendix 190, et seq.

2. Venue is proper in this judicial district as the Defendant's waybill specifies this Court in this judicial district as the designated forum for resolution of disputes.

THE PARTIES

3. Plaintiff, TOKIO MARINE AMERICA INSURANCE COMPANY ("TOKIO MARINE") is an insurance corporation incorporated under the laws of the State of New York with an office and place of business located at 800 East Colorado Blvd., Pasadena, CA 91001. Plaintiff brings this action in its own name as it is the subrogated insured of the cargo, EPSON AMERICA, INC. (hereinafter "EPSON"). EPSON imports printing equipment and components and was the owner of the cargo described below. Having paid for the loss of the cargo described below, TOKIO MARINE is subrogated to EPSON'S rights against

defendants, including A.P. MOELLER - MAERSK A/S d/b/a MAERSK LINE.

4. Defendant A.P. MOELLER - MAERSK A/S d/b/a MAERSK LINE (hereinafter “MAERSK”) is a corporation doing business in this judicial district as a vessel operating and owning common carrier with an office and place of business at 180 Park Avenue, Building 105, Florham Park, NJ 07932.

5. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants designated herein as DOES 1 through 10, inclusive, are unknown to Plaintiff who therefore sues said Defendants by such fictitious names.

6. Plaintiff is informed and believes, and thereon alleges, that each of Defendants designated herein as a DOE 1 through 10, inclusive, is, in some manner, legally responsible for the events and happenings herein referred to, and when the names and capacities of said Defendants are ascertained, Plaintiff will seek leave of Court to amend this Complaint to reflect their true names and capacities.

FIRST CAUSE OF ACTION

(Non-Delivery of Cargo)

7. Plaintiff incorporates by reference paragraphs 1 through 6, inclusive, of this Complaint as fully set forth herein.

8. Under its waybill MAEU216860329 dated March 12, 2022, MAERSK accepted a shipment of Epson multifunction printers in container MRSU5931846 (“Cargo”) for multi-modal carriage from Batangas, Phillippines aboard the HALIBUT voyage 208N to the Port of Los Angeles, California and then by rail to Plainfield, Indiana. The Cargo was received in good order and condition with container seal number ML-PHI749639. Instead, the container was delivered with a BNSF seal (Number M808620) and with obvious pilferage, shortage and damage to the Cargo (CLG Ref: 3595).

9. Defendants failed and neglected to carry and deliver the Cargo and maintain its good order and condition as when received. The Cargo was pilfered, never delivered and stolen which are breaches of Defendants’ statutory and legal obligations.

10. As a result, Plaintiff has been damaged in the amount of \$36,994.54, plus, interest and costs, no part of which has been paid by Defendants despite demand therefore.

SECOND CAUSE OF ACTION

(Negligence/Wilful Misconduct/Deviation)

11. Plaintiff refers to paragraphs 1 through 10, inclusive, of this complaint and incorporates them herein as though fully set forth.

12. The loss of the Cargo was directly caused by the negligence, carelessness, and/or material wilful misconduct by MAERSK or others whose conduct is imputed to MAERSK

13. Thus, Plaintiff has been damaged in the sum of \$36,994.54, plus interest and costs, no part of which has been paid by Defendants despite demand therefore.

THIRD CAUSE OF ACTION

(Breach of Bailment)

14. Plaintiff refers to paragraphs 1 through 13, inclusive, of this complaint and incorporates them herein as though fully set forth.

15. The damage to the Cargo was the direct result of the acts and omissions of Defendants, and each of them, in violation of their statutory and common law duties and obligations as bailees to safely care for the Cargo.

16. Thus, Plaintiff has been damaged in a sum of \$36,994.54, plus interest and costs, no part of which has been paid by Defendants despite demand therefore.

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FOURTH CAUSE OF ACTION

(Breach of Contract)

17. Plaintiff refers to paragraphs 1 through 16, inclusive, of this complaint and incorporates them herein as though fully set forth.

18. On March 12, 2022, EPSON and MAERSK entered into a written agreement as reflected on the face of MAERSK waybill MAEU216860329 and wherein defendants agreement to move the Cargo from Batangas, Philippines to Plainfield, Illinois via the Port of Los Angeles.

19. Defendant materially and substantially breached and deviated from their agreement by failing to deliver the Cargo in the same good order and condition as when received.

20. As a direct result of such breach and deviance, Plaintiff has been damaged in the sum of \$36,994.54, plus interest and costs, no part of which has been paid by Defendants despite demand therefore.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For general damages in the sum of \$36,994.54, plus miscellaneous expenses, interest and costs;
2. For pre-judgment interest from August 25, 2022, at the rate of 5% per

annum or as otherwise allowable by the Court;

3. For post-judgment interest at the maximum allowable rate;
4. For costs of suit herein; and,
5. For such other and further relief as this court deems just and proper.

Dated: March 9, 2023

CAMMARANO LAW GROUP

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