

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**MARITIME LEGAL AID & ADVOCACY, LTD**

276 Fifth Ave., Suite 704

New York, NY 10001

Plaintiff,

v.

**U.S. MARITIME ADMINISTRATION**

1200 New Jersey Avenue, SE

Washington, DC 20590

Defendant.

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) CASE NO.: 1:22-cv-04308-JGK

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**AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive, declaratory, and other appropriate relief, seeking the release of agency records requested by Plaintiff Maritime Legal Aid & Advocacy, Ltd. (“MLAA”) from Defendant United States Maritime Administration (“MARAD”) via the FOIA.

2. Specifically, MLAA challenges the failure of MARAD to disclose documents in response to four (4) closely-related Freedom of Information Act requests (the “FOIA Requests”) properly made by Plaintiff.

### Parties

3. Plaintiff MLAA is a non-partisan, non-profit 501(c)(3) corporation organized under the laws of the state of Delaware. MLAA's principal place of business is in New York City, New York. MLAA is a legal advocacy organization advocating for the human rights of seafarers and working to end shipboard sexual misconduct and other abusive behaviors in the U.S. maritime industry. MLAA has uncovered extensive evidence that shipboard sexual misconduct, in particular, is an epidemic in the maritime industry that affects far too many of the more than 200,000 U.S. Coast Guard-credentialed mariners who work in this vital industry. In furtherance of its mission to be legal advocates on behalf of a vulnerable mariner population, MLAA uses a combination of research, public education, litigation, and advocacy. As part of its research, MLAA uses government records made available to it under the FOIA. In furtherance of its mission, MLAA gathers information of potential public interest, including government records made available to it under the FOIA, and then uses its editorial skills to turn those raw materials into distinct works before distributing those works free of charge to a global audience. Through its website,<sup>1</sup> Facebook account, Instagram account,<sup>2</sup> and electronic mailing lists, original and distinct stories created and published by MLAA reach tens of thousands of readers every month. Accordingly, MLAA is a representative of the news media within the meaning of 5 U.S.C. § 552(a)(4)(A).

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<sup>1</sup> <https://www.maritimelegalaid.com>

<sup>2</sup> <https://www.instagram.com/maritimelegalaid>

4. Defendant MARAD is an agency within the meaning of 5 U.S.C. §§ 552(f)(1) and 701(b)(1). MARAD has possession, custody, and control of records responsive to MLAA'S FOIA Requests.

### **Jurisdiction and Venue**

5. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). The Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202.

6. Venue in this district is proper under 5 U.S.C. § 552(a)(4)(B), because MLAA's principal place of business is located in this judicial district. *See* (Exhibit A: *MLAA 2021 Delaware Corporate Franchise Tax Report* (showing Principal Place of Business at 276 Fifth Ave., Suite 704, New York, NY 10001)).

### **Background**

7. Among the most vulnerable U.S. Coast Guard-credentialed mariners in the United States are students ("Cadets" or "Midshipmen") studying at the U.S. Merchant Marine Academy ("USMMA"), located in Kings Point, New York. The USMMA is directly operated by MARAD.

8. To successfully graduate from the USMMA, students must participate in the USMMA's "Sea Year" program. Sea Year is a mandatory program in which USMMA students are sent to work on oceangoing commercial cargo ships to gain practical shipboard work experience as well as the "sea days" required to obtain a U.S. Coast Guard merchant

mariner license. To graduate, students at the USMMA are required to earn at least 330 sea days via the Sea Year program.

9. MARAD is directly responsible for the operation of the USMMA's Sea Year program and responsible for ensuring the safety of USMMA students who serve aboard commercial cargo ships during the Sea Year program.

10. The foundation of MARAD's Sea Year program is the Maritime Security Program ("MSP"), which was established by the Maritime Security Act of 1996 (P.L. 104-239) and replaced an earlier subsidy program. The MSP is funded by Congress and directly administered by MARAD. The purpose of the MSP is to establish and sustain a fleet of active, privately owned, commercially viable, and military useful vessels to meet the United States' national defense and sealift requirements in time of war or national emergency.

11. The MSP supports a fleet of 60 U.S.-flagged ships engaged in international commerce by providing annual subsidies to defray the additional costs of operating under the American-flag versus a cheaper "flag of convenience." In 2021, the annual operating subsidy delivered to MSP vessel operators by MARAD was \$5.2 million per enrolled vessel, and the total amount of the MSP subsidies sent by MARAD to commercial vessel operators was more than \$300 million. *See* Congressional Research Service, "*MARAD Shipping and Shipbuilding Support Programs.*"<sup>3</sup>

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<sup>3</sup> Congressional Research Service, "MARAD Shipping and Shipbuilding Support Programs, <https://crsreports.congress.gov/product/pdf/R/R46654/2> (January 8, 2021).

12. One condition placed upon vessel operators enrolled in the MSP is a legal and contractual obligation “to carry on the MSP vessel two U.S. Merchant Marine Academy cadets, if available, on each voyage.” *See* 46 C.F.R. § 296.31(f). This legal requirement for MSP-enrolled vessel operators to carry USMMA cadets is the foundation of the USMMA Sea Year program.

13. The Sea Year program has been operating almost continuously since even before the USMMA was officially dedicated on September 30, 1943 during the crisis of the 2<sup>nd</sup> World War.

14. Since the Sea Year program’s inception, students have endured sexual abuse during their Sea Years. *See* MaritimeLegalAid.com, “*U.S. Merchant Marine Academy Class of 1956 Graduate Recounts Being Assigned to a Ship with a Sexually Predatory Captain During Sea Year in 1954.*”<sup>4</sup>

15. For the first 31 years of the existence of the USMMA, women were not allowed to attend the Academy, and thus it was only young male USMMA cadets who occasionally had the great misfortune of being assigned to a vessel with a sexually predatory crew member. *See* MaritimeLegalAid.com, “*I Had to Quit the U.S. Merchant Marine Academy After I Was Subjected to Months of Horrific Sexual Harassment and Abuse During Sea Year. I’m a Man, and I Will No Longer Stay Silent.*”<sup>5</sup>

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<sup>4</sup> MaritimeLegalAid.com, “*U.S. Merchant Marine Academy Class of 1956 Graduate Recounts Being Assigned to a Ship with a Sexually Predatory Captain During Sea Year in 1954,*” <https://www.maritimelegalaid.com/blog/usmma-class-of-1956-graduate-recounts-being-assigned-to-a-ship-with-a-sexually-predatory-captain-during-sea-year-in-1954> (September 20, 2021).

<sup>5</sup> MaritimeLegalAid.com, “*I Had to Quit the U.S. Merchant Marine Academy After I Was Subjected to Months of Horrific Sexual Harassment and Abuse During Sea Year ...,*” <https://www.maritimelegalaid.com/blog/sea-year-made-me-quit-kings-point>, (October 12, 2021).

16. However, in 1974 the USMMA began admitting women, and in 1975 the Academy began sending female cadets out on their Sea Years. These women, who were in their late teens and early 20's, were shipped out on working cargo ships manned by hardened seaman, just like the male Cadets. Aboard these ships they were generally the only women, or sometimes the only woman, and the inevitable sexual harassment and abuse of these women ensued. Thus began what has been referred to within the USMMA and MARAD for nearly 50 years as "the female cadet problem."

17. Since 1975, incidents of sexual abuse were frequently reported to MARAD and the USMMA by both male and female students. However, MARAD's response to these reports has been to systematically coverup the crimes and misconduct to avoid embarrassment and loss of reputation to their agency and the USMMA, as well as to protect the reputational and financial interests of the commercial vessel operators who MARAD has relied upon to operate the Sea Year program. *See CNN, "Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted."*<sup>6</sup>

18. MARAD also abetted these commercial vessels operators, such as global shipping giant Maersk Line, in their own internal sexual misconduct coverup policies. One of the industry-wide policies of the commercial vessel operators that MARAD has supported involved the systematic violation of a federal law that requires shipping companies to report allegations of shipboard sexual abuse to the United States Coast Guard.

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<sup>6</sup> CNN, "Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted," <https://www.cnn.com/2022/02/16/us/merchant-marine-academy-usmma-sexual-assault-rape-invs/index.html> (February 16, 2022).

See MaritimeLegalAid.com, “*The Long, Tragic History of 46 USC 10104, AKA ‘The Federal Shipboard Sexual Assault Allegation Reporting Law.’*”<sup>7</sup>

19. The shipboard sexual assault allegation reporting requirement of 46 U.S.C. 10104(a) became federal law in 1990. However, via the Freedom of Information Act, MLAA has learned that commercial vessels operators enrolled in the MSP intentionally violated the law and intentionally and systematically hid allegations of shipboard federal sex crimes from federal law enforcement over the course of more than 30 years. See MaritimeLegalAid.com, “*In Precedent Setting Enforcement Action, U.S. Coast Guard Has Fined Maersk Line, Limited \$10,000 For Violating 46 USC § 10104 During Shocking Shipboard Sexual Assault Coverup Involving USMMA Cadets.*”<sup>8</sup>

20. MARAD and the U.S. Department of Transportation (“USDOT”) have known for decades that sexual harassment and sexual assault against USMMA cadets was rampant within the USMMA Sea Year program. And these agencies have known for decades that sexual abuse was rampant in the broader maritime shipping industry.

21. On December 6, 2021 U.S. Transportation Secretary Pete Buttigieg even publicly admitted the DOT and MARAD have long known about the sexual abuse problems affecting USMMA cadets and other mariners. During a speech in London before

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<sup>7</sup> MaritimeLegalAid.com, “*The Long, Tragic History of 46 USC 10104, AKA ‘The Federal Shipboard Sexual Assault Allegation Reporting Law,’*” <https://www.maritimelegalaid.com/foia/the-long-tragic-history-of-46usc10104-aka-the-federal-shipboard-sexual-assault-reporting-law>, (January 9, 2022).

<sup>8</sup> MaritimeLegalAid.com, “*In Precedent Setting Enforcement Action, U.S. Coast Guard Has Fined Maersk Line, Limited \$10,000 For Violating 46 USC § 10104 During Shocking Shipboard Sexual Assault Coverup Involving USMMA Cadets*” <https://www.maritimelegalaid.com/foia/in-precedent-setting-enforcement-action-us-coast-guard-has-fined-maersk-line-limited-10000-for-violating-46-usc-10104-during-shocking-shipboard-sexual-assault-coverup-involving-usmma-cadets>, (September 3, 2021).

the International Maritime Organization (“IMO”), presidential-aspirant Buttigieg said, “*For too long, sexual assault and sexual harassment in maritime shipping has been an open secret, affecting the industry around the world.*” Buttigieg also told the IMO that “*the need for action is particularly urgent.*” See gCaptain, “*Buttigieg Pushes IMO To Address Sexual Assault At Sea.*”<sup>9</sup>

22. For decades, MARAD and the USMMA were able to silence all of their victims and prevent any news of the sexual abuse occurring within its Sea Year program from reaching Congress or the media. But that wall of secrecy began to show cracks in 2007 because of the passage of the John Warner National Defense Authorization Act. The 2007 Act codified a required assessment cycle of gender relations and sexual misconduct within federal service academies operated by the U.S. Department of Defense. The central tool of the assessment cycle was a standardized anonymous survey administered to students at the academies every two years. These surveys are known as the Service Academy Gender Relations Surveys (“SAGR Surveys”).

23. The Act was passed in 2007, but did not initially apply to the USMMA. However, in 2012 students at the USMMA began participating in the biannual SAGR Surveys, and the results of the USMMA SAGR Surveys were shocking and alarming from the beginning. In the anonymous surveys, students at the USMMA reported experiencing sexual harassment and sexual assault at rates significantly higher than students at any of the other four federal service academies.

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<sup>9</sup> gCaptain.com, “*Buttigieg Pushes IMO To Address Sexual Assault At Sea,*” <https://gcaptain.com/buttigieg-pushes-imo-to-address-sexual-assault-at-sea>, (December 11, 2021).



24. According to the USMMA’s 2013–2014 SAGR Survey Report, 63 percent of female midshipman at the USMMA reported experiencing *sexual harassment* within the previous 12-month period, and 17% of female midshipman reported that they had been *sexually assaulted* within the previous 12 months. Students also reported that much of the sexual harassment and sexual assault (“SASH”) was occurring during their Sea Year aboard vessels enrolled in the MSP. See LMI, “*U.S. Merchant Marine Academy Culture Audit.*”<sup>10</sup>

25. The SAGR Survey results brought intense Congressional scrutiny to MARAD’s operation of the USMMA and the Sea Year program. In 2016, amid public reports of rampant sexual harassment and sexual assaults of Sea Year cadets aboard commercial ships, U.S. Transportation Secretary Anthony Foxx suspended the Sea Year program in a policy decision known as the “2016 Sea Year Stand Down.” The Sea Year program was subsequently suspended for more than 9 months.

26. During the Stand Down, MARAD formed an internal “Shipboard Climate Compliance Team” (“SCCT”) that worked with MSP commercial vessel operators, labor unions, and other maritime industry “partners” to create new policies designed to protect USMMA Cadets at sea. MARAD’s resulting policies came to be known as the SCCT Policies.

27. The SCCT Policies were promulgated without adherence to the federal “rule-making” process and despite the fact that MARAD is not the regulator of the U.S. maritime

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<sup>10</sup> LMI, “*U.S. Merchant Marine Academy Culture Audit,*” <https://www.maritime.dot.gov/sites/marad.dot.gov/files/docs/foia/3971/201612-usmma-culture-audit-final-report.pdf> (December 2016).

industry and possesses no actual regulatory authority from Congress that empowers it to regulate safety aboard American-flag cargo ships.

28. In public statements regarding the Sea Year Stand Down and the SCCT Policies released in 2016/17, MARAD never mentioned that the reason MSP vessel operators would agree to “stringent new requirements for companies providing Sea Year training opportunities for Midshipmen” was because 46 C.F.R. § 296.31(f) required vessel operators enrolled in the MSP “to carry on the MSP vessel two U.S. Merchant Marine Academy cadets, if available, on each voyage.”

29. One question asked by many maritime industry observers of the Sea Year Stand Down and resulting SCCT Policies was whether MARAD had placed contractual clauses in its Maritime Security Program Operating Agreements with vessel operators that created financial penalties for failures to adhere to the SCCT Policies, or for failures to protect USMMA Cadets from sexual harassment and sexual assault aboard their vessels.

30. However, MARAD never answered this question, never made the MSP Operating Agreements public, and never provided the public with answers to the important question of how exactly an agency with no regulatory authority over the maritime industry would enforce quasi-regulatory shipboard safety policies.

31. According to the biannual SAGR Surveys, MARAD’s SCCT Policies were totally ineffective at reducing the rate of USMMA Cadets being sexually harassed and assaulted during Sea Year. The data showed the SCCT Policies may have even exacerbated the Sea Year SASH problems.

32. In 2020 the organization that later became MLAA was formed and began its work by offering a platform for maritime whistleblowers to post first-hand accounts of sexual harassment and assault endured while working in the maritime industry. Many of the whistleblower accounts published by MLAA were written by current or former Cadets in the USMMA's Sea Year program.

33. These extremely disturbing reports of sexual harassment and sexual violence within the Sea Year program have been heavily documented in the news media, and taken together, they paint a picture of a highly dysfunctional and tragically unsafe training program that has allowed widespread and rampant sexual abuse to affect USMMA Cadets.

34. The disturbing reports include numerous first-hand accounts of teenage cadets being violently raped at sea by their much older supervisors during the MARAD-sponsored training program.

35. Since 2020, extremely disturbing reports have also emerged in the news media that paint a picture of MARAD engaging in a pattern of systematic coverups of these shipboard sex crimes to protect MARAD's image and its relationships with the MSP commercial vessel operators MARAD relies upon to operate the Sea Year program. *See* CNN, "*Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted.*"<sup>12</sup>

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<sup>12</sup> CNN, "*Culture of fear at Merchant Marine Academy silences students who say they were sexually harassed and assaulted,*" <https://www.cnn.com/2022/02/16/us/merchant-marine-academy-usmma-sexual-assault-rape-invs/index.html> (February 16, 2022).

36. On September 28, 2021 MLAA published a bombshell first-person account by a then-current USMMA Cadet who was brutally raped aboard a Maersk vessel enrolled in the MSP while participating in MARAD's Sea Year program. *See* CNN, "*I was trapped*": Shipping giant investigates alleged rape of 19-year-old during federal training program."<sup>14</sup>

37. The courageous author of that story came to be known in the media as "Midshipman-X." Her horrifying story of survival at sea set in motion a chain of events that led to the Sea Year program once again being shut down. This time, it was Transportation Secretary Pete Buttigieg who suspended the Sea Year program in November 2021 after the chairpersons of six (6) powerful Congressional committees demanded Buttigieg suspend the Sea Year program over concerns about the safety of Cadets. *See* MaritimeLegalAid.com, "*Maritime Crusader Senator Maria Cantwell & 5 Powerful Congressmen Call Maritime Industry 'Toxic,' Demand Firing of USMMA Leader Jack Buono & Demand Suspension of Cadet Commercial Shipping.*"<sup>15</sup>

38. Following the 2<sup>nd</sup> suspension of the Sea Year program in November, 2021, the USDOT and MARAD began creating new Sea Year policies to protect USMMA Cadets from sexual abuse during Sea Year. These new policies were called "Every Mariners

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<sup>14</sup> CNN, "*I was trapped*": Shipping giant investigates alleged rape of 19-year-old during federal training program," <https://www.cnn.com/2021/10/11/business/maersk-rape-investigation-merchant-marine/index.html> (October 12, 2021).

<sup>15</sup> MaritimeLegalAid.com, "*Maritime Crusader Senator Maria Cantwell & 5 Powerful Congressmen Call Maritime Industry 'Toxic,' Demand Firing of USMMA Leader Jack Buono, & Demand Suspension of Cadet Commercial Shipping.*" <https://www.maritimelegalaid.com/foia/in-precedent-setting-enforcement-action-us-coast-guard-has-fined-maersk-line-limited-10000-for-violating-46-usc-10104-during-shocking-shipboard-sexual-assault-coverup-involving-usmma-cadets>, (November 1, 2021).

Builds a Respectful Culture” (“EMBARC”) and replaced the previous SCCT Policies promulgated by MARAD in 2016/2017. The EMBARC policies were publicly released on December 15, 2021. See MARAD, “*Every Mariner Builds a Respectful Culture (EMBARC)*.”<sup>16</sup>

39. In December 2021, following the public release of the EMBARC standards, MLAA began investigating the failure of the SCCT Policies to protect Midshipman-X and others from sexual assault and harassment, the connection between the SSCT Policies and EMBARC Policies and the Maritime Security Program Operating Agreements, MARAD’s response to Congress’ demand to again shut down the Sea Year program in November 2021, and MARAD’s implementation of the new EMBARC policies. MLAA began its investigation by filing a series of four closely-related FOIA Requests that are the subject of this Amended Complaint.

40. The four closely-related FOIA Requests that are the subject of this Amended Complaint were acknowledged by MARAD and assigned FOIA Control Numbers 22-0040-FOIA, 22-0041-FOIA, 22-0088-FOIA, and 22-0089-FOIA.

41. MLAA is committed to learning the extent of MARAD’s knowledge of the sexual abuse problems within the Sea Year program and MARAD’s true policies concerning the sexual abuse of cadets participating in the Sea Year program—policies which MARAD has refused to release to the public.

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<sup>16</sup> MARAD, “*Every Mariner Builds a Respectful Culture (EMBARC) Minimum Standards*,” [https://maritime.dot.gov/sites/marad.dot.gov/files/2021-12/EMBARC\\_Standards.pdf](https://maritime.dot.gov/sites/marad.dot.gov/files/2021-12/EMBARC_Standards.pdf), (December 15, 2021).

42. Through the FOIA process, MLAA seeks to pierce the veil of administrative secrecy that surrounds this important issue, open MARAD policies to the light of public scrutiny, and eventually make the maritime workplace safer for USMMA cadets as well as hundreds of thousands of other credentialed mariners.

**FIRST CAUSE OF ACTION: 22-0040-FOIA**

43. MLAA repeats, realleges, and reincorporates the allegations in paragraphs 1 through 42 as though fully set forth herein.

44. MLAA submitted FOIA Request #1 to MARAD on December 28, 2021 (Exhibit B). In FOIA Request #1 MLAA sought records related to MARAD's EMBARC Standards. In FOIA Request #1 MLAA also sought expedited processing under the FOIA.

45. FOIA Request #1 was received by MARAD and acknowledged on January 5, 2022. FOIA Request #1 was assigned "*Control No. 22-0040-FOIA*" (Exhibit C).

46. On February 23, 2022 MARAD issued its First Partial Response to FOIA Request #1 and released 192 pages of records responsive to FOIA Request #1 (Exhibit D).

47. On March 31, 2022 MARAD issued its Second Partial Response to FOIA Request #1 and released 16 pages of records responsive to FOIA Request #1 (Exhibit E).

48. As of the date of this Amended Complaint, MARAD has not released any additional records in response to FOIA Request 22-0040-FOIA and MARAD has not issued a final response to FOIA Request 22-0040-FOIA.

49. Therefore, Defendant MARAD has failed to meet the statutory deadlines set by the FOIA. 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, MLAA has exhausted its administrative remedies under the FOIA.

50. Defendant MARAD is permitted to withhold records or parts of records responsive to MLAA's FOIA Request only if one of the FOIA's enumerated exemptions apply.

51. No exemptions permit the withholding of the records sought by MLAA's FOIA Request.

52. Accordingly, MLAA is entitled to an order compelling Defendant MARAD to produce all records responsive to the FOIA Request.

**SECOND CAUSE OF ACTION: 22-0041-FOIA**

53. MLAA repeats, realleges, and reincorporates the allegations in paragraphs 1 through 42 as though fully set forth herein.

54. MLAA submitted FOIA Request #2 to MARAD on December 30, 2021 (Exhibit F). In FOIA Request #2 MLAA sought records related to MARAD's Response to a public letter from Senator Maria Cantwell dated October 12, 2021. In FOIA Request #2 MLAA also sought expedited processing under the FOIA.

55. FOIA Request #2 was received by MARAD and acknowledged on January 5, 2022. FOIA Request #2 was assigned "*Control No. 22-0041-FOIA*" (Exhibit G).

56. In its acknowledgement of FOIA Request #2, MARAD intentionally omitted the 3<sup>rd</sup> category of records requested in FOIA Request #2, which were, "*Since January 1, 2021, all communications between DOT and any Whitehouse officials or staffers that include one or more references to the USMMA Sea Year program or to the EMBARC standards released by DOT on December 15, 2021.*"

57. On January 18, 2022 MARAD denied MLAA's request for expedited processing under the FOIA with respect to FOIA Request #2 (Exhibit H).

58. As of the date of this Amended Complaint, MARAD has not issued a final response to FOIA Request 22-0041-FOIA.

59. Defendant MARAD has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, MLAA has exhausted its administrative remedies under the FOIA.

60. Defendant MARAD is permitted to withhold records or parts of records responsive to MLAA's FOIA Request only if one of the FOIA's enumerated exemptions apply.

61. No exemptions permit the withholding of the records sought by MLAA's FOIA Request #2.

62. Accordingly, MLAA is entitled to an order compelling Defendant MARAD to produce all records responsive to FOIA Request #2.

**THIRD CAUSE OF ACTION: 22-0088-FOIA**

63. MLAA repeats, realleges, and reincorporates the allegations in paragraphs 1 through 42 as though fully set forth herein.

64. MLAA submitted FOIA Request #3 to MARAD on March 19, 2022 (Exhibit I). In FOIA Request #3 MLAA sought "*All active Maritime Security Program (MSP) operating agreements between MARAD and vessel operators...*" as well as all active "*Voluntary Intermodal Sealift Agreement (VISA) program operating agreements...*"



65. FOIA Request #3 was received by MARAD and acknowledged on April 21, 2022. FOIA Request #3 was assigned “*Control No. 22-0088-FOIA*” (Exhibit J).

66. On April 22, 2022 MARAD issued its First Partial Response to FOIA Request #3 and released 46 pages of records responsive to FOIA Request #3 (Exhibit K).

67. As of the date of this Amended Complaint, MARAD has not released any additional records in response to FOIA Request 22-0088-FOIA and MARAD has not issued a final response to FOIA Request 22-0088-FOIA.

68. Defendant MARAD has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, MLAA has exhausted its administrative remedies under the FOIA.

69. Defendant MARAD is permitted to withhold records or parts of records responsive to MLAA’s FOIA Request only if one of the FOIA’s enumerated exemptions apply.

70. No exemptions permit the withholding of the records sought by MLAA’s FOIA Request #3.

71. Accordingly, MLAA is entitled to an order compelling Defendant MARAD to produce all records responsive to FOIA Request #3.

**FOURTH CAUSE OF ACTION: 22-0089-FOIA**

72. MLAA repeats, realleges, and reincorporates the allegations in paragraphs 1 through 42 as though fully set forth herein.

73. MLAA submitted FOIA Request #4 to MARAD on March 19, 2022 (Exhibit L). In FOIA Request #4 MLAA sought records related to MARAD's Shipboard Climate Compliance Team (SCCT) Criteria.

74. FOIA Request #4 was received by MARAD and acknowledged on April 1, 2022. FOIA Request #4 was assigned "*Control No. 22-0089-FOIA*" (Exhibit M).

75. As of the date of this Amended Complaint, MARAD has not any records in response to FOIA Request 22-0089-FOIA and MARAD has not issued a final response to FOIA Request 22-0089-FOIA.

76. Defendant MARAD has failed to meet the statutory deadlines set by FOIA. 5 U.S.C. § 552(a)(6)(A)-(B). Accordingly, MLAA has exhausted its administrative remedies under the FOIA.

77. Defendant MARAD is permitted to withhold records or parts of records responsive to MLAA's FOIA Request only if one of the FOIA's enumerated exemptions apply.

78. No exemptions permit the withholding of the records sought by MLAA's FOIA Request #4.

79. Accordingly, MLAA is entitled to an order compelling Defendant MARAD to produce all records responsive to FOIA Request #4.

**PRAYER FOR RELIEF**

WHEREFORE, MLAA respectfully requests that this Court enter a judgment for MLAA and award the following relief:

80. Declare that the records sought by MLAA's FOIA Requests are public under 5 U.S.C. § 552 and must be disclosed;

81. Order Defendant, by a date certain, to conduct a search of its records that is designed to prove beyond material doubt that its search for records responsive to MLAA's FOIA Requests were reasonably calculated to uncover all relevant records.

82. Order Defendant, by a date certain, to demonstrate that they have conducted an adequate search;

83. Order Defendant, by a date certain, to produce to MLAA any and all nonexempt records or portions of records responsive to MLAA's FOIA Requests, as well as a Vaughn Index of any records or portions of records withheld due to a claim of exemption;

84. Enjoin Defendant from withholding the requested records;

85. Award MLAA its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

86. Grant MLAA such other and further relief as the Court may deem just and proper.

**Dated:** June 20, 2022

*/s/ J. Ryan Melogy*

**J. RYAN MELOGY**

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