UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL INSURANCE COMPANY,
Plaintiff,
v.
CLEARFREIGHT INC, et al.,
Defendants.

CLEARFREIGHT INC,
Third-Party Plaintiff,
v.
R&M TRUCKING CO, et al.,
Third-Party Defendants.

Case No. 2:23-cv-05605-MRA-JPR

ORDER GRANTING THIRD-PARTY DEFENDANT R&M FREIGHT, INC.'S MOTION TO DISMISS THIRD-PARTY COMPLAINT WITH LEAVE TO AMEND [ECF 33]

Before the Court is Third-Party Defendant R&M Freight, Inc.'s Motion to Dismiss Third-Party Plaintiff ClearFreight Inc's Third-Party Complaint ("the Motion"). ECF 33. This case was reassigned to the undersigned district judge on February 23, 2024. ECF 43. Pursuant to the Court's Reassignment Order, the Motion was taken under submission without oral argument. ECF 44; *see also* Fed. R. Civ. P. 78; L.R. 7-15. Having considered

the parties' briefing and for the reasons stated herein, the Court **GRANTS** the Motion with leave to amend.

I. FACTUAL & PROCEDURAL BACKGROUND[1]

On July 12, 2023, Federal Insurance Company ("FIC" or "Plaintiff") filed the instant action against ClearFreight Inc ("ClearFreight") and Does 1-10, alleging a claim for damage to ocean cargo under the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701 note. ECF 1 (Compl.) ¶¶ 4-5. FIC designated its claim as an admiralty and maritime claim within the meaning of Federal Rule of Civil Procedure 9(h). *Id.* ¶ 5.

FIC insures cargo. *Id.* ¶ 1. ClearFreight is a carrier. *Id.* ¶ 2. FIC alleges that on June 5, 2022, ClearFreight and others unknown received a shipment of lithium-ion rechargeable batteries in Kaohsiung, Taiwan, for carriage under certain bills of lading. *Id.* ¶ 6. ClearFreight and Doe Defendants contracted to carry this cargo from Kaohsiung, Taiwan to Chicago, Illinois via Long Beach, California in "the same good order, condition, and quantity as when received." *Id.* ¶ 6. When the cargo arrived in Chicago, it was "badly damaged," resulting in a depreciation of value. *Id.* ¶ 7. Pursuant to an insurance policy, FIC indemnified the owner of the cargo for any loss of or damage to the cargo. *Id.* ¶ 8.

On September 9, 2023, ClearFreight filed a Third-Party Complaint ("TPC") against Third-Party Defendants R&M Trucking Co., R&M Freight, Inc., R&M Trucking Intermodal, Inc., Jeff's Fast Freight, Inc., and Roes 1-10. ECF 14. ClearFreight alleges that the damage reported by FIC was caused primarily by Third-Party Defendants' negligence. *Id.* ¶ 11. ClearFreight seeks (1) indemnification, (2) partial equitable indemnification, and (3) contribution from Third-Party Defendants. *Id.* ¶¶ 10-23.

On December 21, 2023, ClearFreight and R&M Freight, Inc. ("R&M Freight") filed a joint stipulation to extend the time to respond to the TPC. ECF 31. In the stipulation,

[1] When deciding a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court is required to presume that all well-pleaded allegations are true, resolve all reasonable doubts and inferences in the pleader's favor, and view the pleading in the light most favorable to the non-moving party. *See Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 249 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

the parties represented that Third-Party Defendants R&M Trucking-Intermodal, Inc., R&M Trucking Co., and Jeff's Fast Freight, Inc. were erroneously sued. *Id.* at 1-2. The stipulation provided that, once R&M Freight responded to the TPC, ClearFreight would dismiss all other Third-Party Defendants. *Id.* R&M Freight filed the instant Motion to Dismiss on January 25, 2024. ECF 33. ClearFreight has not filed a notice of voluntary dismissal as to all other Third-Party Defendants.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." Dismissal is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121 (9th Cir. 2008). To survive a Rule 12(b)(6) motion to dismiss, a complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (per curiam). This is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679.

The court "must accept as true all of the factual allegations contained in the complaint," but it is "not bound to accept as true a legal conclusion couched as a factual allegation." *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

III. DISCUSSION

A. Failure to Satisfy Pleading Standard (All Claims)

As a threshold matter, ClearFreight almost exclusively relies upon "[t]hreadbare recitals of the elements of a cause of action, supported by conclusory statements" to state

its claims. *Iqbal*, 556 U.S. at 678. The Court identifies only one material fact pleaded in the TPC: that FIC's Complaint "arises out of the carriage of goods under R & M Trucking shipment number 82970880 related to certain cargo which was previously transported under ClearFreight bill of lading number S00565821 and ocean bill of lading number OOLU2700550390." ECF 14 ¶ 8. The remainder of ClearFreight's TPC contains legal conclusions. For instance, ClearFreight pleads that R&M Freight, "through their acts, omissions, breaches, negligence, and/or fault were legally responsible for any and all of the events and happenings alleged in Plaintiff's complaint and for proximately causing any damages and/or loss incurred by Plaintiff." *Id.* ¶ 9. If held liable to Plaintiff, ClearFreight alleges, without any factual support, that R&M Freight's negligence was "active, primary, and affirmative," whereas its own negligence or other actionable conduct was only "passive, derivate, and secondary." *Id.* ¶ 11. Considering only the well-pleaded facts, the Court can infer at best that R&M Freight transported the subject cargo at some stage. But ClearFreight does not allege certain foundational facts, such as the leg of carriage undertaken by R&M Freight, the terms of said carriage, when the cargo was transferred to R&M Freight, or the condition of the cargo when received by ClearFreight and when discharged into the care of R&M Freight.

ClearFreight's Opposition does not clarify its argument. ClearFreight speculatively asserts in its Opposition that R&M Freight "undertook to, and participated in, the common carriage of the cargo at issue in the underlying action *in some way* and was *legally responsible*" for the resulting damage. ECF 38 at 3 (emphases added). ClearFreight then argues for the first time that its "theory of legal responsibility" against R&M Freight is "not limited strictly to negligence" because of its "repeated use of the phrases 'any legal theory' and 'other actionable conduct or activity.'" *Id.* at 8. Specifically, ClearFreight contends that the TPC can be "broadly read to include a breach of contract claim." *Id.* at 7. ClearFreight's insistence that the Court read a breach of contract claim speaks for itself.[2]

[2] "In determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint to a plaintiff's moving papers, such as a memorandum in opposition

As R&M Freight argues in its Reply, ECF 42 at 2 n.1, ClearFreight has not provided R&M Freight with "fair notice of what the . . . claim is and the grounds upon which it rests," *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Even if ClearFreight had alleged a contract claim in its TPC, ClearFreight does not set forth facts that would allow the Court to reasonably infer a contract between the parties. In the carriage-of-goods context, a bill of lading is the typical form of a contract between a shipper and carrier. *See OneBeacon Ins. Co. v. Haas Indus., Inc.*, 634 F.3d 1092, 1098 (9th Cir. 2011).[3] "A bill of lading 'records that a carrier has received goods from the party that wishes to ship them, states the terms of carriage, and serves as evidence of a contract for carriage.'" *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 94 (2010) (quoting *Norfolk S. R. Co. v. James N. Kirby,* 543 U.S. 14, 18-19 (2004)). "Courts apply general principles of contract interpretation when construing a bill of lading." *OneBeacon*, 634 F.3d at 1098. Thus, as with any contract, a bill of lading requires offer, acceptance, and consideration. *See generally* Restatement (Second) of Contracts ch. 3-4 (Am. L. Inst. 1981). ClearFreight argues that by referring to a shipment number used by R&M, its TPC alleges that R&M Freight was made "a party to a contract of carriage." ECF 38 at 7-8. But a shipment number is merely a tracking number, not a contract. Unlike a bill of lading, it does not set forth the requisite elements of a contract, the terms of carriage, or any information relevant to the legal relationship between the parties.

The Federal Rule of Civil Procedure 8(a) pleading standard cannot be satisfied through "naked assertions devoid of further factual enhancement" or "unadorned, the defendant-unlawfully-harmed-me accusations." *Iqbal*, 556 U.S. at 678 (citation omitted).

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to a defendant's motion to dismiss." *See Schneider v. Cal. Dep't of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). Thus, even if ClearFreight's Opposition explained the legal theory alleged in its pleading, the focus of the Court's analysis would still be the operative TPC. *See id.*

[3] In its Reply, R&M Freight refers to a bill of lading attached to the TPC, which "shows that Clearfreight hired R&M [Freight] to transport the cargo entirely within the state of Illinois." ECF 42 at 4. The docketed TPC does not contain any exhibits. *See* ECF 14.

Since ClearFreight's pleaded facts "do not permit the court to infer more than the mere possibility of misconduct," it has not shown that it is "entitled to relief" within the meaning of Rule 8(a)(2). *Id*. at 679. Accordingly, the Court grants R&M Freight's Motion to Dismiss on this ground.

B. Preemption Under the FAAAA (Negligence Claim)

Since the parties briefed preemption under the FAAAA, and preemption may be relevant to determining the appropriateness of granting ClearFreight leave to amend the TPC, the Court shall consider this separate ground for dismissal. The FAAAA provides in relevant part that:

> [A] State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). It is indisputable that R&M Freight is a "motor carrier" engaged in the "transportation" of property within the meaning of the FAAAA. *See id.* §§ 13102(14), 13102(23)(A).

"In considering the preemptive scope of a statute, congressional intent 'is the ultimate touchstone.'" *Dilts v. Penske Logistics, LLC*, 769 F.3d 637, 642 (9th Cir. 2014) (quoting *Engine Mfrs. Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 498 F.3d 1031, 1040 (9th Cir. 2007)). The FAAA's preemption clause was modeled on similar provisions in the Airline Deregulation Act of 1978 and Motor Carrier Act of 1980, which Congress had designed to supersede state regulation of air and motor carrier industries and "ensure [that] transportation rates, routes, and services [] reflect 'maximum reliance on competitive market forces.'" *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 367-78 (2008) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378 (1992)). Consistent with preceding regulations but adding a new qualification, the FAAAA preempts regulations that "'relate to a price, route, or service of any motor carrier . . . [specifically] with respect to the transportation of property.'" *Dan's City Used Cars v.*

Pelkey, 569 U.S. 251, 255-56 (2013) (quoting 49 U.S.C. § 14501(c)(1)) (emphasis omitted). With the FAAAA, Congress sought to accomplish two objectives: (1) eliminate competitive advantage enjoyed by air carriers relative to motor carriers, and (2) "'prevent states from undermining federal deregulation of interstate trucking through a patchwork of state regulations'—with Congress particularly concerned about States enacting 'barriers to entry, tariffs, price regulations, and laws governing the type of commodities that a carrier could transport.'" *Cal. Trucking Assoc. v. Su*, 903 F.3d 953, 960-61 (9th Cir. 2018) (quoting *Dilts*, 769 F.3d at 644).

The "relate to" language in the preemption provision encompasses "state enforcement actions having a connection with, or reference to carrier rates, routes, or services." *Rowe*, 552 U.S. at 370 (following *Morales*, 504 U.S. 374, in which the Court interpreted similar language in the preemption provision of the Airline Deregulation Act of 1978). "To determine whether a state law has a 'connection with' rates, routes, or services, courts examine 'the actual or likely effect' of the law." *Miller v. C.H. Robinson Worldwide, Inc.*, 976 F.3d 1016, 1022 (9th Cir. 2020) (quoting *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 660 F.3d 384, 396 (9th Cir. 2011), *rev'd in part on other grounds*, 569 U.S. 641 (2013)). Although the FAAAA may preempt state laws with an indirect effect on rate, route, or service, it does not preempt state laws with only a "tenuous, remote, or peripheral" connection. *Rowe*, 552 U.S. at 370-71 (citation omitted). "Preemption occurs at least where state laws have a *significant* impact related to Congress' deregulatory and pre-emption related objectives." *Id.* at 371 (citation and internal quotation marks omitted) (emphasis added).

R&M Freight asserts that ClearFreight's common law negligence claim falls within the scope of FAAAA preemption because it "directly or indirectly attempt[s] to regulate [R&M's] services with respect to the transportation of property." ECF 33 at 10. ClearFreight rebuts that R&M Freight "makes no reference in its moving papers to any state law regulatory scheme at play." ECF 38 at 6.

Common-law negligence is a law of general applicability. The Ninth Circuit has explained that, in passing the FAAAA, "Congress did not intend to preempt generally applicable state transportation, safety, welfare, or business rules that do not otherwise regulate prices, routes, or services." *Dilts*, 769 F.3d at 644. Indeed, "'broad law[s] applying to hundreds of different industries' with no other 'forbidden connection with prices[, routes,] and services'—that is, those that do not directly or indirectly mandate, prohibit, or otherwise regulate certain prices, routes, or services—are not preempted by the FAAAA." *Id.* (quoting *Air Transp. Ass'n of Am. v. City of San Francisco*, 266 F.3d 1064, 1071 (9th Cir. 2001)).

R&M Freight argues that "subject[ing] a carrier to state tort liability for loss or damage to a shipment would impermissibly 'impose a California standard of reasonableness in place of the market forces' . . . ." ECF 33 at 11 (quoting *A.C.L. Computers & Software v. Fed. Express Corp.*, No. 15-CV-04202-HSG, 2016 WL 946127 (N.D. Cal. Mar. 14, 2016)). R&M Freight contends that, as in *A.C.L.*, applying state tort law would, in effect, "dictate its delivery practices and impact its services and prices in a manner barred by the FAAAA. *Id.* But in the context of a generally applicable law, the FAAAA's "relate-to" test is a fact-specific inquiry: "[w]hat matters is not solely that the law is generally applicable, but where in the chain of a motor carrier's business it is acting to compel a certain result . . . and what result it is compelling (*e.g.*, a certain wage, non-discrimination, a specific system of delivery, a specific person to perform the delivery)." *Su*, 903 F.3d at 966. In *A.C.L.*, the plaintiff alleged that the carrier, FedEx, had breached its duty of care by releasing plaintiff's packages to individuals who presented false identification and thereby failed to prevent a criminal scheme against the plaintiff. 2016 WL 946127, at *2-3. The court determined that relief on such a theory would "require services *significantly different* than what the market might dictate, and these service changes would *likely impact* FedEx's prices." *Id.* (emphases added). Based on the limited factual allegations before it, the Court in this case cannot determine whether ClearFreight's negligence claim would displace prevailing market standards and have the requisite effect

on R&M Freight's prices, routes, or services to fall within the scope of FAAAA preemption.

R&M Freight contends that the instant case is identical to *EIJ, Inc. v. United Parcel Serv., Inc.*, No. 03-CV-7301-CBM-JWJ, 2004 U.S. Dist. LEXIS 18481 (C.D. Cal. Sept. 8, 2004), and *Holmstrom v. United Parcel Serv.*, No. 02-CV-00683-VAP-SGL, 2002 U.S. Dist. LEXIS 26617 (C.D. Cal. Sept. 18, 2002), where courts in this district held that the FAAAA preempts certain consumer negligence claims related to carriage. ECF 33 at 9, 11. The Court does not find either case persuasive. In *EIJ*, the court found that the plaintiff's claims were preempted because they were based on "the delivery, loss of, or damage to goods." 2004 U.S. Dist. LEXIS 18481, at *19-21. But this standard pertains to preemption under the Carmack Amendment, 49 U.S.C. § 14706, not the FAAAA. *See id.* at *19-20 (exclusively citing decisions from sister circuit courts regarding preemption under the Carmack Amendment in reaching its decision).[4] In *Holmstrom*, dismissal was unopposed, and the court determined without analysis that a consumer's negligence claims were barred by the FAAAA. *Holmstrom*, 2002 U.S. Dist. LEXIS 26617, at *1-6.

Without more detailed factual allegations, the Court cannot evaluate whether the actual or likely effect of common-law negligence, as applied here, would cause some economic consequence significant to Congress' preemption objectives. *See Dilts*, 769 F.3d at 645. Accordingly, the Court finds that it would be premature to decide at this stage whether ClearFreight's claims are preempted by the FAAAA.

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[4] The Ninth Circuit has held that "the Carmack Amendment is the exclusive cause of action for [interstate-shipping] contract claims alleging delay, loss, failure to deliver or damage to property." *Hall v. N. Am. Van Lines, Inc.*, 476 F.3d 683, 689 (9th Cir. 2007). R&M Freight does not argue that ClearFreight's claims are preempted by the Carmack Amendment. Thus, the Court declines to inquire further. *See Greenlaw v. United States*, 554 U.S. 237, 243-44 (2008) (describing the party presentation principle, wherein courts "rely on the parties to frame the issues for decision and assign the role of neutral arbiter of matters the parties present").

C. Direct Liability Under COGSA

Lastly, ClearFreight argues that pursuant to Federal Rule of Civil Procedure 14(c)(2), its TPC should be construed to hold R&M Freight directly liable for Plaintiff's COGSA claim. *See* ECF 38 at 9-10. In its Reply, R&M Freight states that "neither the Third-Party Complaint nor Plaintiff's Complaint refer to any COGSA claim against R&M [Freight], or contain any factual allegations as to R&M [Freight] to support a COGSA claim against R&M [Freight]." ECF 42 at 4.

Federal Rule of Civil Procedure 14(c) governs third-party practice in admiralty and maritime cases. The defendant in admiralty "may, as a third-party plaintiff, bring in a third-party defendant who may be wholly or partly liable—either to the plaintiff or to the third-party plaintiff—for remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 14(c)(1). If the third-party plaintiff in admiralty "demand[s] judgment in the plaintiff's favor against the third-party defendant," the action "shall proceed as if the plaintiff had commenced it against the third-party defendant as well as the third-party plaintiff." *Id.* 14(c)(2).

The Ninth Circuit has instructed that the "demand" requirement in Rule 14(c)(2) is not to be interpreted "rigidly." *See Royal Ins. Co. of Am. v. Sw. Marine*, 194 F.3d 1009, 1018 (9th Cir. 1999). A demand has been made when "the unmistakable meaning of the language in the third-party complaint was to designate the third-party defendant as a defendant to plaintiff's complaint." *Id.* (quoting *Riverway Co. v. Trumbull River Servs., Inc.*, 674 F.2d 1146, 1154 (7th Cir. 1982)). In *Royal Insurance*, the Ninth Circuit held that although neither third-party complaint contained explicit "demand" language, both third-party complaints "specifically and repeatedly referred to Rule 14(c)," "were captioned 'Third Party Complaint [F.R.Civ.P.14(c)]' . . . and both prayed that the Third Party Defendant answer and respond to the complaint of [the plaintiff] in accordance with Rule 14(c)." *Id.* (emphasis omitted). Notably, "both explained how and why the third-party was directly liable to [the plaintiff]." *Id.*

It is not "unmistakable" from the face of ClearFreight's TPC that it intended for R&M Freight to directly defend against FIC's Complaint. *Id.* To be sure, there is some evidence that ClearFreight has made a demand for judgment in Plaintiff's favor and against R&M Freight. The TPC is captioned "THIRD PARTY COMPLAINT BY DEFENDANT CLEARFREIGHT INC [Fed. R. Civ. P. Rule 14(c)(2)]" (brackets in original), explicitly naming the relevant subdivision. ECF 14 at 1. In the "Jurisdiction" section, ClearFreight alleges that "Third-Party Defendants . . . are or may be liable for all or part of the claims asserted against ClearFreight in the original complaint" and further states that it "seeks to bring in the Third-Party Defendants to defend against Plaintiff's claims." *Id.* ¶ 1. In its prayer for relief, ClearFreight also states that it "prays for judgment on its third-party complaint (in addition to any judgment in favor of Plaintiff against the Third-Party Defendants as to Plaintiff's complaint)." *Id.* at 6; *see also Campbell Indus., Inc. v. Offshore Logistics Int'l*, 816 F.2d 1401, 1406 (9th Cir. 1987) (holding that Rule 14(c)(2) was satisfied by a third-party complaint praying that the third-party defendant "make its defenses and answer directly to the claims of the Plaintiff . . .").

Critically, however, ClearFreight does not explain how or why R&M Freight is directly liable to FIC in a manner that would permit R&M Freight to respond to FIC's claims. *Cf. Royal Ins.*, 194 F.3d at 1018 (finding that the factual allegations within the third-party complaints indicate that the third-party plaintiffs intended to hold the third-party defendants directly liable to the plaintiff); *Riverway Co.*, 674 F.2d at 1148 (noting that the third-party complaint described in detail how the third-party defendants' negligence damaged plaintiff); *see also* Fed. R. Civ. P. 12(e) (providing that a pleading that is "so vague or ambiguous that the party cannot reasonably prepare a response" would be the appropriate subject of a motion for a more definite statement). As discussed in Section III.A., *supra*, ClearFreight's TPC is devoid of factual matter.

Absent a well-pleaded TPC that "unmistakably mean[s]" to "demand judgment in the plaintiff's favor against the third-party defendant," *Royal Ins.*, 194 F.3d at 1018, the action cannot "proceed[] as if the plaintiff had commenced it against the third-party

defendant as well as the third-party plaintiff." *See* Fed. R. Civ. P. 14(c)(2). In other words, R&M Freight cannot be required to "defend under Rule 12 against the plaintiff's claim as well as the third-party plaintiff's claim." *See id*.

D. Leave to Amend

Federal Rule of Civil Procedure 15(a) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). In general, "[t]he court should freely give leave when justice so requires." *Id.* "This policy is to be applied with extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)). The Court finds that the deficiencies in the TPC, as identified in this Order, may be cured through further amendment. Therefore, ClearFreight may amend its TPC in conformity with this Order if it can do so consistent with Federal Rules of Civil Procedure 8(a) and 11.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **GRANTED** with leave to amend. The Court further ORDERS as follows:

1. ClearFreight shall file a First Amended TPC within twenty-one (21) days of this Order. Failure to timely file an amended pleading may result in dismissal of this third-party action with prejudice. *See* Fed. R. Civ. P. 41(b).

2. R&M Freight shall respond within twenty-one (21) days of service of the First Amended TPC. *See* Fed. R. Civ. P. 12(a)(1)(A).

3. ClearFreight shall show cause in writing within seven (7) days of this Order why this action should not be dismissed for lack of prosecution as to Third-Party Defendants R&M Trucking Co., R&M Trucking Intermodal, Inc., and Jeff's Fast Freight, Inc. The parties previously represented that the above-named Third-Party Defendants were erroneously sued and that ClearFreight would voluntarily dismiss those Third-Party Defendants once R&M Freight filed a response. Accordingly, as an alternative to a written

response, the filing of a Notice of Voluntary Dismissal as to the above-named Third-Party Defendants shall be deemed an appropriate response. *See* Fed. R. Civ. P. 41(a).

IT IS SO ORDERED.

Dated: May 31, 2024

HON. MÓNICA RAMÍREZ ALMADANI
UNITED STATES DISTRICT JUDGE