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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION
15

16 CURTIN MARITIME CORP., a
17 California corporation,

18 Plaintiff,

19 vs.

20 SANTA CATALINA ISLAND
COMPANY, a Delaware corporation;
21 AVALON FREIGHT SERVICES,
LLC, a Delaware corporation,

22 Defendants.
23
24

Case No. 2:16-cv-3290

**CIVIL COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF:**

**(1) SECTION 2 OF THE SHERMAN
ACT;
(2) SECTION 1 OF THE SHERMAN
ACT; and
(3) CALIFORNIA UNFAIR
COMPETITION ACT (BUS. &
PROF. CODE § 17200 *et seq.*)**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Curtin Maritime Corp. files this Complaint against defendants Santa
2 Catalina Island Company and Avalon Freight Services LLC, and demanding trial by
3 jury, complains and alleges as follows:

4 **I.**

5 **THE PARTIES**

6 1. Plaintiff Curtin Maritime Corp. (“Curtin” or “Curtin Maritime”) is a
7 California corporation with its principal place of business located at 1500 Pier C,
8 Long Beach, California 90813. Since 1997, Curtin has been engaged in the business
9 of providing a full range of maritime services including, but not limited to, ocean
10 and harbor towing, maritime construction and dredging, cargo, barge services and
11 salvage. Curtin owns and operates a fleet of tugs and barges. Curtin’s owner and
12 CEO, Martin Curtin, was a long-time resident of Santa Catalina Island.

13 2. Defendant Santa Catalina Island Company (“SCICo”) is a corporation
14 organized and existing under the laws of Delaware with headquarters in Avalon,
15 California. Santa Catalina Island, often called Santa Catalina or just Catalina, is an
16 island located 26 miles south-southwest of Los Angeles and is part of Los Angeles
17 County. Beginning in about the 1920s, the island was developed first by William
18 Wrigley Jr. William Wrigley acquired a majority interest in SCICo in 1919, and
19 SCICo is currently owned by his descendants. In or about 1975, the Wrigleys
20 donated most of the land on the island to and created the Santa Catalina
21 Conservancy. Almost all of the remaining land is owned by SCICo and the trade
22 and commerce of Catalina is entirely dominated by SCICo. In addition to being the
23 largest landowner on the island, SCICo holds a significant number of land leases for
24 the small businesses on Catalina and is the island’s largest employer.

25 3. Defendant Avalon Freight Services, LLC (“AFS”) is a limited liability
26 corporation organized and existing under the laws of Delaware doing business in the
27 County of Los Angeles, California, with headquarters located in San Pedro,
28 California. AFS now controls 100% of the freight originating from or shipped to the

1 City of Avalon by barge. AFS operates Pebbly Beach, the only location available
2 on the island available to facilitate the shipment of goods into and out of Avalon.

3 4. AFS is owned and managed by Gregory Bombard and Harley Franco.
4 Mr. Bombard and his family also own Catalina Channel Express, Inc. (“Catalina
5 Express”), which has operated a passenger ferry service for 35 years and currently
6 provides approximately 90% of the passenger ferry services to and from the island.

7 5. The transportation of goods into and out of Catalina is in the flow of
8 interstate commerce and directly involves and affects interstate commerce. Products
9 and goods that are manufactured, produced, distributed or sold outside of California
10 are shipped across state lines, and over federal waters, to reach Avalon.

11 Accordingly, the conduct alleged hereinafter is not only directly in, but also directly
12 restrains and adversely affects such interstate commerce.

13 II.

14 JURISDICTION AND VENUE

15 6. This Complaint is filed and this action is instituted under Sections 4
16 and 16 of the Clayton Act (15 U.S.C. §§ 15, 26) to recover the damages caused by
17 past and continuing violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. §§
18 1, 2), and California’s Unfair Competition Act (Bus. & Prof. Code § 17200 *et seq.*),
19 as alleged herein.

20 7. This Court has original and exclusive jurisdiction over the subject
21 matter of this civil action under 28 U.S.C. §§ 1331 and 1337. This Court may
22 exercise supplement jurisdiction over the state law claim pursuant to 28 U.S.C. §
23 1367.

24 8. Venue in this District is proper because all parties transact business on
25 a systematic and continuous basis within this District, and may be found here,
26 within the meaning of 15 U.S.C. §§ 15, 22 and 28 U.S.C. § 1391. Further, the
27 unlawful acts alleged herein were performed and occurred in material part within
28 this District.

1 III.

2 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

3 **A. The SCICo/AFS Monopoly of Shipping**

4 9. Santa Catalina is an island. Its sole significant and only incorporated
5 city is Avalon, where about 90% of the island's 4,000 permanent residents reside.
6 Catalina hosts over one million visitors per year.

7 10. While it is possible to ship goods into and out of Catalina by air, both
8 the physical and cost limitations are high and therefore extremely limiting. The
9 island's only airport is located over 30 minutes from Avalon, and its single runway
10 cannot accommodate typical cargo aircraft or commercial/passenger flights. Thus,
11 large or heavy items, such as building materials or furniture, cannot be shipped by
12 air because of the space and weight limitations of aircraft and because such items
13 must be able to fit through the hatch of the aircraft. Many businesses and
14 restaurants on the island require reliable daily freight delivery by sea because it is
15 not feasible in terms of cost or volume to fly in necessities, such as fresh food, by air
16 every day. Additionally, one of the major items required on the island is motor fuel
17 and it is not practicable to ship sufficient fuel into Catalina by air. Accordingly, the
18 overwhelming amount of freight shipped into or out of Catalina is accomplished by
19 sea, frequently by tug and barge services between San Pedro or Long Beach harbors
20 and Avalon. There is no reasonably interchangeable service for shipping freight by
21 sea in this market, and the cross-elasticity of demand between freight shipping by
22 sea and other modes of shipping is extremely low.

23 11. The shipment of freight by sea between Avalon and the Southern
24 California mainland is the relevant product/geographic market.

25 12. All freight, including mainly fuels, foodstuffs, consumable goods,
26 furniture, machinery and building supplies are transported between the mainland
27 and island's barge and warehouse operation center in Avalon, known as Pebbly
28 Beach.

1 13. Defendant AFS has a 100% monopoly of such barge freight business to
2 and from Avalon by virtue of a ten-year exclusive lease for the use of Pebbly Beach
3 granted to defendant AFS by defendant SCICo.

4 14. SCICo owns the Pebbly Beach facility, which consists of a concrete
5 docking facility, and a freight operations yard and warehouse. The Pebbly Beach
6 facility is the only option available for delivering freight by sea to Avalon.

7 15. Construction of a new facility functionally similar to Pebbly Beach
8 would be impracticable, not only because it would require significant infrastructure
9 investments, but also because SCICo owns virtually all of the useable coastline and
10 potential docking points on the island. The only possible docking point on the
11 island that is not owned by SCICo is owned by the City of Avalon and lies within a
12 protected marine sanctuary. The California State Lands Commission and the
13 California Public Utilities Commission both found the Pebbly Beach facility to be
14 the only option available for delivering freight by sea to Avalon.

15 16. The maximum rate charged for freight operations to Avalon is
16 regulated by the California Public Utilities Commission (“CPUC”), but the
17 Commission does not have authority to regulate the use, or terms of use, of the
18 Pebbly Beach facility. CPUC Commissioner Mike Florio commented on February
19 25, 2016: “I found this to be a very frustrating situation. What I see here is
20 unchecked monopoly power being exercised by SCICo to prevent any competition
21 with what is essentially an affiliated company, Avalon [AFS], providing the
22 transportation service, and, I mean, that’s why this Commission exists is to prevent
23 the exercise of monopoly power. At the same time, back in 1987, the Legislature
24 repealed the statutes that gave us the authority to regulate docks or wharfs, which,
25 interestingly enough, is mentioned as a public utility service in the Constitution, but
26 the enabling statutes were repealed.”

17. The State Lands Commission owns the submerged land at Pebbly Beach, which it leases to SCICo on a non-exclusive basis with the Pebbly Beach freight operator as an approved sublessee. The lease with SCICo reserves the State Lands Commissions' right to "lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease." During a meeting on June 29, 2015, the State Lands Commission decided to defer to the CPUC for a determination of which and how many freight operators would ship out of Pebbly Beach. Land Management Division Chief Bugsch stated during the meeting: "Debate surrounds whether or not there is a need for multiple freight carriers and whether or not the facility can accommodate multiple freight carriers. The CPUC is best equipped to answer questions surrounding competition and may or may not choose to address these issues to some degree in their proposed decision."

18. Defendant AFS has an absolute monopoly on the freight shipment of goods into and out of Avalon and that monopoly is exploited by defendant SCICo to insure that no outsider can threaten its ownership and dominance of the island. In that regard, SCICo a majority of the stores and outlets which sell goods and commodities to the public and the prices at which it sells are unconstrained by competition and are inflated by the non-competitive high shipping costs brought about by the monopoly and perpetuated by the monopolistic conduct alleged herein.

B. The Exclusive Lease of Pebbly Beach to AFS by SCICo

19. AFS's shipping monopoly is facilitated and created by defendant SCICo's ownership of the Pebbly Beach facility which it has leased to defendant AFS on an exclusive basis for a ten-year period running from April 1, 2016 to March 31, 2026. The lease contains the express proviso: "Lessor (SCICo) shall not lease space in the Project or grant use rights with respect to the Project to anyone

1 other than Lessor for a use competitive with the Avalon Freight Service unless
2 Lessor is legally required to do so . . .”

3 20. The lease also contains a revenue sharing provision whereby AFS pays
4 additional rent in the form of a percentage of its gross revenues attributable to the
5 operation of the freight service. The terms state: “Lessee (AFS) shall pay separate
6 and additional rent (“Additional Rent”) calculated as a percentage of gross revenues
7 attributable to the operation of the Avalon Freight Service (“AFS Gross Revenues”) . . .” The lease defines “Gross Revenues” as including: “(i) the gross amount of all
8 revenues from the shipment of freight into the Project . . . or from the Project, and
9 (ii) all other gross revenues from the provision of the services or the sale or rental of
10 any goods, wares or merchandise at or from the Premises, by Lessee, sublessees, or
11 others operating through or under Lessee. . .”

12 21. This revenue sharing provision was not included or mentioned in
13 SCICo’s Request for Proposals when it solicited new freight shippers, and revenue
14 was not shared between SCICo and Catalina Freight Line, the previous operator of
15 Pebbly Beach. Because of this revenue sharing provision, SCICo has a financial
16 stake in AFS’s freight operations, benefits from the exclusion of competition, and
17 has no incentive to enter into good-faith negotiations with any competitor of AFS.
18

19 22. Pebbly Beach includes a large warehouse facility of roughly 10,000
20 square feet. SCICo leased to AFS only half, or approximately 5,000 square feet, of
21 the warehouse and retained the exclusive right to use the remainder. SCICo also
22 reserved the right to use the Pebbly Beach facility and wharf to freight goods for
23 SCICo’s own use or consumption using its own equipment.

24 23. AFS must seek approval from SCICo before applying to the CPUC for
25 an increase in tariff rates.

26 **C. SCICo’s Selection of AFS As the Exclusive Freight Shipper to Avalon**

27 24. Prior to March 31, 2016, Catalina Freight Line (“CFL”) provided
28 freight hauling to Avalon for several decades under a long-term lease of the Pebbly

1 Beach facility with SCICo. In 2012, SCICo issued Request for Proposals (“RFPs”)
2 to select a new long-term freight operator to assume operations when CFL’s lease
3 expired.

4 25. Proposals from interested freight carriers were due on February 28,
5 2013, and required that each submit information concerning their specific technical
6 capabilities and at least two prior contracts demonstrating successful past
7 performance within the previous five years. Of the proposals received from eight
8 interested operators, CFL, Curtin Maritime, and AFS were selected by SCICo as
9 finalists.

10 26. SCICo announced on January 15, 2014 that defendant AFS had won
11 the RFP and would assume a long-term exclusive lease of Pebbly Beach and all
12 freight services for ten years beginning on April 1, 2016. At the time, AFS was a
13 newly-formed venture without employees, management, vessels, or equipment. It
14 was the only recipient of SCICo’s RFP that was not already an operational freight
15 hauler and which had no experience in freight management logistics or transporting
16 freight as a vessel common carrier. Because it had no assets, vessels or employees,
17 AFS’s “winning” proposal depended on the leasing of a fleet of vessels from GBHF
18 Leasing, another entity jointly owned by Mr. Bombard and Mr. Franco, and the
19 utilization of existing facilities and equipment under the control Mr. Bombard’s
20 company, Catalina Express.

21 27. Despite the critical importance of freight hauling to the survival and
22 prosperity of Catalina’s residents, the public was not involved in SCICo’s RFP
23 process or the selection of AFS.

24 28. From the inception of SCICo’s RFP process, Curtin Maritime objected
25 to the selection of a new freight hauler by SCICo and not the citizens of Catalina.
26 During the RFP process, and based on CFL’s long history as the exclusive freight
27 hauler out of Pebbly Beach, Curtin Maritime mistakenly believed that there could
28 only be a single operator of the Pebbly Beach facility because the CPUC would only

1 grant a single license in the form of a Certificate of Public Convenience and
2 Necessity (“CPCN”). As a result, Curtin Maritime did not object to the exclusivity
3 terms during the RFP process.

4 **D. Proceedings Before The CPUC**

5 29. On October 28, 2014, AFS filed an application with the CPUC seeking
6 authority to operate scheduled vessel common carrier freight service between the
7 Port of Los Angeles and Catalina. Curtin Maritime and CFL filed protests to AFS’s
8 application. Proceedings before the CPUC commenced, including a Public
9 Participation Hearing concerning the SCICo-AFS lease and the Pebbly Beach
10 facility.

11 30. AFS and SCICo defended their exclusive lease of Pebbly Beach before
12 the CPUC by claiming the facility could not accommodate more than one freight
13 operator at a time and that the CPUC had no authority to compel SCICo to allow
14 multiple operators to use the facility.

15 31. During the CPUC proceedings, it became clear that SCICo and Mr.
16 Bombard started discussions about providing freight services through the Pebbly
17 Beach facility in August 2012, before SCICo initiated the formal RFP process.
18 These negotiations centered on the use of Berth 95 in the Port of Los Angeles as the
19 possible mainland terminal for such freight services. Berth 95 is adjacent to and
20 intermingled with Catalina Express’s facilities. Mr. Bombard has previously leased
21 portions of Catalina Express’s facilities at Berth 95 to SCICo under what Mr.
22 Bombard openly referred to as a “handshake deal.”

23 32. SCICo and AFS are inextricably linked due to their web of common
24 and interrelated interests and business operations, including but not limited to their
25 shared use of Pebbly Beach, the revenue sharing provisions in their long-term
26 exclusive lease, and SCICo’s effective control over AFS’s freight operations,
27 including oversight of when and the terms under which AFS may seek a rate
28 increase from the CPUC. The CPUC acknowledged this fact: Commissioner Mike

1 Florio, examining SCICo’s relationship to AFS, stated “we. . . aren’t really dealing
2 with an affiliate here. We’re dealing with common ownership of – of various
3 companies in . . . an economic hammerlock on -- on the economy of Catalina
4 Island.” AFS is jointly owned by Mr. Franco and Mr. Bombard, who have built a
5 web of affiliate transactions between AFS and other companies that they own
6 individually or collectively, and whose businesses are critical to the economy of
7 Catalina, and therefore critical to SCICo as the island’s largest landlord, landowner,
8 and employer. During the proceedings before the CPUC, SCICo/AFS obfuscated
9 the nature of their affiliate relationships, leading the CPUC to comment that
10 “whether by design or default, the complexity and nature of AFS’ affiliate
11 relationships complicates Commission tariff review of AFS’ costs and income.”

12 33. On June 8, 2015, the CPUC held a Public Participation Hearing during
13 which statements were made by numerous interested parties. Richard Coffey,
14 owner of CFL, commented at the hearing: “As a long time and current operator of
15 the Pebbly Beach facility, we are experts -- we are the experts on how it can be
16 utilized, and we know that the facility can easily accommodate multiple carriers
17 through simple scheduling management, and would be happy to operate the facility
18 if our competitors don’t believe they can. As we all know, the benefits of
19 competition are many, and we are hopeful that the CPUC can help this community
20 achieve them.” During this hearing, at least eleven members of the public spoke in
21 favor of open competition for freight hauling services, including City of Avalon
22 Mayor Ann Marshall, City Councilman Joe Sampson, and many long-time residents
23 and small business owners in Avalon.

24 34. During the proceedings before the CPUC, CFL provided testimony
25 from a freight management logistics and supply chain expert, Daniel Avila. Mr.
26 Avila stated that the “Pebble Beach yard has more than sufficient capacity to
27 support the storage and shipping operations of three shippers throughout all time
28 periods in a given operating day,” and that “[m]ulti-shipper operations are

1 commonplace in a variety of supply chains and there are several operating models
2 which can be employed for a multi-shipper facility at Pebbly Beach.”

3 35. Indeed, the Pebbly Beach warehouse is sufficiently large to provide
4 adequate space to accommodate the operations of more than one freight hauler. As
5 provided in the exclusive lease, only half of all available warehouse space is
6 currently utilized by AFS to store all commodities shipped to Avalon. Mr. Coffey,
7 who had run operations at Pebbly Beach through CFL for many years, stated during
8 the CPUC hearings that: “[R]ealistically, two and maybe three full barges in a day
9 could easily be accommodated at Pebbly Beach, as we often provide that level of
10 service without experiencing problems or congestion in the yard.”

11 36. Consistent with the fact that it is feasible for two or more freight
12 haulers to utilize the Pebbly Beach facility, SCICo’s lease with AFS reserved
13 SCICo’s right to use Pebbly Beach to haul goods for SCICo’s own use or
14 consumption using its own equipment. This allows SCICo to ship goods necessary
15 for its own businesses and restaurants on the island at a different or lower cost than
16 all other businesses which must ship through defendant AFS.

17 37. Because SCICo and AFS are both monopolists, as described herein,
18 and because the Pebbly Beach facility cannot be practicably or reasonably
19 duplicated and because it is abundantly feasible to provide and share the Pebbly
20 Beach facility among freight companies, defendants’ adamant refusal to do so, i.e.
21 refusing access to an essential facility is an act of monopolization.

22 **E. Plaintiff Curtin Maritime Stands Poised to Bust the Monopoly and**
23 **Lower Prices**

24 38. Competition in shipping goods and commodities to and from Avalon is
25 both desirable and feasible. Despite the limitations inherent in any island’s
26 economy, competition exists in the markets for similar delivery, water taxi or ferry
27 services in Catalina.

1 39. On January 8, 2015, Curtin Maritime filed an application with the
2 CPUC seeking authority to provide scheduled vessel common carrier freight service
3 between the Port of Long Beach and all points on Catalina, and between any points
4 on the island. On February 6, 2015, CFL filed a protest to Curtin Maritime's
5 application but later supported Curtin Maritime's request to provide competitive
6 service. AFS responded to Curtin Maritime's application, arguing that the Pebbly
7 Beach facilities could not be used by multiple operators.

8 40. Many freight operators, including AFS, must coordinate the timing of
9 their landing on Pebbly Beach with high tide. Curtin Maritime's vessels are not
10 restricted by the tide because they have longer ramp length and could land at Pebbly
11 Beach at any time of day, including during low tide. It would be possible for Curtin
12 Maritime and one or more freight operators to operate out of the Pebbly Beach
13 facility simultaneously.

14 41. On February 25, 2016, the CPUC issued a Certificate of Public
15 Convenience and Necessity ("CPCN") to Curtin Maritime to provide cargo
16 transportation between the mainland and Catalina. To encourage and promote
17 competition between qualified carriers, the CPUC also granted a certificate to AFS.
18 In support of that decision, the CPUC noted "competition in shipping, as well as
19 reliable and safe shipping, is absolutely imperative to the economies of the island
20 and also to the safety of the electric and water service" of the island.

21 42. In this regard, the CPUC suggested it supports Curtin Maritime's
22 proposal that would allow multiple users of the Pebbly Beach facility and found that
23 plaintiff "Curtin Maritime possesses the operational fitness required to obtain a
24 CPCN" and that Curtin Maritime's participation in the shipping of good and
25 commodities to and from Avalon would "likely lead to lower rates..." During a
26 CPUC meeting on February 25, 2016, Commissioner Catherine Sandoval also raised
27 antitrust concerns over the long-term exclusive lease between SCIC and AFS for the
28 use of Pebbly Beach and commented: "this is a classic Essential Facilities Doctrine

1 type of case where, you know, given not just that wharf but it's also a question of
2 geography of what -- what would be able to facilitate that type of service if that one
3 essential facility were controlled. . . for the exclusive use of an affiliate in a way that
4 -- that harms competition, and . . . harm[s] all the consumers."

5 43. The proceedings before the CPUC were largely held before
6 Administrative Law Judge Darin E. Farrar. After several rounds of briefing by AFS,
7 Curtin Maritime and CFL, multiple days of live testimony, and a site visit to Pebbly
8 Beach, ALJ Farrar issued a Proposed Decision on January 22, 2016 that denied a
9 CPCN to AFS but granted one to Curtin Maritime. In this decision, ALJ Farrar
10 concluded: "It is difficult to imagine a more obvious and improper delegation of
11 Commission authority than allowing a financially interested private party (such as
12 SCICo), to install a new freight shipping company (AFS). . ." (Brackets and
13 parenthesis in original.) The Proposed Decision also denied a CPCN to AFS on the
14 grounds that "its affiliate agreements and structure allow inside dealing and
15 compromise regulatory review and oversight."

16 44. To further its policy of encouraging competition, the CPUC ultimately
17 adopted an alternate decision which granted CPCNs to both Curtin Maritime and
18 AFS. The CPUC granted Curtin Maritime a CPCN despite acknowledging that it
19 lacked the authority to compel SCICo to grant access to Pebbly Beach, and that "the
20 new entrant [Curtin] is, practically speaking, precluded from functioning."

21 45. Curtin Maritime currently leases a 12,000 square foot facility located at
22 1500 C Street, Berth 57, Long Beach, from which it runs its current shipping
23 operations. Curtin has operated at this location for at least 12 years and its current
24 lease terms continue until December 31, 2019. Curtin Maritime regularly loads
25 large barges at this location, including for example, materials necessary for
26 Chevron's recent offshore marine construction. To accommodate the regulated
27 freight service, Curtin Maritime secured a lease at 1400 Pier C Street, Berth 57,
28 Long Beach, for 1.1 acres of land and 0.9 acres of submerged land.

1 46. The shipping of freight to and from Avalon is an approximately \$6
2 million business every year. Curtin Maritime runs an efficient tug and barge
3 operation with low operating costs and would profit even if the total volume of
4 freight shipped to and from Avalon did not change with the introduction of multiple
5 freight shippers sharing the route and/or Pebbly Beach. During the CPUC hearings,
6 Mr. Curtin explained: “We have an existing tug and barge operation; we have
7 existing infrastructure; we have existing cost structures; we have excess capacity
8 with our assets, and ultimately, any additional revenues that we get out of Catalina
9 are a huge bonus.” Curtin Maritime also has the ability to design and build its own
10 vessels should Avalon’s freight needs fluctuate.

11 47. Curtin Maritime has repeatedly sought a lease or contract allowing it to
12 co-use the Pebbly Beach facility. In 2015, SCICo rejected Curtin Maritime’s
13 request for a lease to Pebbly Beach but stated that it would be willing to reopen the
14 discussion if Curtin Maritime obtained a CPCN. After receiving a CPCN, Curtin
15 Maritime renewed its request in writing that SCICo grant access to Curtin Maritime
16 for the Pebbly Beach facility. SCICo sent a written response on March 16, 2016
17 summarily rejecting Curtin Maritime’s request for access to the Pebbly Beach
18 facilities. To date, Curtin Maritime has been unable to secure an island side landing
19 facility suitable for the delivery of freight.

20 48. Curtin Maritime has demonstrated to the satisfaction of the CPUC and
21 others how its fleet of tugs and barges are different from AFS’s and how these
22 differences would easily allow each company to share the use the facilities without
23 conflict. ALJ Farrar wrote in his decision, “While Curtin Maritime’s approach for
24 land-based and waterside facilities may differ from the more traditional approaches
25 taken by CFL and AFS, there is nothing to suggest that it is infeasible, and indeed, it
26 is consistent with Curtin Maritime’s generally more innovative thinking.”
27 Nonetheless, to protect its monopoly and to maintain the non-competitive and
28

1 inflated price of shipping, fuel and other commodities, AFS and SCICo each have
2 continued to deny Curtin Maritime reasonable access to Pebbly Beach.

3 49. The refusal of defendants to share the Pebbly Beach facility is an act of
4 monopolization because it is intended to, and does eliminate, a competitor which
5 threatens to lessen defendants' control, prices and profits.

6 IV.

7 CLAIMS FOR RELIEF

8 FIRST CAUSE OF ACTION

9 (Monopolization In Violation of Section 2 of the Sherman Act)

10 (15 U.S.C. § 2)

11 50. Plaintiff incorporates by reference the allegations of paragraphs 1
12 through 49, as though fully set forth herein.

13 51. Section 2 of the Sherman Act (15 U.S.C. § 2) prohibits, *inter alia*, the
14 willful monopolization of any part of the trade or commerce among the States.
15 Defendants' conduct and practices are anticompetitive, predatory and/or
16 exclusionary.

17 52. Plaintiff Curtin Maritime has the requisite standing to assert antitrust
18 claims against defendants because it is a participant and competitor in the relevant
19 market of freight shipping services and would ship freight by sea to and between the
20 Southern California mainland and Avalon if not for defendants' unlawful conduct.

21 53. Defendants are engaged in monopolizing by engaging in an
22 anticompetitive and exclusionary scheme, including the exclusive ten-year lease
23 between SCICo and AFS for use of the Pebbly Beach facility, to preclude
24 competition in the relevant market.

25 54. SCICo/AFS has a monopoly on freight shipping by sea as it controls
26 100% of all freight shipping to and from Avalon through the exclusive control of the
27 Pebbly Beach facility. SCICo/AFS, through affiliates and owners, also controls
28 roughly 90% of the passenger ferry services to and from Catalina. Thus SCICo/AFS

1 have a monopoly on all travel or transportation of goods to Avalon and passengers
2 to and from the island.

3 55. Defendants have undertaken their anticompetitive and exclusionary
4 conduct with the purpose of monopolizing, with the deliberate and specific intent to
5 monopolize freight shipping between the mainland and Avalon, and specifically to
6 eliminate, destroy or foreclose meaningful competition in the relevant market by
7 refusing Curtin Maritime access to the Pebbly Beach facility so that defendants can
8 continue to maintain their “hammerlock” on Catalina Island and charge supra-
9 competitive prices for shipping, fuel and other commodities sold on the island.

10 56. Privately-owned businesses on the island which compete against
11 businesses owned or operated by SCICo face a competitive disadvantage because
12 they are forced to freight commodities through AFS at supra-competitive rates.
13 SCICo’s lease retains partial use of Pebbly Beach’s facilities for SCICo’s own use
14 so that it may freight and warehouse goods for its own businesses without the use of
15 AFS’s services.

16 57. Residents of Avalon have been deprived of the choice between freight
17 haulers on the basis of price, quality, reliability, or any other criteria. Competition
18 in the market for freight hauling would lower the price of freight shipping, which
19 would in turn lower the high cost of goods on the island, and provide additional
20 reliable freight services to Avalon in the event of an emergency, labor strike,
21 extreme weather or sea conditions.

22 58. Significant and high barriers to market entry exist in the form of
23 regulations, the necessity of long-term terminal facilities on the mainland, high
24 capital investment including tugs, barges, equipment and staff, and defendants’
25 monopolies. These barriers discourage new entry into the relevant market.

26 59. Defendants possess and have wielded the power in the relevant market
27 to control prices and exclude competition.

28

60. Defendants' monopoly position in the relevant market has been acquired and maintained through intentional exclusionary and predatory conduct, as opposed to business acumen, accident, or by virtue of offering a superior product or service, greater efficiency, or lower prices.

61. There is no legitimate business justification for SCICo/AFS's refusal to provide reasonable access to the Pebbly Beach facility. SCICo/AFS's asserted justifications are merely pretextual and the anticompetitive effects of these restraints outweighs any purported beneficial effects on competition.

62. Defendants anticompetitive acts have caused substantial economic injury to plaintiff Curtin Maritime and have also injured competition in the relevant markets by, *inter alia*, foreclosing, lessening and eliminating potential competition and depriving consumers from securing competitive shipping prices and lower prices for the goods and commodities subject to the supra-competitive shipping prices.

63. The aforesaid conduct of defendants has produced antitrust injury to Curtin Maritime, competition and consumers, and unless enjoined by this Court, will continue to produce at least the following anticompetitive, exclusionary and injurious effects upon competition in interstate commerce:

(a) competition for shipping in the relevant market has been substantially and unreasonably restricted, lessened, foreclosed and eliminated, and consumers have been forced to pay supra-competitive prices for shipping;

(b) the creation and maintenance of significant and insurmountable barriers to entry, thereby ensuring continued unlawful maintenance of defendants' monopolies;

(c) prices for fuel, goods and other commodities sold on Catalina have been artificially inflated because of the shipping monopoly; and

(d) consumers have been deprived of any meaningful choice as to selection, price, convenience, location and quality of shipping services.



64. By reason of, and as a direct and proximate result of defendants' anticompetitive and exclusionary practices and conduct, Curtin Maritime has suffered, and will continue to suffer, financial injury to its business and property. Curtin Maritime has not yet calculated the precise extent of its past damages and cannot now estimate with precision the future damages that continue to accrue, but when Curtin Maritime does so, it will seek leave of the Court to insert the amount of the damages sustained herein.

65. Specifically, as a direct and proximate result of defendants' continued and willful monopolization and misuse of monopoly power, Curtin Maritime is being and will continue to be irreparably injured by and through the following: (a) the loss of revenue and profits that would otherwise have been earned from freight shipping to and from Avalon; (b) the loss of market share that would otherwise have been achieved by Curtin Maritime in a freely-competitive market; (c) the loss of good will and value as a going concern.

SECOND CAUSE OF ACTION

(Unlawful Exclusive Dealing Arrangements In Violation of

Section 1 of the Sherman Act)

(15 U.S.C. § 1)

66. Plaintiff incorporates by reference the allegations of paragraphs 1 through 65, as though fully set forth herein.

67. Section 1 of the Sherman Act (15 U.S.C. § 1) prohibits, *inter alia*, agreements or arrangements that unreasonably restrain competition to the detriment of consumers.

68. Defendants entered into and engaged in an unlawful trust in restraint of the trade and commerce. The long-term exclusive lease between SCICo and AFS for use of the Pebbly Beach facility explicitly states that the facility shall not be leased "to anyone other than Lessor (AFS) for a use competitive with the Avalon



1 Freight Service. . .” Defendants’ exclusive dealing arrangements constitute an
 2 unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

3 69. The coordinated and collective actions of SCICo/AFS have the purpose
 4 and effect of eliminating or substantially restricting competition in the market for
 5 freight shipping by sea to and from Avalon and raising the price of freight shipping
 6 above competitive levels. The SCICo/AFS exclusive lease of the Pebbly Beach
 7 facility is a long-term exclusive dealing arrangement with the purpose, effect,
 8 tendency and capacity to, among other things, significantly foreclose competition in
 9 the market for freight shipping by sea between Avalon and the mainland and
 10 maintain the SCICo/AFS monopoly. Other freight shippers, such as plaintiff Curtin
 11 Maritime, would like to ship freight by sea to and from Avalon but are precluded
 12 from doing so by virtue of the SCICo/AFS exclusive dealing arrangement.

13 70. The actual and probable effect of SCICo/AFS’s illegal arrangements
 14 has been to raise prices above the competitive level and substantially lessen, if not
 15 completely foreclose, competition in the market for freight shipping by sea while
 16 maintaining SCICo/AFS’s monopoly of this market. Defendants possess monopoly
 17 power in this defined relevant market and have used, and, continue to use, exclusive
 18 dealing arrangements to raise barriers to entry and foreclose actual and potential
 19 competition. These arrangements have had, and continue to have, the effect of
 20 unreasonably restraining competition in the market for freight shipping services by
 21 sea to and from Avalon.

22 71. There is no legitimate business justification for SCICo/AFS’s exclusive
 23 dealing arrangements. The anticompetitive effects of these restraints outweighs any
 24 purported beneficial effects on competition.

25 72. Defendants’ conduct has produced antitrust injury to Curtin Maritime,
 26 competition and consumers including a substantial foreclosure or elimination of
 27 competition in the relevant market, the creation and maintenance of significant
 28 barriers to entry, inflated prices for fuel, goods and other commodities sold on

1 Catalina, and consumers have been deprived of any choice between freight shippers
2 and have been forced to pay supra-competitive prices for shipping.

3 73. By reason of, and as a direct and proximate result of, SCICo/AFS's
4 contracts in restraint of trade, plaintiff Curtin Maritime has been injured in its
5 business and property, including but not limited to the loss of profits, goodwill,
6 value and market share. Consumers have also been harmed by the unreasonable and
7 substantial restriction of competition for the provision of freight shipping services
8 by sea to and from Avalon, significantly limited consumer choice for such services,
9 and consumers' reduced access to plaintiff's competitive services. Curtin Maritime
10 has not yet calculated the precise extent of its past damages and cannot now estimate
11 with precision the future damages that continue to accrue, but when Curtin Maritime
12 does so, it will seek leave of the Court to insert the amount of the damages sustained
13 herein.

14 74. As a direct and proximate result of SCICo/AFS's contracts in restraint
15 of trade, consumers have been deprived of the full benefits of competition in the
16 relevant market.

17 **THIRD CAUSE OF ACTION**

18 **(Violation of California Unfair Competition Act under Business and** 19 **Professions Code §§ 17200 *et seq.*)**

20 75. Plaintiff incorporates by reference the allegations of paragraphs 1
21 through 74, as though fully set forth herein.

22 76. This Court has jurisdiction over this cause of action because it arises
23 from the same transactions and common nucleus of operative facts as alleged under
24 the federal cause of action for violations under the Sherman Act.

25 77. During all relevant periods, plaintiff Curtin Maritime conducted a
26 substantial volume of business in California. California is plaintiff's place of
27 incorporation and principal place of business.
28

1 78. Defendants conduct a substantial volume of business in California,
2 including but not limited to the operation of freight shipping to and from Catalina
3 and the maintenance and business of stores, restaurants and other outlets on the
4 island.

5 79. California’s Unfair Competition Law (“UCL”) was enacted to protect
6 both consumers and competitors by promoting fair competition in commercial
7 markets for goods and services.

8 80. Section 17200 *et seq.* of the California Business & Professions Code is
9 written in the disjunctive and broadly covers three varieties of unfair competition—
10 acts that are unlawful, unfair or fraudulent. The statute’s intent and purpose is to
11 protect both consumers and competitors by promoting fair competition in
12 commercial markets for goods and services. The coverage of Section 17200 *et seq.*
13 is broad and intended to “enjoin on-going wrongful business conduct in whatever
14 context such activity might occur.” *Cel-Tech Communications, Inc. v. Los Angeles*
15 *Cellular Telephone Co.*, 20 Cal. 4th 163, 181 (1999).

16 81. Plaintiff Curtin Maritime is a “person” within the meaning of
17 California Business & Professions Code § 17201.

18 82. As alleged herein, defendants’ conduct constitutes “unfair” business
19 practices. A practice may be deemed unfair even if not specifically proscribed by
20 some other law. Conduct that significantly threatens or harms competition, or
21 threatens an incipient violation of an antitrust law, may be deemed to be “unfair.”

22 83. As alleged herein, defendants’ anticompetitive conduct is also
23 “unlawful.” Within the meaning section 17200, virtually any violation of any civil
24 or criminal federal, state or municipal, statutory, regulatory, court-made or local law
25 can serve as a predicate for an “unlawful” claim. *Law Offices of Mathew Higbee v.*
26 *Expungement Assistance Services*, 214 Cal. App. 4th 544, 553 (2013). The violation
27 of the federal antitrust laws, as alleged herein, satisfies the “unlawful” prong of §
28 17200.

85. Defendants' unfair and unlawful conduct has caused harm to plaintiff Curtin Maritime, to competition and consumers. The UCL is a strict liability statute and it is not necessary to show that defendants intended to injure or harm plaintiff Curtin Maritime.

86. Pursuant to Business & Professions Code section 17203, the entry of permanent and mandatory injunctive relief against each defendant is necessary to enjoin their ongoing unfair and/or unlawful business conduct. An injunction is needed to enable competition in the market for freight shipping by sea to and from Avalon. Plaintiff Curtin Maritime incurred injury as a result of defendants' conduct as alleged herein. Consequently, defendants have violated the UCL, specifically Cal. Bus. & Prof. Code § 17200.

WHEREFORE, plaintiff Curtin Maritime requests the entry of judgment against defendants as follows:

- 21-

1 5. That defendants be ordered to allow Curtin Maritime reasonable and
2 non-discriminatory access to and use of the Pebbly Beach freight facility so as to
3 enable competition in the relevant market (15 U.S.C. § 15);

4 6. That plaintiff be awarded its reasonable attorneys' fees and costs of
5 litigation; and

6 7. That this Court provide such other and further relief as may be just and
7 proper.

8
9
10 Dated: May 13, 2016

BLECHER COLLINS & PEPPERMAN, P.C.
MAXWELL M. BLECHER
TAYLOR C. WAGNIERE

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14 By: /s/ Maxwell M. Blecher
15 Maxwell M. Blecher
16 Attorneys for Plaintiff
17 Curtin Maritime Corp.
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DEMAND FOR JURY TRIAL

Plaintiff Curtin Maritime Corp. hereby demands trial by jury pursuant to the Federal Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.

Dated: May 13, 2016

BLECHER COLLINS & PEPPERMAN, P.C.
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TAYLOR C. WAGNIERE

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