


1 DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP  
2 Edward A. Woods (SBN 54841)  
Eric M. George (SBN 166403)  
3 Michael A. Bowse (SBN 189659)  
450 North Roxbury Drive, 7th Floor  
4 Beverly Hills, CA 90210  
Telephone: (310) 274-7100  
5 Facsimile: (310) 275-5697  
Email: ewoods@dskbwg.com;  
6 egeorge@dskbwg.com;  
mbowse@dskbwg.com

BY   
CLERK OF DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES  
2008 MAY -9 PM 2:13

FILED

7 COTCHETT, PITRE & McCARTHY  
8 Joseph W. Cotchett (SBN 36324)  
Ara R. Jabaghourian (SBN 205777)  
9 Nanci E. Nishimura (SBN 152621)  
Steven N. Williams (SBN 175489)  
10 San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
11 Burlingame, CA 94010  
Telephone: (650) 697-6000  
12 Facsimile: (650) 697-0577  
Email: jcotchett@cpmlegal.com;  
13 ajabaghourian@cpmlegal.com  
mnishimura@cpmlegal.com

ENGSTROM, LIPSCOMB  
& LACK  
A Professional Corporation  
Walter J. Lack (SBN 57550)  
10100 Santa Monica Boulevard  
16th Floor  
Los Angeles, California 90067  
Telephone: (310) 552-3800  
Telecopier: (310) 552-9434  
Email: wlack@elllaw.com

14 Attorneys for Plaintiff and the Class

15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA

17 TASTE OF NATURE, INC.,

18 Plaintiff,

19 vs.

20 MATSON NAVIGATION CO., INC.;  
21 THE CARLYLE GROUP; CASTLE  
22 HARLAN, INC.; HORIZON LINES  
23 HOLDING CO.; HORIZON LINES,  
24 INC.; HORIZON LINES, LLC; and  
ALEXANDER & BALDWIN, INC.,

25 Defendants.

CASE NO.

CV08-03073 PA (SSx)

CLASS ACTION COMPLAINT

FOR VIOLATION OF SHERMAN  
ACT, 15 USC § 1

JURY TRIAL DEMANDED

DREIER STEIN KA  
BROWNE WOOD  
GEORGE LLP

1 Plaintiff, on behalf of itself and all others similarly situated, hereby brings  
2 this action for treble damages and injunctive relief under the federal antitrust laws  
3 of the United States, Section 1 of the Sherman Antitrust Act of 1890, 15 U.S.C. § 1  
4 ("Sherman Act") and Sections 4 and 26 of the Clayton Antitrust Act of 1914, 15  
5 U.S.C. §§ 15, 26 ("Clayton Act") against Defendants Matson Navigation Co, Inc.,  
6 The Carlyle Group, Castle Harlan, Inc., Horizon Lines Holding Co., Horizon Lines,  
7 Inc., Horizon Lines, LLC and Alexander & Baldwin, Inc. Plaintiff complains and  
8 alleges upon information and belief except as to those paragraphs applicable to the  
9 named Plaintiff, which are based on personal knowledge, as follows:

10 **I. NATURE AND OVERVIEW OF THIS ACTION**

11 1. The Territory of Guam, a small island in the Western Pacific ocean, is  
12 geographically isolated from the rest of the world, and depends heavily on  
13 shipments of goods by sea from and to the West Coast of the United States. The  
14 cost of shipping everything from food to medical supplies to building materials to  
15 all the other necessities and amenities of modern life is high, and contributes to the  
16 unusually high cost of living in Guam. This case involves actions by the two  
17 primarily domestic ocean shippers to collusively set and stabilize artificially high  
18 rates for shipment of goods between Guam and the West Coast of the United States,  
19 and thus to artificially inflate the already high cost of living in Guam.

20 2. Specifically, this action arises from a conspiracy to fix, raise, maintain  
21 and/or stabilize prices for domestic, noncontiguous ocean shipping between the  
22 United States West Coast and the Territory of Guam. This conspiracy has three  
23 aspects: a conspiracy to fix fuel surcharges on domestic shipping rates, which at the  
24 present time amounts to almost 20 percent of the shipping lines' revenue; a  
25 conspiracy to decrease and stabilize shipping capacity (and therefore fix and  
26 stabilize prices) in the West Coast-Guam domestic shipping routes; and a  
27 conspiracy to fix domestic intermodal non-through rates to shippers and intermodal  
28 companies alike, including union drivers at domestic ports.

1           3.     Two ocean liner companies, Matson Navigation Company, Inc. (a  
2 wholly-owned subsidiary of Alexander & Baldwin, Inc.)(hereafter "Matson") and  
3 Horizon Lines, Inc., (hereafter "Horizon") control at least 80 percent of all cargo  
4 shipped from to or from Guam by sea.

5           4.     Since at least 1999, Matson and Horizon have imposed a "fuel  
6 surcharge" on all cargoes. This surcharge has been calculated as a percentage of  
7 revenue. It started as 1.75 percent of revenue and, following 16 consecutive  
8 changes (15 increases and 1 decrease), stood at 21.25 percent of revenue as of June  
9 2006. In late 2006, the two companies changed their fuel surcharges for a 17th time,  
10 to its current 19.75 percent of revenue.

11           5.     In each case, Matson publicly initiated the fuel surcharges, and in each  
12 case, Horizon matched them, exactly, within a few days. In addition, Horizon has  
13 publicly followed Matson in changing the timing of fuel surcharge changes, from  
14 once per quarter to any time it wanted to change them.

15           6.     These fuel surcharges make no economic sense and possess no  
16 economic justification. Matson and Horizon have very different cost and revenue  
17 structures, and their different inventory of ships with different fuel consumption use  
18 different quantities of fuel with different economic consequences. It is impossible  
19 for fuel surcharges calculated as a percentage of revenue to be exactly the same for  
20 both companies, particularly at every moment through 18 changes over 7 years. In  
21 reality, the fuel surcharges are not based on true cost and revenue factors, but are  
22 set by collusion between Matson and Horizon.

23           7.     The second aspect of the conspiracy is a conspiracy to limit the  
24 shipping capacity on the West Coast-Guam shipping route. Matson and Horizon  
25 accomplish this by agreeing to carry each other's cargoes, and to do so at  
26 substantially lower rates than either charges to other shippers. This has been going  
27 on regularly and for years. The ostensible reason for capacity sharing is to speed  
28 shipments, e.g. when one carrier does not have enough space on one of its ships for

DREIER STEIN KA  
BROWNE WOOL  
LORGE LLP

1 a particular cargo it will slip that cargo on its competitor's next ship at a much lower  
2 cost, and get the cargo to its destination before it would arrive if it waited for the  
3 first carrier's next ship. The true purpose and effect of this capacity sharing,  
4 however, is to restrict the output of shipping services on the West Coast-Guam  
5 routes because without the agreement (1) Matson and Horizon might each have to  
6 add additional ships to this route to handle excess capacity, or (2) another ocean  
7 carrier would enter that route and compete with both Matson and Horizon. Under  
8 either scenario, additional capacity would inevitably lead to more competition and  
9 lower prices, an outcome that the Defendants abhor.

10 8. The third aspect of the conspiracy involves collusively setting  
11 domestic intermodal non-through rates charged to shippers and paid to independent  
12 intermodal companies, including union drivers at domestic ports.

13 9. This case involves exclusively domestic, noncontiguous shipping  
14 between the West Coast of the United States and the Territory of Guam. It  
15 specifically does not involve international ocean shipping between the United  
16 States and foreign countries.

17 10. Plaintiff, on behalf of all persons and entities that purchased cargo  
18 shipping services from any of the Defendants and their co-conspirators or any  
19 predecessor, subsidiary, or affiliate of each, on the West Coast-Guam shipping  
20 routes, at any time during the period four years from the filing of this Complaint to  
21 the present (the "Class"), brings this action to recover treble damages and injunctive  
22 relief for violations of the United States antitrust laws. At all relevant times herein,  
23 Defendants were domestic ocean shippers on the West Coast-Guam shipping  
24 routes, and charged identical fuel surcharges and agreed to share shipping capacity  
25 with each other on those routes. As further alleged in this Complaint, during four  
26 years preceding the filing of this Complaint to the present (the "Class Period"),  
27 Defendants agreed, combined, and/or conspired with each other to fix, raise,  
28 maintain, and/or stabilize the prices and output of ocean cargo shipping on the West

1 Coast-Guam routes, as well as the rates charged to shippers and paid to intermodal  
2 carriers for nonthrough intermodal traffic. As a result of Defendants' unlawful  
3 conduct and conspiracy, Plaintiff and the other members of the Class paid  
4 artificially high prices for domestic ocean shipping on those routes, including  
5 artificially high fuel surcharges, and have been damaged thereby.

6 **II. JURISDICTION AND VENUE**

7 11. This Complaint is brought under Sections 4 and 16 of the Clayton Act,  
8 15 U.S.C. §§ 15 and 26, to obtain injunctive relief and to recover treble damages  
9 and the costs of this suit, including reasonable attorneys' fees, against Defendants  
10 for the injuries sustained by Plaintiff and the members of the Class by reason of  
11 Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

12 12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§  
13 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

14 13. This Court has *in personam* jurisdiction over each of the Defendants  
15 because each was engaged in an illegal price-fixing scheme and conspiracy that was  
16 directed at and/or caused injury to persons and entities residing in, located in, or  
17 doing business in the Northern District of California and throughout the United  
18 States.

19 14. Venue is proper in this judicial district pursuant to 15 U.S.C. § 22 and  
20 28 U.S.C. § 1391(b), (c), and (d) because during the Class Period one or more of  
21 the Defendants resided, transacted business, was found, or had agents in this  
22 district, and because a substantial part of the events giving rise to Plaintiff's claims  
23 occurred in this district. In particular, a substantial portion of the affected interstate  
24 trade and commerce described below has been carried out in this district.

25 15. No other forum would be more convenient for the parties and  
26 witnesses to litigate this case.

DREIER STEIN KA  
BROWNE WOOD, GEORGE LLP

1 **III. PARTIES**

2 16. Plaintiff Taste of Nature, Inc. ("Plaintiff") is a candy and snack  
3 manufacturing company with its principal place of business in Los Angeles,  
4 California. During the Class Period, Plaintiff purchased domestic ocean cargo  
5 shipping services on Defendants' West Coast-Guam routes, and paid fuel  
6 surcharges thereon, and suffered direct pecuniary injury and damages as a result of  
7 the antitrust violations alleged herein.

8 17. Defendant Matson Navigation Company, Inc. is a Hawaii corporation  
9 with its principal place of business in Oakland, California. It has participated in  
10 substantial business dealings in this district including the sale of domestic cargo  
11 shipping services on the West Coast-Guam routes. Matson is a wholly-owned  
12 subsidiary of Alexander & Baldwin, Inc.

13 18. Defendant The Carlyle Group is a private equity firm partnership with  
14 its principal place of business in Washington, D.C. It has participated in substantial  
15 business dealings in this district including the sale of domestic cargo shipping  
16 services on the West Coast-Guam routes. The Carlyle Group owned Horizon Lines  
17 (previously called CSX Lines LLC) from 2003 to 2004.

18 19. Defendant Castle Harlan, Inc. is a private equity investment firm with  
19 its principal place of business in New York, New York. It has participated in  
20 substantial business dealings in this district including the sale of domestic cargo  
21 shipping services on the West Coast-Guam routes. Castle Harlan purchased  
22 Horizon Lines from The Carlyle Group in 2004.

23 20. Defendant Horizon Lines Holding Co. is a Delaware corporation with  
24 its principal place of business in Charlotte, North Carolina. It has participated in  
25 substantial business dealings in this district including the sale of domestic cargo  
26 shipping services on the West Coast-Guam routes. Horizon Lines Holding Co. is  
27 the holding company for Horizon Lines LLC.

1 21. Defendant Horizon Lines, Inc. is a Delaware corporation with its  
2 principal place of business in Charlotte, North Carolina. It has participated in  
3 substantial business dealings in this district including the sale of domestic cargo  
4 shipping services on the West Coast-Guam routes.

5 22. Defendant Horizon Lines, LLC is a Delaware corporation with its  
6 principal place of business in Charlotte, North Carolina and a Sales And Terminal  
7 office in Oakland, California. At all times relevant to this Complaint, Defendant  
8 Horizon Lines, LLC has been known as CSX Lines from 2001 to 2003. It has  
9 participated in substantial business dealings in this district including the sale of  
10 domestic cargo shipping services on the West Coast-Guam routes.

11 23. Defendant Alexander & Baldwin, Inc. is a Hawaii corporation with its  
12 principal place of business in Honolulu, Hawaii. It has participated in substantial  
13 business dealings in this district including the sale of domestic cargo shipping  
14 services on the West Coast-Guam routes.

15 **IV. UNNAMED CO-CONSPIRATORS AND AGENTS**

16 24. On information and belief, at all relevant times, other shipping lines,  
17 trade groups, affiliates of the defendants, or other entities or individuals, referred to  
18 herein as John Does 1-10, willingly conspired with Defendants in their unlawful  
19 restraint of trade. All averments in this complaint against named Defendants are  
20 also averred against these unnamed co-conspirators as though set forth at length.

21 25. The acts alleged to have been done by Defendants were authorized,  
22 ordered or done by their directors, officers, agents, employees, or representatives  
23 while actively engaged in the management of each of the Defendants' affairs.

24 **V. INTERSTATE TRADE AND COMMERCE**

25 26. Throughout the Class Period, there was a continuous and uninterrupted  
26 flow of domestic cargo shipping in interstate commerce between the West Coast of  
27 the United States and the Territory of Guam.

DREIER STEIN K/  
BROWNE WOOL...GEORGE LLP

1 27. Defendants' unlawful activities, as described in this Complaint, took  
2 place within the flow of interstate commerce involving domestic cargo shipping  
3 between the West Coast of the United States, Hawaii, Alaska and the Territory of  
4 Guam, and had a direct, substantial and reasonably foreseeable effect upon  
5 interstate and international commerce.

6 **VI. CLASS ACTION ALLEGATIONS**

7 28. Plaintiff brings this action on its own behalf and as a class action  
8 pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of the  
9 following Class:

10 All individuals or entities (excluding governmental entities,  
11 Defendants, and their parents, predecessors, subsidiaries, affiliates, and  
12 their co-conspirators) who purchased domestic cargo shipping services  
13 between the West Coast of the United States and Guam, directly from  
14 any of the Defendants and their co-conspirators or any predecessor,  
15 subsidiary, or affiliate of each, at any time during the period from four  
16 years before from the filing of this Complaint to the present.

17 29. Because such information is in the exclusive control of Defendants,  
18 Plaintiff does not know the exact number of Class members. Due to the nature of  
19 the trade and commerce involved, however, Plaintiff believes that Class members  
20 number at least in the thousands and are sufficiently numerous and geographically  
21 dispersed so that joinder of all Class members is impracticable.

22 30. There are questions of law or fact common to the Class, including:

23 a. Whether Defendants engaged in a combination or conspiracy among  
24 themselves to fix, raise, maintain, and/or stabilize domestic shipping fuel surcharge  
25 prices between the West Coast of the United States and the Territory of Guam;

26 b. Whether Defendants engaged in a combination or conspiracy among  
27 themselves to fix, raise, maintain and/or stabilize domestic shipping prices between  
28 the West Coast of the United States and the Territory of Guam by limiting shipping  
29 capacity on those routes;

30 c. Whether Defendants engaged in a combination or conspiracy among  
31 themselves to fix, raise, maintain and/or stabilize domestic shipping prices between

1 the West Coast of the United States and the Territory of Guam by collusively fixing  
2 rates for domestic non-through intermodal rates charged to shippers and to  
3 independent companies;

4 d. The duration of the conspiracy alleged in this Complaint and the nature  
5 and character of the acts performed by Defendants in furtherance of the conspiracy;

6 e. Whether the alleged conspiracy violated Section 1 of the Sherman Act;

7 f. Whether the conduct of Defendants, as alleged in this Complaint,  
8 caused injury to the business or property of the Plaintiff and the other members of  
9 the Class;

10 g. The effect of Defendants' conspiracy on the fuel surcharge and other  
11 prices for domestic noncontiguous shipping between the West Coast of the United  
12 States and the Territory of Guam during the Class Period; and

13 h. The appropriate measure of damages sustained by the Plaintiff and the  
14 other members of the Class.

15 31. Plaintiff's claims are typical of the claims of the Class members.  
16 Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff  
17 sustained direct financial injury in connection with the domestic noncontiguous  
18 cargo shipping services, intermodal transportation services, and fuel surcharges  
19 from one or more Defendants, and its interests are consistent with and not  
20 antagonistic to those of other members of the Class. Plaintiff is represented by  
21 counsel that is highly competent and experienced in the prosecution of antitrust and  
22 class action litigation.

23 32. The questions of law and fact common to the members of the Class  
24 predominate over any questions affecting only individual members.

25 33. A class action is superior to other methods for the fair and efficient  
26 adjudication of this controversy. Treatment as a class action will permit a large  
27 number of similarly situated persons to adjudicate their common claims in a single  
28 forum simultaneously, efficiently, and without the duplication of effort and expense

1 that numerous individual actions would engender. Class treatment will also permit  
2 the adjudication of relatively small claims by many Class members who otherwise  
3 could not afford to litigate an antitrust claim such as is asserted in this Complaint.  
4 This class action presents no difficulties in management that would preclude  
5 maintenance as a class action. Finally, the Class is readily definable and is one for  
6 which records of the names and addresses of the members of the Class exist in the  
7 files of the Defendants.

8 **VII. DEFENDANTS AND THE DOMESTIC NONCONTIGUOUS OCEAN**  
9 **SHIPPING MARKET**

10 34. Defendants Matson and Horizon and their affiliates control at least 80  
11 percent of all cargo shipped to Guam by sea. This gives the Defendants an  
12 overwhelming market share and market power in a classic oligopolistic—essentially  
13 duopolistic—market structure.

14 35. The principal competitors for the Defendants in the domestic  
15 noncontiguous ocean cargo market between the West Coast and Guam are therefore  
16 one another.

17 36. Domestic noncontiguous cargo shipping is a service that is fungible  
18 because almost all such shipping today is containerized and any container vessel  
19 can readily substitute for any other in carrying such cargo containers. The same is  
20 true for the much lesser amount of non-containerized cargo, such as automobiles.

21 37. Domestic noncontiguous cargo shipping is a homogenous service sold  
22 by shipping lines, including Defendants, to cargo shipping customers, including  
23 Plaintiff and the members of the Class, primarily based on price.

24 38. The domestic noncontiguous cargo shipping market between the West  
25 Coast of the United States and Guam is highly concentrated, and there exist  
26 substantial barriers to entry in this market; both factors facilitate the implementation  
27 and maintenance of a horizontal price-fixing cartel such as that perpetrated by  
28 Defendants and alleged herein.

1 **VIII. DEFENDANTS' CONCERTED FUEL SURCHARGES**

2 39. Beginning at least eight years prior to the filing of this Complaint,  
3 Defendants agreed to act in concert with one another in demanding fuel surcharges  
4 from their domestic shipper customers, and agreed to set those rates jointly and at  
5 the same level. Defendants' agreement to charge uniform fuel surcharges is  
6 reflected in their lockstep price changes.

7 40. On January 1, 1999, neither Matson nor Horizon charged its customers  
8 a fuel surcharge.

9 41. On October 11, 1999, Matson imposed a fuel surcharge of 1.75 percent  
10 of revenue. Horizon matched this fuel surcharge exactly within days.

11 42. On February 20, 2000, Matson increased its fuel surcharge to 2.25  
12 percent. Horizon matched this fuel surcharge exactly within days.

13 43. On April 2, 2000, Matson increased its fuel surcharge to 3.25 percent.  
14 Horizon matched this fuel surcharge exactly within days.

15 44. On October 15, 2000, Matson increased its fuel surcharge to 4.25  
16 percent. Horizon matched this fuel surcharge exactly within days.

17 45. On November 25, 2001, Matson decreased its fuel surcharge to 3.25  
18 percent. Horizon matched this fuel surcharge exactly within days.

19 46. On May 5, 2002, Matson increased its fuel surcharge to 4.75 percent.  
20 Horizon matched this fuel surcharge exactly within days.

21 47. On October 20, 2002, Matson increased its fuel surcharge to 6.00  
22 percent. Horizon matched this fuel surcharge exactly within days.

23 48. On March 3, 2003, Matson increased its fuel surcharge to 7.50 percent.  
24 Horizon matched this fuel surcharge exactly within days.

25 49. On May 4, 2003, Matson increased its fuel surcharge to 8.00 percent.  
26 Horizon matched this fuel surcharge exactly within days.

27 50. On June 21, 2004, Matson increased its fuel surcharge to 8.80 percent.  
28 Horizon matched this fuel surcharge exactly within days.

DREIER STEIN K/  
BROWNE WOOL... GEORGE LLP

1           51. On October 18, 2004, Matson increased its fuel surcharge to 9.20  
2 percent. Horizon matched this fuel surcharge exactly within days.

3           52. On April 18, 2005, Matson increased its fuel surcharge to 10.50  
4 percent. Horizon matched this fuel surcharge exactly within days.

5           53. On July 3, 2005, Matson increased its fuel surcharge to 11.50 percent.  
6 Horizon matched this fuel surcharge exactly within days.

7           54. On October 2, 2005, Matson increased its fuel surcharge to 13.00  
8 percent. Horizon matched this fuel surcharge exactly within days.

9           55. On January 1, 2006, Matson increased its fuel surcharge to 15.00  
10 percent. Horizon matched this fuel surcharge exactly within days.

11           56. On April 2, 2006, Matson increased its fuel surcharge to 18.50 percent.  
12 Horizon matched this fuel surcharge exactly within days.

13           57. On June 4, 2006, Matson increased its fuel surcharge to 21.25 percent.  
14 Horizon matched this fuel surcharge exactly within days.

15           58. On October 1, 2006, Matson decreased its fuel surcharge to 19.75  
16 percent. Horizon matched this fuel surcharge exactly the next day.

17           59. In short, Matson and Horizon have acted in lock step in charging the  
18 exact same fuel surcharges *as a percentage of revenue* for 18 consecutive changes  
19 over a period of seven years, and in doing so have boosted their revenue by  
20 approximately 20 percent.

21           60. Matson and Horizon acted in lockstep in other ways as well. For  
22 example, fuel surcharges used to be adjusted quarterly. In the spring of 2006,  
23 Matson announced that it would make surcharge changes whenever it deemed it  
24 necessary, a significant change in a policy that had been in place for years. Eleven  
25 days later, Horizon also changed its longstanding policy to make surcharge changes  
26 "in a more timely manner."

27           61. The history of identical fuel surcharges makes no economic sense, as  
28 they are calculated as a percentage of revenue. Even assuming a rise in the price of

1 fuel for both carriers, the increase in cost as a percentage of revenue *cannot* be the  
2 same for both carriers. The carriers use different technologies (e.g. different ships  
3 with different types of engines and fuel efficiencies), different routes, different  
4 operations, carry different cargoes, and so on. There may also be different  
5 allocations of fuel expense between the carriers and third parties. Thus, it is  
6 impossible for the cost allocation of fuel cost increases to be exactly the same  
7 percentage of revenue for both carriers. In other words, the two shipping lines  
8 charged identical fuel surcharge costs for years *regardless of whether it was*  
9 *economically rational or not*. The uniformity of these fuel surcharges show that  
10 they bear little or no relationship to external costs *as a percentage of revenue*, and  
11 instead have been imposed by the Defendants as part of a contract, combination or  
12 conspiracy to raise and maintain prices above competitive rates.

13 62. The reality is that the lockstep fuel surcharge increases were the result  
14 of an illegal agreement between the two competitors. Defendants implemented their  
15 agreement by secretly exchanging information and secretly agreeing to fix the fuel  
16 surcharge at artificially high and identical levels. Opportunities for exchanging  
17 secret information and reaching illegal agreements abound, including under the  
18 auspices of the Maritime Cabotage Task Force, an industry lobbying group to  
19 which both Horizon and Matson belong.

20 63. But for Defendants' illegal agreement, they would have been unable to  
21 increase their fuel surcharges to the extent they did. Defendants profited  
22 enormously from their illegal conspiracy to increase fuel surcharges to identical and  
23 unjustified levels.

24 **IX. DEFENDANTS' FIXING OF DOMESTIC NON-THROUGH**  
25 **INTERMODAL RATES**

26 64. "Intermodal" transportation refers to the transfer of goods from  
27 shipping lines to other forms of land transportation, for example trucks and trains.  
28 In some areas, the Defendants have integrated their own intermodal transportation

1 networks into their shipping systems. In other areas, however, the Defendants must  
2 rely on contracting with independent intermodal carriers at the various ports where  
3 their goods are loaded and unloaded.

4 65. The setting of intermodal rates charged to shippers in the international  
5 trades is fixed by the shipping lines, and these price fixing agreements are exempt  
6 from the antitrust laws. On information and belief, however, Defendants conspired  
7 to fix domestic nonthrough intermodal rates as well, and profit by the excessively  
8 high intermodal rates so fixed.

9 66. Also on information and belief, Defendants fix the rates they pay to  
10 independent intermodal companies. This specifically includes port drivers as  
11 testified to before Congress:

12 Hidden behind the protection of antitrust immunity, shipping lines  
13 participate in rate setting discussion groups. The coordination,  
14 however, does not stop with rate setting. They then utilize these groups  
15 to enter into secret contracts to set rates exclusively to their own  
16 benefit and to the detriment of, among others, the port drivers. This is  
17 done by collectively setting rates that include the cost of transporting  
18 the containers inland. The shipping lines apparently have agreed that  
19 they will effectively provide inland container transportation as part of  
the shipping charge to their customers. Thus, the highly profitable  
shipping lines pay low rates to trucking companies which, after taking  
their percentage, pay port drivers only a bare minimum for the  
transport of containers. The shipping lines also appear to have agreed,  
for the most part, not to contract with trucking companies that hire  
union drivers.

20 Testimony of George W. Cashman, Director, IBT Port Division, before the United  
21 States House of Representatives Committee on the Judiciary, March 22, 2000.

22 What Mr. Cashman did not realize is that domestic shippers such as the Defendants  
23 in this case do not have the protection of antitrust immunity for such behavior when  
24 it involves domestic nonthrough intermodal rates.

25 67. Thus, Defendants illegally agree to set both domestic nonthrough  
26 intermodal rates charged to shippers, and the rates they pay to independent  
27 intermodal companies, such as trucking companies.

DREIER STEIN K.A.  
BROWNE WOODS GEORGE LLP

1 **X. DEFENDANTS' CAPACITY SHARING AGREEMENT**  
2 **TO LIMIT CAPACITY AND PROP UP SHIPPING**  
3 **RATES**

4 68. For some time, the Defendants have openly agreed to ship each other's  
5 containers on a regular basis, charging each other much less than they charge their  
6 actual shipper customers. In fact, the charge to the initial carrier is about \$1,000 per  
7 container, while the charge to the shipper is about \$4,000 per container. The  
8 ostensible purpose of this shared capacity is to speed up shipments when, for  
9 example, one shipper's ship is full and they do not want to wait for their next  
10 scheduled ship to depart when a rival's ship may depart sooner.

11 69. The true reason for the capacity sharing agreement, however, is to  
12 reduce and stabilize capacity on the West Coast-Guam routes, thereby preventing  
13 the addition of new capacity by the Defendants and/or other shipping lines, for the  
14 purpose and with the effect of stabilizing and propping up prices. The Defendants  
15 are thus using their considerable market power to restrict output of shipping  
16 services on these domestic routes and thus raise and stabilize prices.

17 70. An example occurred in about 2000, when Matson was running a  
18 seven vessel fleet that included bi-weekly service from Los Angeles, with sailings  
19 at mid-week. Horizon put in a vessel in the opposite week, which would give it a  
20 competitive niche. Matson countered with a second vessel (for a total of eight),  
21 giving Matson weekly service compared to Horizon's bi-weekly service. Horizon's  
22 vessel utilization was reduced considerably with this new, direct, competition, and  
23 Horizon did not have another ship available to provide competitive weekly service.  
24 Horizon negotiated a highly attractive rate (about \$1,000) with Matson for their  
25 weekly mid-week freight before removing their vessel from the service, and thus  
26 reducing the capacity on that route.

27 71. The space sharing activity is public knowledge and is done on a  
28 regular, and even advertised, basis. For example, Horizon's website, listing its

1 services and sailings, advertises Matson sailings on Matson's vessels (such as the  
2 RJ Feiffer) as Horizon's "MWX Service."

3 72. The upshot of this capacity sharing arrangement is that Matson and  
4 Horizon are collaborating with each other (rather than competing with each other)  
5 in order to reduce the capacity of shipping service on the West Coast-Guam routes  
6 and thus maintain higher prices for the shipment of cargo on those routes.

7 **XI. VIOLATIONS ALLEGED**

8 **VIOLATION OF 15 U.S.C. § 1**

9 73. Plaintiff incorporates by reference as if fully set forth herein the  
10 allegations contained in the preceding paragraphs of this Complaint.

11 74. During the Class Period, the exact dates being unknown to Plaintiff,  
12 Defendants engaged in a continuing contract, combination, or conspiracy in  
13 unreasonable restraint of trade of commerce among the several states to artificially  
14 raise, fix, maintain, and/or stabilize the prices of domestic cargo shipping services  
15 on the West Coast-Guam routes in violation of Section 1 of the Sherman Act, 15  
16 U.S.C. § 1.

17 75. In formulating and effectuating the alleged contract, combination, or  
18 conspiracy, Defendants engaged in anti-competitive activities, the purpose and  
19 effect of which were to artificially raise, fix, maintain, and/or stabilize the price of  
20 domestic interstate cargo shipping services on those routes, including but not  
21 limited to fuel surcharges. These activities included the following:

22 A. Agreeing to charge fuel surcharges at certain levels and otherwise to  
23 fix, raise, maintain, and/or stabilize the price of fuel surcharges charged in the  
24 United States domestic cargo shipping routes between the West Coast and Guam;

25 B. Charging such fuel surcharges at the agreed-upon rates;

26 C. Signaling increases in the price of such fuel surcharges by, inter alia,  
27 publicly announcing their increases and moving in lock-step;

1 D. Announcing such new fuel surcharges prices nearly simultaneously or  
2 within days of each other.

3 76. During the Class Period, the Defendants increased, as a ratio to  
4 external costs – and profits -- the fuel surcharges they charged. The relative  
5 increases in these fuel surcharges were the result of anticompetitive conduct.

6 77. During the Class Period, the exact dates being unknown to Plaintiff,  
7 the Defendants engaged in a continuing contract, combination or conspiracy in  
8 unreasonable restraint of trade or commerce among the several states to artificially  
9 raise, fix, maintain, and/or stabilize the price of domestic nonthrough intermodal  
10 rates charged to shippers and paid to independent intermodal companies on the  
11 West Coast-Guam routes in violation of Section 1 of the Sherman Act, 15 U.S.C. §  
12 1.

13 78. During the Class Period, the exact dates being unknown to Plaintiff,  
14 Defendants engaged in a continuing contract, combination or conspiracy in  
15 unreasonable restraint of trade or commerce among the several states to artificially  
16 raise, fix, maintain, and/or stabilize the price of domestic cargo shipping services on  
17 the West Coast-Guam routes by sharing capacity for the specific purpose of  
18 restricting shipping capacity on those routes, in violation of Section 1 of the  
19 Sherman Act, 15 U.S.C. § 1.

20 79. During the Class Period, Plaintiff and members of the Class purchased  
21 domestic cargo shipping services directly from Defendants, and/or from their  
22 agents, subsidiaries, and/or controlled affiliates.

23 80. The illegal combination and conspiracy alleged herein has had the  
24 following effects, among others:

25 A. Price competition in the pricing of domestic cargo shipping services on  
26 the West Coast-Guam routes has been restrained, suppressed, and/or eliminated;

1 B. Price competition in the contracting of domestic cargo shipping  
2 services on the West Coast-Guam routes has been restrained, suppressed, and/or  
3 eliminated;

4 C. Prices for domestic cargo shipping services and the fuel surcharges  
5 thereon on the West Coast-Guam routes charged by Defendants have been fixed,  
6 raised, maintained, and/or stabilized at artificially high, non-competitive levels;

7 D. Prices for domestic nonthrough intermodal services on the West Coast-  
8 Guam routes charged by Defendants have been fixed, raised, maintained and/or  
9 stabilized at artificially high, non-competitive levels; and

10 E. Members of the Class have been deprived of the benefit of free and  
11 open competition, and have been injured in their business and property in that they  
12 have paid more for domestic cargo shipping services and intermodal services than  
13 they would have paid without the Defendants' and their co-conspirators' price  
14 fixing.

15 **XII. FRAUDULENT CONCEALMENT**

16 81. Throughout the relevant period, Defendants affirmatively and  
17 fraudulently concealed their unlawful conduct from the Plaintiff and the Class.

18 82. Plaintiff and the members of the Class did not discover, and could not  
19 discover through the exercise of reasonable diligence, that Defendants were  
20 violating the antitrust laws as alleged herein until shortly before this litigation was  
21 commenced. Nor could Plaintiff and the members of the Class have discovered the  
22 violations earlier than that time because Defendants conducted their conspiracy in  
23 secret, concealed the nature of their unlawful conduct and acts in furtherance  
24 thereof, and fraudulently concealed their activities through various other means and  
25 methods designed to avoid detection. The conspiracy was by its nature self-  
26 concealing.

1 83. Defendants engaged in a successful, illegal price-fixing conspiracy  
2 with respect to fuel surcharges and other fees, which they affirmatively concealed,  
3 in at least the following respects:

4 A. By agreeing among themselves not to discuss publicly, or otherwise  
5 reveal, the nature and substance of the acts and communications in furtherance of  
6 their illegal scheme;

7 B. By engaging in secret meetings and telephone calls in order to further  
8 their illicit domestic cargo shipping, capacity discouraging and fuel surcharges  
9 cartel; and/or

10 C. By giving false and pretextual reasons for their pricing for domestic  
11 cargo shipping and fuel surcharges thereon, and their increases, during the relevant  
12 period and by describing such pricing and the increases falsely as being the result of  
13 external costs rather than collusion.

14 84. As a result of Defendants' fraudulent concealment of their conspiracy,  
15 Plaintiff and the Class assert the tolling of any applicable statute of limitations  
16 affecting the rights of action of Plaintiff and the members of the Class.

17 **XIII. INJURY TO PLAINTIFF AND THE CLASS**

18 85. During the Class Period, Plaintiff and the members of the Class,  
19 because of Defendants' antitrust violations, paid fuel surcharges and other fees they  
20 would not have paid absent such violations. As a result, Plaintiff and the members  
21 of the Class it seeks to represent have been injured and damaged in their business  
22 and property in an amount to be determined according to proof.

23 86. As a direct and proximate result of the illegal conspiracy, Plaintiff and  
24 the members of the Class have been injured and financially damaged in their  
25 respective businesses and property, in that they have paid surcharges and other  
26 inflated fees for intermodal transportation and shipping charges during the Class  
27 Period that they would not have paid in the absence of the illegal conspiracy.

28

1 **XIV. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays that:

3 1. The Court determine that this action may be maintained as a class  
4 action under Rule 23(a) and (b) (3) of the Federal Rules of Civil Procedure;

5 2. The Court adjudge and decree that the contracts, combinations and  
6 conspiracies alleged herein are a per se unreasonable restraint of trade in violation  
7 of section 1 of the Sherman Act;

8 3. Judgment be entered against Defendants, jointly and severally, and in  
9 favor of Plaintiff and the Class for damages as allowed by law as determined to  
10 have been sustained by them;

11 4. Each of the Defendants, successors, assigns, parents, subsidiaries,  
12 affiliates and transferees, and their respective officers, directors, agents and  
13 employees, and all other persons acting or claiming to act on behalf of Defendants  
14 or in concert with them, be permanently enjoined and restrained from, in any  
15 manner, directly or indirectly, continuing, maintaining or renewing the  
16 combinations, conspiracy, agreement, understanding or concert of action, or  
17 adopting any practice, plan, program or design having a similar purpose or effect in  
18 restraining competition;

19 5. The Court award Plaintiff and the Class attorneys' fees and costs, and  
20 pre judgment and post-judgment interest as permitted by law; and

21  
22 ///

23 ///

24 ///

25

26

27

28

6. The Court award Plaintiff and the Class such other and further relief as may be necessary and appropriate.

DATED: May 9, 2008

DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP  
Edward A. Woods  
Eric M. George  
Michael A. Bowse

COTCHETT, PITRE & McCARTHY  
Joseph W. Cotchett  
Ara R. Jabagchourian  
Nanci E. Nishimura  
Steven N. Williams

ENGSTROM, LIPSCOMB  
& LACK  
Walter J. Lack

By Eric George by MS  
Eric M. George

Attorneys for Plaintiff  
Taste of Nature, Inc.

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all of the claims asserted in this Complaint so triable.

DATED: May 9, 2008

DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP  
Edward A. Woods  
Eric M. George  
Michael A. Bowse

COTCHETT, PITRE & McCARTHY  
Joseph W. Cotchett  
Ara R. Jabagchourian  
Nanci E. Nishimura  
Steven N. Williams

ENGSTROM, LIPSCOMB  
& LACK  
Walter J. Lack

By Eric George by MS  
Eric M. George

Attorneys for Plaintiff  
Taste of Nature, Inc.

DREIER STEIN K.  
BROWNE WOODS GEORGE LLP

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Percy Anderson and the assigned discovery Magistrate Judge is Suzanne H. Segal.

The case number on all documents filed with the Court should read as follows:

**CV08- 3073 PA (SSx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

**Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

**Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

**Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

ORIGINAL

SEE ATTACHED FOR LIST OF ATTORNEYS

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TASTE OF NATURE, INC.,  
PLAINTIFF(S)  
v.  
MATSON NAVIGATION CO., INC.; THE  
CARLYLE GROUP; CASTLE HARLAN,  
INC.; HORIZON LINES HOLDING CO.;  
HORIZON LINES, INC.; HORIZON LINES,  
LLC; and ALEXANDER & BALDWIN, INC.,  
DEFENDANT(S).

CASE NUMBER  
CV08-03073 PA (SSx)

SUMMONS

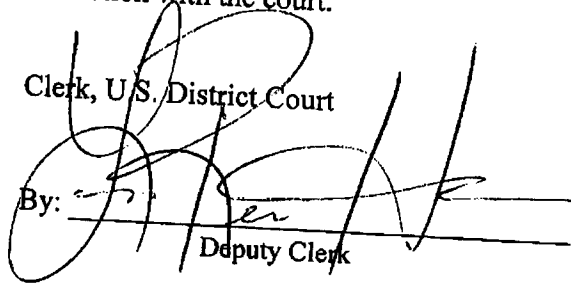
TO: DEFENDANT(S): MATSON NAVIGATION CO., INC.; THE CARLYLE GROUP; CASTLE HARLAN, INC.; HORIZON LINES HOLDING CO.; HORIZON LINES, INC.; HORIZON LINES, LLC; and ALEXANDER & BALDWIN, INC.,

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, SEE ATTACHED LIST, whose address is SEE ATTACHED LIST. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: MAY - 9 2008

By:   
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**Counsel for Plaintiffs**

**DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP**  
Edward A. Woods (SBN 54841)  
Eric M. George (SBN 166403)  
Michael A. Bowse (SBN 189659)  
450 North Roxbury Drive, 7th Floor  
Beverly Hills, CA 90210  
Telephone: (310) 274-7100  
Facsimile: (310) 275-5697  
Email: ewoods@dskbwg.com;  
egeorge@dskbwg.com;  
mbowse@dskbwg.com

**COTCHETT, PITRE & McCARTHY**  
Joseph W. Cotchett (SBN 36324)  
Ara R. Jabaghourian (SBN 205777)  
Nanci E. Nishimura (SBN 152621)  
Steven N. Williams (SBN 175489)  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577  
Email: jcotchett@cpmlegal.com;  
ajabaghourian@cpmlegal.com  
nnishimura@cpmlegal.com

**ENGSTROM, LIPSCOMB  
& LACK**  
A Professional Corporation  
Walter J. Lack (SBN 57550)  
10100 Santa Monica Boulevard  
16th Floor  
Los Angeles, California 90067  
Telephone: (310) 552-3800  
Telecopier: (310) 552-9434  
Email: wlack@elllaw.com

ORIGINAL

<b>PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) TASTE OF NATURE, INC.,	<b>DEFENDANTS</b> MATSON NAVIGATION CO., INC.; THE CARLYLE GROUP; CASTLE HARLAN, INC.; HORIZON LINES HOLDING CO.; HORIZON LINES, INC.; HORIZON LINES, LLC; and ALEXANDER & BALDWIN, INC., County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only): ALAMEDA
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): LOS ANGELES	Attorneys (If Known)
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  SEE ATTACHED LIST OF COUNSEL	Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				
<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																									

**V. REQUESTED IN COMPLAINT:** JURY DEMAND:  Yes  No (Check 'Yes' only if demanded in complaint.)  
**CLASS ACTION** under F.R.C.P. 23:  Yes  No     MONEY DEMANDED IN COMPLAINT: \$

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)  
 5 U.S.C. Section 1. Conspiracy to Fix Prices

**NATURE OF SUIT** (Place an X in one box only.)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS(405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
---	--	--	---	---	--

**VII. IDENTICAL CASES:** Has this action been previously filed and dismissed, remanded or closed?  No  Yes  
 List case number(s):

**OFFICE USE ONLY:** Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

(b). RELATED CASES: Have any cases been previously filed that are related to the present case?  No  Yes

If yes, list case number(s): \_\_\_\_\_

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)  
 Check here if the U.S. government, its agencies or employees is a named plaintiff.

LOS ANGELES COUNTY

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).  
 Check here if the U.S. government, its agencies or employees is a named defendant.

MATSON NAVIGATION CO., INC. -- Alameda; THE CARLYLE GROUP -- Washington, D.C.; CASTLE HARLAN, INC. -- New York;  
HORIZON LINES HOLDING CO. -- North Carolina; HORIZON LINES, INC. -- North Carolina; HORIZON LINES LLC -- North Carolina;  
ALEXANDER & BALDWIN, INC. -- Hawaii.

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)  
Note: In land condemnation cases, use the location of the tract of land involved.

ANGELES COUNTY

X. SIGNATURE OF ATTORNEY (OR PRO PER): \_\_\_\_\_

Date May 9, 2008

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**Counsel for Plaintiffs**

DREIER STEIN KAHAN  
BROWNE WOODS GEORGE LLP  
Edward A. Woods (SBN 54841)  
Eric M. George (SBN 166403)  
Michael A. Bowse (SBN 189659)  
450 North Roxbury Drive, 7th Floor  
Beverly Hills, CA 90210  
Telephone: (310) 274-7100  
Facsimile: (310) 275-5697  
Email: ewoods@dskbwg.com;  
egeorge@dskbwg.com;  
mbowse@dskbwg.com

COTCHETT, PITRE & McCARTHY  
Joseph W. Cotchett (SBN 36324)  
Ara R. Jabaghourian (SBN 205777)  
Nanci E. Nishimura (SBN 152621)  
Steven N. Williams (SBN 175489)  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
Burlingame, CA 94010  
Telephone: (650) 697-6000  
Facsimile: (650) 697-0577  
Email: jcotchett@cpmlegal.com;  
ajabaghourian@cpmlegal.com  
nnishimura@cpmlegal.com

ENGSTROM, LIPSCOMB  
& LACK  
A Professional Corporation  
Walter J. Lack (SBN 57550)  
10100 Santa Monica Boulevard  
16th Floor  
Los Angeles, California 90067  
Telephone: (310) 552-3800  
Telecopier: (310) 552-9434  
Email: wlack@elllaw.com