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ENDORSED FILED
Clerk of the Superior Court
JAN 21 2004
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By CHARLES D. RAMEY
DEPUTY CLERK

5 Attorneys for Plaintiff
6 MATSON NAVIGATION COMPANY, INC.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SOLANO

11 MATSON NAVIGATION COMPANY,
12 INC.,

Case No. FC5023572

COMPLAINT FOR DAMAGES

13 Plaintiff,

14 vs.

15 AUTO LOGISTICS SOLUTIONS, INC.,
16 GENERAL MOTORS CORPORATION,
and DOES 1-50,

ASSIGNED TO
JUDGE Harry S. Rinalcutt
FOR ALL PURPOSES

17 Defendants.

18
19 Plaintiff Matson Navigation Company, Inc. ("Matson") complains against defendants
20 Auto Logistics Solutions, Inc. ("ALSI") and General Motors Corporation ("GM") as follows:

21 **PARTIES**

- 22 1. Plaintiff Matson is a Hawaii corporation with its headquarters in Alameda County,
23 California.
24 2. Defendant ALSI is a California corporation with its headquarters in Solano
25 County, California.
26 3. Defendant GM is a Delaware corporation with its headquarters in Detroit,
27 Michigan.
28 4. The true names and capacities of defendants named herein as Does 1 through 50,

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1 inclusive, are unknown to Matson, who therefore sues such Doe defendants by such fictitious
2 names. Matson is informed and believes, and on that basis alleges, that each of the fictitiously
3 named Doe defendants is an entity and/or individual responsible in part for the actions by
4 Defendants and for the damages sustained by Matson as alleged in this Complaint and against
5 whom Matson seeks relief. In doing the things alleged herein, such Doe defendants were acting
6 with the Defendants' consent and permission and/or in concert with them. Matson will amend its
7 Complaint to name such Doe defendants as their identities are discovered.

8 5. Matson is informed and believes and on that basis alleges that at all relevant times
9 herein Defendants, and each of them, were acting as principals and/or agents of the other
10 Defendants.

11 JURISDICTION AND VENUE

12 6. This Court has personal jurisdiction over the Defendants because ALSI is a
13 corporation organized under the laws of the State of California and GM conducts substantial,
14 continuous and systematic business operations in the State of California.

15 7. Venue is proper because the contracts that are the subject of this action were
16 entered into and defendant ALSI resides in this county.

17 OPERATIVE FACTS

18 8. General Motors is a manufacturer and seller of vehicles. Some of the vehicles it
19 manufactures are sold in the State of Hawaii.

20 9. ALSI is a company that arranges for the transportation of vehicles.

21 10. Matson is an ocean common carrier and is a principal freight carrier between the
22 United States mainland and Hawaii.

23 11. In January 1999, GM sent a Request for Quotation to ALSI to transport GM
24 vehicles between the United States mainland and Hawaii.

25 12. In April 1999, GM accepted ALSI's proposal to transport GM vehicles between
26 the United States mainland and Hawaii.

27 13. ALSI does not own any commercial ships. After GM accepted ALSI's proposal to
28 transport vehicles, ALSI approached Matson to provide shipping services to ALSI and to GM for

1 the transportation of the GM vehicles between the United States mainland and Hawaii.

2 14. The terms of the agreement between ALSI and Matson were memorialized first in
3 a letter agreement between ALSI and Matson dated May 7, 1999, ("May 7, 1999 Agreement"), a
4 true and correct copy of which is attached hereto as Exhibit A and incorporated herein by
5 reference, which set out the obligations of the parties and the rates applicable to the transport of
6 vehicles.

7 15. The May 7, 1999 Agreement was later succeeded by a Memorandum of
8 Understanding dated March 1, 2001 between ALSI and Matson (the "MOU"), a true and correct
9 copy of which is attached hereto as Exhibit B and incorporated herein by reference, which set out
10 the obligations of the parties and the rates applicable to the transport of the vehicles. The MOU
11 states that "ALSI represents that it has an agreement with General Motors pursuant to which
12 General Motors has appointed ALSI as its exclusive agent to arrange for the transportation of all
13 General Motors automobiles...."

14 16. GM acknowledged, agreed to, and ratified the May 7, 1999 Agreement and the
15 MOU between ALSI and Matson for the provision of transportation services for the benefit of
16 GM.

17 17. Matson's bills of lading and tariffs relating to each shipment of GM vehicles were
18 incorporated into the May 7, 1999 Agreement and the MOU. The bills of lading identified ALSI
19 as the "bill to" party. The bills of lading provide that the shipper and consignee are jointly and
20 severally liable for freight charges and expenses, including attorneys' fees, incurred in collection
21 of the charges.

22 18. Pursuant to the May 7, 1999 Agreement and the MOU, ALSI delivered GM
23 vehicles to Matson, which Matson then transported. Upon delivery, ALSI collected the vehicles
24 for disposition per GM.

25 19. Pursuant to the May 7, 1999 Agreement and MOU, Matson was to be paid for
26 transporting the GM vehicles within 62 days of Matson's invoice thereof.

27 20. In February 2003, GM terminated its relationship with ALSI. As a result, Matson
28 was excused from any further obligations under the MOU.

1 performed by it under the terms of the agreements sued on or the same have been excused.

2 32. GM has breached and continues to breach its obligations to Matson under the
3 May 7, 1999 Agreement and MOU by failing to make payment to Matson for the transport of GM
4 vehicles.

5 33. As a direct result of GM's breach of its obligation to Matson, Matson has been
6 damaged in the amount of \$3,300,434.45.

7 WHEREFORE, Matson prays as hereinafter set forth.

8 **THIRD CAUSE OF ACTION**
9 **(Principal Liable for Agent's Acts Under Actual Authority [Civ. Code § 2316])**
10 **(Against GM)**

11 34. Matson repeats and realleges the allegations contained in paragraphs 1 through 27
12 and incorporates them herein by reference.

13 35. GM intentionally conferred on ALSI the authority to enter into agreements with
14 Matson for the transport of GM vehicles between the United States mainland and Hawaii by
15 express agreement. Matson is informed and believes, and thereon alleges, that ALSI at all times
16 herein mentioned believed that it was authorized and, in fact, was authorized to act on behalf of
17 GM.

18 36. At all times herein mentioned, ALSI was the agent of GM, and in entering into the
19 May 7, 1999 Agreement and MOU with Matson for the transport of GM vehicles between the
20 United States mainland and Hawaii was acting within the course and scope of that agency and at
21 the direction and with the permission and consent of GM.

22 37. ALSI, while acting as agent for GM, has breached its obligations to Matson under
23 the May 7, 1999 Agreement and MOU by failing to make payment for transportation services
24 rendered.

25 38. Matson has fully performed all conditions, covenants and promises required to be
26 performed by it under the terms of the agreement between ALSI and Matson or the same have
27 been excused.

28 39. As a direct result of ALSI's breach of its obligations to Matson, Matson has been
damaged in the amount of \$3,300,434.45.

1 Dated: January 21, 2004

MORGAN, LEWIS & BOCKIUS LLP

2
3 By Kent M. Roger
4 Kent M. Roger
5 Attorneys for Plaintiff
6 MATSON NAVIGATION COMPANY,
7 INC.

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