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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

KRYSTAL INC. AND KEDE	)	5:16-cv-02406-RSWL-SP
GROUP, INC.,	)	
	)	
Plaintiffs,	)	<b>ORDER RE: PLAINTIFFS'</b>
	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT [45]</b>
v.	)	
	)	
	)	
CHINA UNITED TRANSPORT,	)	
INC., DBA C.U. TRANSPORT,	)	
INC.; AND DOES ONE THROUGH	)	
TEN,	)	
	)	
	)	
Defendant.	)	
	)	

Currently before the Court is Plaintiffs Krystal Inc. ("Krystal") and Kede Group, Inc.'s ("Kede") (collectively, "Plaintiffs") Motion for Summary Judgment ("Motion") [45]. Having reviewed all papers submitted pertaining to this Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:** the Court **GRANTS** Plaintiffs' Motion as to liability under their breach of contract claim, **DENIES as MOOT** Plaintiffs' Motion as

1 to liability under their negligence claim, and **DENIES**  
2 Plaintiffs' Motion as to the amount of damages.

3 **I. BACKGROUND**

4 **A. Factual Background**

5 Plaintiffs are owners, sellers, and exporters of  
6 motor vehicles. Compl. ¶ 7, ECF No. 1. Defendant is a  
7 licensed non-vessel-operating common carrier who  
8 provides ocean transportation of cargo from the United  
9 States to foreign countries. Id. ¶ 8.

10 Plaintiffs allege that they agreed to sell a  
11 Mercedes Benz Sprinter van (the "Cargo") to Krystal  
12 Dalian Automotive Sales Co., Ltd. ("Dalian") for  
13 \$72,980.00. Decl. of Jack Xu ("Xu Decl.") ¶ 5, Ex. A,  
14 ECF No. 45-7. The invoice, however, names Grand Union  
15 Autotrade Group Corporation ("Grand Union") as the  
16 buyer. Decl. of Ruby Hu ("Hu Decl."), Ex. 2, ECF No.  
17 47-3. According to Qiuchen Wang, Director of Dalian,  
18 Dalian agreed to sell the Cargo to Tangwei Xu, a  
19 Chinese buyer, for 1,350,000.00 Chinese Yuan Renminbi  
20 ("CNY"), equal to \$217,678.74. Decl. of Quichen Wang  
21 ("Wang Decl.") ¶ 5, Ex. A, ECF No. 45-3.

22 On November 5, 2015, Plaintiffs contracted with  
23 Defendant to transport the Cargo from the United States  
24 to China. Compl. ¶ 9. On November 18, 2015, Defendant  
25 issued a "Clean on Board" Bill of Lading, the contract  
26 for shipment, to Krystal, stating that the Cargo was  
27 loaded into an "open top" shipping container. Xu  
28 Decl., Ex. B, ECF No. 45-8.

1 Section Six of the Bill of Lading, labeled "Extent  
2 of liability," states, "C.U. Transport Inc. shall be  
3 liable for loss or damage to the goods occurring  
4 between the time when he received the goods into his  
5 charge and the time of delivery." Id. The Bill of  
6 Lading also states,

7 When C.U. Transport Inc is liable for  
8 compensation in respect of loss or of damage to  
9 the goods, such compensation shall be calculated  
10 by reference to the value of such goods at the  
11 place and time they are delivered to the  
12 consignee in accordance with the contract or  
13 should have been so delivered.

14 The value of the goods shall be fixed according  
15 to the commodity exchange price, or, if there be  
16 no such price, according to the current market  
17 price, by reference to the normal value of goods  
18 of the same kind of quality.

19 C.U. Transport Inc. shall hold a single  
20 carrier's liability for cargo transported under  
21 Through Bill of Lading. The carrier's liability  
22 is limited to US \$2.00 per kilogram or US  
23 \$100.00 per shipment which ever is smaller.

24 Id.

25 On December 1, 2015, Ruby Hu, working for  
26 Defendant, emailed Jenny Chao at Kede to inform Ms.  
27 Chao that the Cargo had been damaged. Decl. of Jenny  
28 Chao ("Chao Decl."), Ex. C, ECF No. 45-12. On January  
12, 2016, Dalian United International Inspection Co.,  
Ltd. conducted a survey of the Cargo. Hu Decl., Ex. 3.  
The Report of Survey concluded, "the cargo were damaged  
partly." Id.

29 **B. Procedural Background**

30 Plaintiffs filed their Complaint on November 21,  
31 2016 against Defendant [1]. The Complaint alleges two

1 causes of action against Defendant, breach of contract  
2 and negligence. See Compl.

3 Plaintiffs filed their Motion on August 4, 2017  
4 [45]. Defendant filed its Opposition on August 15,  
5 2017 [47]. Plaintiffs filed their Reply on August 22,  
6 2017 [48].

## 7 **II. FINDINGS OF FACT**

8 1. Plaintiffs delivered the Cargo to Defendant at the  
9 port of loading in good condition. Def.'s Stmt. of  
10 Genuine Issues in Opp'n to Mot. for Summ. J. ¶ 9;  
11 Chan Decl., Ex. 1.

12 2. The Cargo was discharged in damaged condition at  
13 the port of discharge. Chao Decl., Ex. C.

## 14 **III. DISCUSSION**

### 15 **A. Legal Standard**

16 Federal Rule of Civil Procedure 56 states that a  
17 "court shall grant summary judgment" when the movant  
18 "shows that there is no genuine dispute as to any  
19 material fact and the movant is entitled to judgment as  
20 a matter of law." A fact is "material" for purposes of  
21 summary judgment if it might affect the outcome of the  
22 suit, and a "genuine issue" exists if the evidence is  
23 such that a reasonable fact-finder could return a  
24 verdict for the non-moving party. Anderson v. Liberty  
25 Lobby, Inc., 477 U.S. 242, 248 (1986). The evidence,  
26 and any inferences based on underlying facts, must be  
27 viewed in the light most favorable to the opposing  
28 party. Twentieth Century-Fox Film Corp. v. MCA, Inc.,

1 715 F.2d 1327, 1329 (9th Cir. 1983). In ruling on a  
2 motion for summary judgment, the court's function is  
3 not to weigh the evidence, but only to determine if a  
4 genuine issue of material fact exists. Anderson, 477  
5 U.S. at 255.

6 Under Rule 56, the party moving for summary  
7 judgment has the initial burden to show "no genuine  
8 dispute as to any material fact." Fed. R. Civ. P.  
9 56(a); see Nissan Fire & Marine Ins. Co. v. Fritz Cos.,  
10 210 F.3d 1099, 1102-03 (9th Cir. 2000). The burden  
11 then shifts to the non-moving party to produce  
12 admissible evidence showing a triable issue of fact.  
13 Nissan Fire & Marine Ins., 210 F.3d at 1102-03.

14 The standard for a motion for summary judgment  
15 "provides that the mere existence of *some* alleged  
16 factual dispute between the parties will not defeat an  
17 otherwise properly supported motion for summary  
18 judgment; the requirement is that there be no *genuine*  
19 issues of *material* fact." Anderson, 477 U.S. at 247-  
20 48.

## 21 **B. Discussion**

### 22 1. The Court GRANTS Plaintiffs' Request for 23 Judicial Notice

24 Plaintiffs seek judicial notice of the exchange  
25 rates for the CNY to the U.S. dollar from the Federal  
26 Reserve's website. Pls.' Req. for Judicial Notice  
27 ("RJN") ¶ 1. A court may take judicial notice of a  
28 fact that is not subject to reasonable dispute because

1 it "can be accurately and readily determined from  
2 sources whose accuracy cannot reasonably be  
3 questioned." Fed. R. Evid. 201(b)(2). Exchange rates  
4 listed on the Federal Reserve's system are a "fitting  
5 subject of a request for judicial notice." HostLogic  
6 ZRT v. GH Int'l, Inc., No. 6:13-cv-982-Orl-36KRS, 2014  
7 U.S. Dist. LEXIS 88680, at \*27 (M.D. Fla. June 10,  
8 2014)(taking judicial notice of Euro to U.S. Dollar  
9 exchange rate from Federal Reserve System). As such,  
10 the Court **GRANTS** Plaintiffs' Request for Judicial  
11 Notice of the CNY to U.S. dollar exchange rate  
12 contained on the Federal Reserve's website.

13 Plaintiffs also seek judicial notice of a page from  
14 the Federal Maritime Commission's website showing that  
15 Defendant is licensed to operate as a non-vessel-  
16 operating common carrier. See RJN ¶ 2. Defendant does  
17 not dispute that it has a non-vessel-operating common  
18 carrier license from the Federal Maritime Commission.  
19 See Def.'s Stmt. of Genuine Issues in Opp'n to Mot. for  
20 Summ. J. ¶ 6. The license shown on the Federal  
21 Maritime Commission's website is a public record whose  
22 accuracy cannot reasonably be questioned.

23 Consequently, the Court **GRANTS** Plaintiffs' Request for  
24 Judicial Notice of Defendant's license from the Federal  
25 Maritime Commission.

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1           2.   Defendant's Evidentiary Objections to  
2           Plaintiffs' Declarations Are **OVERRULED in part**  
3           and **SUSTAINED in part**

4           a.   *Chao Declaration*

5           Defendant objects to Exhibits A and B to the Chao  
6 Declaration, the Booking Confirmation and Receipt of  
7 Cargo respectively. Defendant argues that Plaintiffs  
8 have failed to properly authenticate the Exhibits as a  
9 business record. Def.'s Evid. Objs. to Chao Decl. 2:6-  
10 10. However, as Plaintiffs point out in their Response  
11 to Defendant's Evidentiary Objections, Defendant  
12 ignores Federal Rule of Evidence 901, which states that  
13 witness testimony can be used to authenticate evidence.  
14 Pls.' Resp. to Def.'s Evid. Objs. 2:9-11; see Fed. R.  
15 Evid. 901(b)(1). Defendant has not objected based on  
16 hearsay, merely lack of authentication, and while a  
17 business record is self-authenticating, Ms. Chao can  
18 also authenticate the Exhibits through her testimony.  
19 Fed. R. Evid. 901(b)(1). Based on Ms. Chao's personal  
20 knowledge of Kede's business practices and procedures,  
21 Kede's document retention system, and where Kede keeps  
22 its files in the ordinary course of its business, Ms.  
23 Chao can testify that the documents are what they  
24 purport to be. The Court therefore finds that there is  
25 sufficient indicia of authenticity to support the  
26 admissibility of Exhibits A and B and **OVERRULES**  
27 Defendant's authenticity objection.

28           Defendant objects to paragraphs 5-7 of the Chao

1 Declaration<sup>1</sup> on the basis that Ms. Chao lacks personal  
2 knowledge of the events about which she is testifying.  
3 Def.'s Evid. Objs. to Chao Decl. 4:15-26. However, the  
4 Chao Declaration states that Ms. Chao is the Secretary  
5 of Kede, and as the Secretary, she "assists with the  
6 overall management of Kede's business" and has  
7 "personal knowledge of Kede's business practices and  
8 procedures." Chao Decl. ¶¶ 3-4. In paragraphs 5-7,  
9 Ms. Chao is testifying to events that occurred during  
10 her employment and about which she would have known as  
11 Secretary of Kede. Redwind v. W. Union, LLC, No.  
12 3:14-cv-01699-AC, 2016 U.S. Dist. LEXIS 57793, at \*64  
13 (D. Or. May 2, 2016) ("Each statement to which Redwind  
14 objected for lack of personal knowledge was made about  
15 the declarants' employment and events which occurred  
16 during the scope of that employment."). Accordingly,  
17 the Court **OVERRULES** Defendant's lack of personal  
18 knowledge objections.

19 Defendant objects to Ms. Chao's testimony regarding  
20 the exhibits attached to her Declaration based on the  
21 best evidence rule. However, Ms. Chao is not  
22 testifying to the contents of the documents, she merely  
23 attaches them to her Declaration. Therefore, the Court  
24

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25 <sup>1</sup> Defendant objects to the statement in paragraph 5, "Kede  
26 requested a quote for transportation of Cargo . . . ." Defendant  
27 objects to the statement in paragraph 6, "Kede accepted a quote  
28 and tendered the Cargo shipment." Finally, Defendant objects to  
the statement in paragraph 7, "On November 5, 2015, C.U.,  
received the Cargo from Kede in good order and condition  
attaching Exhibit B."

1 should **OVERRULE** Defendant's best evidence rule  
2 objections.

3 b. *Xu Declaration*

4 Defendant objects to Exhibit A of the Xu  
5 Declaration, the invoice for the sale of the Cargo from  
6 Krystal to "Grand Union," for lack of authentication.  
7 Def.'s Evid. Objs. to Xu Decl. 2:6-10. However,  
8 Defendant also attaches the Invoice as an exhibit to  
9 the Chan Declaration.<sup>2</sup> See Chan Decl., Ex. 1. By  
10 offering the Invoice as evidence in support of its  
11 Opposition, Defendant is agreeing that the Invoice is  
12 authentic. Forest Labs., Inc. v. Ivex Pharm., Inc.,  
13 237 F.R.D. 106, 117 (D. Del. 2006)(overruling  
14 foundation objection where defendants offered the same  
15 exhibit to which they were objecting). Accordingly,  
16 the Court **OVERRULES** Defendant's objection to Exhibit A  
17 to the Xu Declaration.

18 Defendant then objects that Mr. Xu's testimony  
19 about Krystal's sale of the Cargo to Dalian is  
20 inadmissible because the Invoice is the best evidence  
21 of the sale. Def.'s Evid. Objs. to Xu Decl. 6:7-14.  
22 As Defendant notes, the Invoice does not name Dalian as  
23 the buyer, but rather names Grand Union. Id. The  
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25  
26 <sup>2</sup> The only difference between the two documents is that  
27 Plaintiffs attach as Exhibit A a copy of the Invoice that was  
28 attached to the Report of Survey regarding the potential damage  
to the Cargo, so the copy of the Invoice is on the Report of  
Survey letterhead. The contents of the two invoices are the  
same.

1 Court agrees that the Invoice is the best evidence to  
2 prove the contents of the Invoice, not Mr. Xu's  
3 testimony, and **SUSTAINS** Defendant's objection to  
4 paragraph 5 of the Xu Declaration.

5 c. *Wang Declaration*

6 Defendant objects that the Wang Declaration fails  
7 to properly authenticate the three exhibits attached to  
8 the Declaration: (1) the sales contract between Dalian  
9 and the Chinese buyer of the Cargo, (2) the repair  
10 quote, and (3) the Assignment of Rights. See Wang  
11 Decl., Exs. A-C.

12 First, Ms. Wang testifies in her Declaration that  
13 she is the Director of Dalian and her duties include  
14 "assisting with the overall management of Dalian's  
15 business." Id. ¶ 3. Ms. Wang therefore has personal  
16 knowledge of the sales Dalian makes. Further, the  
17 sales contract names Dalian and the Chinese buyer and  
18 appears to be what Ms. Wang claims it to be. See Las  
19 Vegas Sands, Ltd. Liab. Co. v. Nehme, 632 F.3d 526, 533  
20 n.6 (9th Cir. 2011)("[A]uthentication sufficient for  
21 admissibility can be satisfied by the object's  
22 '[a]pppearance, contents, substance, internal patterns,  
23 or other distinctive characteristics, taken in  
24 conjunction with circumstances.'" (quoting Fed. R.  
25 Evid. 901(b)(4))). Therefore, Ms. Wang has  
26 authenticated the sales contract.

27 Second, the repair quotation also appears to be  
28 what Ms. Wang claims it to be. It specifically states

1 that the quotation is for a 2014 Mercedes Benz Sprinter  
2 roof with the same VIN number as the Cargo.  
3 Accordingly, Ms. Wang has sufficiently authenticated  
4 the repair quotation.

5 Third, the Assignment of Rights contains Ms. Wang's  
6 signature, and she testifies that the exhibit is a true  
7 and correct copy of the Assignment. See APL Co. Pte.  
8 Ltd. v. UK Aerosols Ltd., No. C 05-00646 MHP, 2007 U.S.  
9 Dist. LEXIS 12689, at \*26 (N.D. Cal. Feb. 22,  
10 2007)(overruling authentication objection when witness  
11 testified to personal knowledge of the agreement and  
12 the agreement had his signature on it). Therefore, Ms.  
13 Wang has sufficiently authenticated the Assignment of  
14 Rights exhibit.

15 Defendant's lack of authentication objections to  
16 the exhibits attached to the Wang Declaration are  
17 therefore **OVERRULED**.

18 Defendant also objects to these Exhibits on the  
19 grounds that they are inadmissible hearsay. Def.'s  
20 Evid. Objs. to Wang Decl. 7:9-8:17. Plaintiffs briefly  
21 address the hearsay objection as it pertains to the  
22 repair quote, arguing that it is a business record.  
23 Pls.' Resp. to Def.'s Evid. Objs. 7:15-24. However, to  
24 qualify as a business record, Federal Rule of Evidence  
25 803(6) requires that a declarant state (1) that the  
26 record was made at or near the time of the event  
27 recorded (2) by a person with knowledge, (3) the record  
28 were kept in the course of a regularly conducted

1 business activity, and (4) it was the regular practice  
2 of that business activity to make the record. Ms.  
3 Wang's Declaration does not mention any of these four  
4 requirements in reference to any of the attached  
5 Exhibits. See Li v. Affordable Art Co., No.  
6 1:12-CV-03523 RLV, 2014 U.S. Dist. LEXIS 190314, at \*15  
7 (N.D. Ga. Feb. 10, 2014)(concluding that exhibits did  
8 not fall within the business records exception because  
9 the accompanying declaration did not include all four  
10 of the requirements under Rule 803(6)). Accordingly,  
11 Defendant's hearsay objections to the Wang Declaration  
12 Exhibits are **SUSTAINED**.

13 Defendant also objects to three statements Ms. Wang  
14 makes in her Declaration. It first objects to the  
15 statement, "Kede began to modify the Cargo to meet the  
16 requirements of Dalian's Chinese buyer." Wang Decl.  
17 ¶ 5. Ms. Wang does not provide any foundation for how  
18 she knows this information, much less that she has any  
19 connection to Kede. Ms. Wang has failed to provide any  
20 testimony of her personal knowledge of this statement.  
21 Therefore, Defendant's objection to this statement is  
22 **SUSTAINED**.

23 Defendant also objects to paragraph 6 on the basis  
24 that Ms. Wang has not shown she has personal knowledge  
25 of Dalian obtaining a repair quotation for the Cargo.  
26 Def.'s Evid. Objs. to Wang Decl. 6:3-9. Paragraph 6  
27 states: "Dalian obtained a repair estimate of CNY  
28 534072.00, equal to \$82,291.53 on the basis of the

1 then-prevailing exchange rate." Wang Decl. ¶ 6. Ms.  
2 Wang also testified that she is the Director of Dalian  
3 and is responsible for overseeing the management of the  
4 business. Id. ¶¶ 2-3. This is sufficient to establish  
5 personal knowledge. See Redwind, 2016 U.S. Dist. LEXIS  
6 57793, at \*64. Therefore, Defendant's lack of personal  
7 knowledge objection to paragraph 6 is **OVERRULED**.

8 Defendant objects to paragraph 7 on the basis that  
9 it is hearsay and Ms. Wang has not demonstrated that  
10 she has personal knowledge necessary to make this  
11 statement. Def.'s Evid. Objs. to Wang Decl. 6:9-13.  
12 Ms. Wang has not shown how she has any personal  
13 knowledge of the cost of the Cargo at origin or whether  
14 she was at all involved in determining the cost of the  
15 Cargo. Additionally, the fact that the repairs were  
16 not acceptable to the Chinese buyer of the Cargo is  
17 hearsay because it is the Chinese buyer's out-of-court  
18 statement offered for its truth. Ms. Wang has not  
19 demonstrated that she participated in conversations  
20 with the Chinese buyer. Because she has failed to show  
21 how she has any personal knowledge of these statements,  
22 and Plaintiffs have failed to establish how the  
23 statements from the Chinese buyer fall within an  
24 exception to the hearsay rule, the Court **SUSTAINS**  
25 Defendant's objections to paragraph 7.

26 2. Plaintiffs' Evidentiary Objections Are  
27 **OVERRULED in part** and **SUSTAINED in part**

28 Plaintiffs object to statements made in the Chan

1 and Hu Declarations. Many of Plaintiffs' objections  
2 "are boilerplate and devoid of any specific argument or  
3 analysis as to why any particular exhibit or assertion  
4 in a declaration should be excluded," and therefore,  
5 the Court **OVERRULES** each of these objections. See  
6 United States v. HIV Cat Canyon, Inc., 213 F. Supp. 3d  
7 1249, 1257 (C.D. Cal. 2016); see also Stonefire Grill,  
8 Inc. v. FGF Brands, Inc., 987 F. Supp. 2d 1023, 1033  
9 (C.D. Cal. 2013)(refusing to "scrutinize each objection  
10 and give a full analysis of identical objections");  
11 Amaretto Ranch Breedables v. Ozimals, Inc., 907 F.  
12 Supp. 2d 1080, 1081 (N.D. Cal. 2012)("This Court need  
13 not address boilerplate evidentiary objections that the  
14 parties themselves deem unworthy of development, and  
15 the Court accordingly summarily overrules the  
16 objections." (internal citations omitted)). The Court  
17 will only address the objections for which Plaintiffs  
18 have provided specific argument.

19 Plaintiffs object to the statement in paragraph 3  
20 of the Chan Declaration where Ms. Chan states, "[Jenny  
21 Xu of Plaintiff Krystal] acknowledged this," when  
22 referring to Ms. Xu's ability to purchase marine  
23 insurance for any cargo Defendant shipped. Whether  
24 Defendant provided Plaintiffs with an opportunity to  
25 purchase marine insurance is irrelevant to the analysis  
26 of Plaintiffs' Motion. Because the Court does not rely  
27 on this statement in ruling on Plaintiffs' Motion, the  
28 Court **OVERRULES** this objection **as MOOT**.

1 Plaintiffs object to the statement, "Sharon Yu and  
2 Jenny Xu declined to obtain marine insurance, which  
3 would have resolved the issue," which is contained in  
4 both the Chan and Hu Declarations. See Chan Decl. ¶ 8;  
5 Hu Decl. ¶ 6. As noted above, the offer of marine  
6 insurance is irrelevant to the Court's ruling on  
7 Plaintiffs' Motion. As such, the Court **OVERRULES** this  
8 objection **as MOOT**.

9 Plaintiffs make the same objection to several  
10 statements in both the Chan and Hu Declarations, which  
11 all state the declarant is "aware" of a certain fact.  
12 See Chan Decl. ¶¶ 8, 11, 14, 16-19; Hu Decl. ¶¶ 8-9,  
13 12, 14-16. Plaintiffs argue that awareness is not  
14 sufficient for personal knowledge. Pls.' Evid. Objs.  
15 to Chan Decl. 2:11-18. However, both declarants have  
16 established that they were directly involved in  
17 communicating with Plaintiffs' employees about the  
18 shipment of the Cargo. Chan Decl. ¶¶ 3-4; Hu Decl.  
19 ¶ 2. Therefore, the declarants' awareness of the  
20 statements to which they testify are based on adequate  
21 personal knowledge. The Court **OVERRULES** Plaintiffs'  
22 lack of personal knowledge objections based on the use  
23 of the word "aware."

24 Plaintiffs object to the following statement in the  
25 Chan Declaration, "In this instance, I am aware that  
26 neither the trucking company, nor US Lines, nor APM  
27 Terminals called C.U. Transport to alert C.U. Transport  
28 that the Sprinter was damaged while being transported

1 to the APM Terminals," Chan Decl. ¶ 16, on the grounds  
2 that Ms. Chan does not have personal knowledge of  
3 whether the entities called Defendant. Pls.' Evid.  
4 Objs. to Chan Decl. 4:23-5:8. Ms. Chan has not  
5 established how she knows none of the entities called  
6 Defendant regarding the damage to the Cargo. As such,  
7 Plaintiffs' objection to this statement is **SUSTAINED**.

8 Plaintiffs object to the statement, "In previous  
9 shipments, Krystal, Inc. also had the ability to  
10 declare a higher value on the bill of lading." Hu  
11 Decl. ¶ 3. Plaintiffs argue that Ms. Hu has not  
12 established personal knowledge necessary to make this  
13 statement. Pls.' Evid. Objs. to Hu Decl. 1:7-16.  
14 However, Ms. Hu testified in her Declaration that she  
15 had worked previously with Plaintiff Krystal, and the  
16 "course of dealing" between herself and Plaintiff  
17 Krystal "indicate [the] pattern for value declaration."  
18 Hu Decl. ¶ 11. Based on her previous dealings with  
19 Plaintiff Krystal, Ms. Hu has shown personal knowledge  
20 of the statement she has made, and the Court **OVERRULES**  
21 this objection.

22 Plaintiffs object to the statement, "I am aware  
23 that Sharon Yu and Jenny Xu of Krystal, Inc. had the  
24 opportunity on numerous transactions to indicate a  
25 different value on the Bill of Lading yet never did,"  
26 Hu Decl. ¶ 11, on the grounds that Ms. Hu lacks  
27 personal knowledge of what the women "had the  
28 opportunity" to do. Pls.' Evid. Objs. to Hu Decl. 4:4-

1 11. However, Ms. Hu states that her prior course of  
2 dealing with the women provides evidence of this  
3 practice. Hu Decl. ¶ 11. As such, Ms. Hu has personal  
4 knowledge of what the women had the opportunity to do,  
5 and the Court **OVERRULES** the objection.

6 4. The Court **GRANTS** Plaintiffs' Motion as to  
7 Breach of Contract Liability, **DENIES as MOOT**  
8 Plaintiffs' Motion as to Negligence Liability,  
9 and **DENIES** Plaintiffs' Motion as to Damages

10 The Court turns to the merits of Plaintiffs'  
11 Motion.<sup>3</sup>

12 a. *Liability for Damage to Goods Under COGSA*

13 In this matter, Plaintiffs bring breach of contract  
14 and negligence claims based on alleged damage that  
15 occurred to the Cargo during shipment. The parties do  
16 not dispute that COGSA governs the shipment in this  
17 matter and any potential liability for damage to the  
18 Cargo during shipment. See Mot. 3:25-4:6; Opp'n 9:18-  
19 19. COGSA "was enacted to allocate risk of loss and  
20 create predictable liability rules for ocean carriers

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21  
22 <sup>3</sup> Defendant notes that it was not aware Plaintiffs were  
23 assignees of Dalian, to whom Plaintiffs sold the Cargo. Opp'n  
24 9:25-10:1. Rather, the commercial invoice Defendant received  
25 named Grand Union as the buyer of the Cargo. Id. at 3:13-15.  
26 Defendant therefore included Grand Union on the Bill of Lading.  
27 Id. at 3:17-18. While Defendant argues that Plaintiffs failed to  
28 inform Defendant that Plaintiffs were suing as assignees of  
Dalian, Defendant does not argue that the Court should deny the  
Motion for that reason. Rather, Defendant simply states that  
"Plaintiffs stand in the shoes of their assignor and are subject  
to all of the defenses existing at the time of the assignment."  
Id. at 10:3-6. As such, the Court addresses the merits of  
Plaintiffs' Motion.

1 and shippers." Indem. Ins. Co. of N. Am. v. Totem  
2 Ocean Trailer Express, No. C13-6093 BHS, 2015 U.S.  
3 Dist. LEXIS 15488, at \*6-7 (W.D. Wash. Feb. 9, 2015).  
4 "Every bill of lading or similar document of title  
5 which is evidence of a contract for the carriage of  
6 goods by sea to or from ports of the United States, in  
7 foreign trade, shall have effect subject to the  
8 provisions of [COGSA]." 46 U.S.C.S. § 30701 note  
9 (Language of COGSA). Therefore, COGSA specifically  
10 governs the Bill of Lading in this matter and any  
11 potential breach of the Bill of Lading Plaintiffs are  
12 alleging.

13 "Generally under COGSA, a shipper establishes a  
14 prima facie case against the carrier by showing that  
15 the cargo was delivered in good condition to the  
16 carrier but was discharged in a damaged condition."

17 Taisho Marine & Fire Ins. Co. v. M/V Sea-Land  
18 Endurance, 815 F.2d 1270, 1274 (9th Cir. 1987).

19 Defendant disputes the fact that Plaintiffs  
20 delivered the Cargo to Defendant in good condition.  
21 See Stmt. of Genuine Issues in Opp'n to Mot. for Sum.  
22 J. ¶ 8. However, Defendant does not dispute that it  
23 issued a "Clean on Board" Bill of Lading. See id. ¶ 9.  
24 "[I]n the usual cargo-damage case the shipper makes a  
25 showing of good condition on shipment sufficient for  
26 its prima facie case by introducing a 'clean' bill of  
27 lading." Daido Line v. Thomas P. Gonzalez Corp., 299  
28 F.2d 669, 671 (9th Cir. 1962). Because there is a

1 "clean" Bill of Lading, which Defendant does not  
2 dispute, Plaintiffs have established that they  
3 delivered the Cargo to Defendant in good condition.

4 Plaintiffs must then prove that the Cargo was  
5 discharged in a damaged condition. Taisho, 815 F.2d at  
6 1274. Defendant does not dispute that the Cargo  
7 arrived in the port in China in a damaged condition,  
8 nor could they do so. Plaintiffs include as an exhibit  
9 to the Chao Declaration an email from Ruby Hu of  
10 Defendant to Jenny Chao of Plaintiff Kede in which Ms.  
11 Hu states, "Sorry to inform you that your car has been  
12 damaged." Chao Decl., Ex. C. To prove liability,  
13 Plaintiffs need only show that the Cargo was discharged  
14 in a damaged condition. In re Complaint of Damodar  
15 Bulk Carriers, Ltd., 903 F.2d 675, 683 (9th Cir. 1990).  
16 Plaintiffs have met their burden to do so, and  
17 Defendant has offered no evidence to raise a genuine  
18 issue of material fact as to whether the Cargo was  
19 damaged upon arrival to port.

20 Ultimately, there is no genuine issue of material  
21 fact as to the two elements of liability under COGSA.  
22 As noted, COGSA governs Plaintiffs' breach of contract  
23 claim, which alleges a breach of the Bill of Lading.  
24 Compl. ¶¶ 10-11. The Court **GRANTS** Plaintiffs' Motion  
25 as to liability under their breach of contract claim.  
26 Because the Court has granted Plaintiffs' Motion as to  
27 liability for their breach of contract claim,  
28 Plaintiffs' Motion as to liability for their negligence

1 claim is **DENIED as MOOT.**

2           b. *Limitation of Liability in the Bill of*  
3                 *Lading*

4           After determining that no genuine issue of material  
5 fact exists as to whether Defendant is liable for a  
6 breach of contract under COGSA, the Court must  
7 determine whether a genuine issue of material fact  
8 exists as to the amount of damages for which Defendant  
9 is liable.

10           The focus of the parties' arguments in regards to  
11 Plaintiffs' Motion is whether the Bill of Lading  
12 properly limited the amount of Defendant's liability.  
13 COGSA limits a carrier's liability for loss and damage  
14 to goods shipped:

15           Neither the carrier nor the ship shall in any  
16 event be or become liable for any loss or damage  
17 to or in connection with the transportation of  
18 goods in an amount exceeding \$ 500 per package  
19 lawful money of the United States, or in case of  
20 goods not shipped in packages, per customary  
freight unit, or the equivalent of that sum in  
other currency, unless the nature and value of  
such goods have been declared by the shipper  
before shipment and inserted in the bill of  
lading.

21 46 U.S.C.S. § 30701 note. This limitation only applies  
22 "if the shipper is given a 'fair opportunity' to opt  
23 for a higher liability by paying a correspondingly  
24 greater charge." Nemeth v. Gen. S.S. Corp., 694 F.2d  
25 609, 611 (9th Cir. 1982). "[T]he burden of proving  
26 'fair opportunity' is initially upon the carrier."  
27 Komatsu, Ltd. v. States S.S. Co., 674 F.2d 806, 809  
28 (9th Cir. 1982). "[T]he mere incorporation of COGSA by

1 reference is not adequate." Mori Seiki USA, Inc. v.  
2 M.V. Alligator Triumph, 990 F.2d 444, 449 (9th Cir.  
3 1993). Instead, the bill of lading must explicitly  
4 include the specific limitation of liability language  
5 of COGSA or language "'to the same effect' as the  
6 statute." Id. (citation omitted).

7 Prior to addressing whether Plaintiffs were  
8 provided with a fair opportunity to opt for higher  
9 liability, Defendant argues that it is under no  
10 obligation to alert Dalian, and therefore Plaintiffs as  
11 the assignees of Dalian, of the limitation of liability  
12 because Dalian was a consignee. Opp'n 10:11-15. It  
13 argues that the Ninth Circuit has determined that a  
14 carrier does not have to alert consignees or other  
15 third parties of the limitation of liability. Id. at  
16 10:9-13 (citing Carman Tool & Abrasives, Inc. v.  
17 Evergreen Lines, 871 F.2d 897, 900-01 (9th Cir. 1989)).  
18 Relying on Carman, Defendant oddly argues that "without  
19 notice of the limitation of liability codified in  
20 COGSA, Dalian is bound by COGSA's limitation of  
21 liability." Opp'n 10:19-22.

22 However, Defendant misconstrues the holding of  
23 Carman. The court in Carman held that the carrier was  
24 not responsible for notifying every involved party of  
25 the limitation of liability as long as the limitation  
26 of liability language from COGSA was contained in the  
27 bill of lading. 871 F.2d at 901. Defendant  
28 specifically admits that the language of COGSA was not

1 contained in the Bill of Lading. Opp'n 12:3-6.

2 Therefore, the holding in Carman is irrelevant.

3 Defendant makes clear that it is not aiming to  
4 limit its liability to \$500 as provided in COGSA. Id.  
5 at 12:25-26. Instead, it argues that its liability  
6 should be limited based on the \$2.00 per kilogram  
7 limitation explicitly contained in the Bill of Lading.  
8 Id. at 12:26-13:2. The Bill of Lading states that  
9 Defendant's liability is "limited to US \$2.00 per  
10 kilogram or US \$100.00 per shipment which ever is  
11 smaller." Hu Decl., Ex. 1.

12 Defendant correctly acknowledges that the \$100.00  
13 limitation is unenforceable. Opp'n 13 n.2; see Tessler  
14 Bros. (B.C.), Ltd. v. Italpacific Line, 494 F.2d 438,  
15 443 n.6 (9th Cir. 1974)(noting that any clause that  
16 lessens the liability of the carrier below the \$500  
17 enumerated in COGSA is null and void). However,  
18 Defendant focuses on the limitation of \$2.00 per  
19 kilogram. Opp'n 12:25-13:2. But focusing on the \$2.00  
20 per kilogram limitation ignores the full text of the  
21 limitation. The clause limits liability to \$2.00 per  
22 kilogram or \$100.00, "which ever is smaller." Hu  
23 Decl., Ex. 1. Therefore, the only time the parties  
24 would rely on the weight-based portion of the clause is  
25 if the weight of the Cargo multiplied by \$2.00 was less  
26 than \$100.00. Put simply, the limitation of liability  
27 would never be over \$100.00. Because this limitation  
28 lessens the liability to below the \$500 limitation

1 COGSA provides, it is "null and void." Tessler Bros.,  
2 494 F.2d 438, 443 n.6.

3 Defendant also argues that Plaintiffs had actual  
4 knowledge of the limitation of liability based on past  
5 conduct and communications of the parties. Opp'n 11:6-  
6 10. However, in making this argument, specifically  
7 through the Chao and Hu Declarations, Defendant focuses  
8 on the \$2.00 per kilogram limitation, not the \$500  
9 default limitation in COGSA. In fact, Ms. Hu's  
10 Declaration notes that the \$2.00 per kilogram  
11 limitation was included "in all bills of lading between  
12 [Defendant] and Krystal, Inc. in the past." Hu Decl.  
13 ¶ 10. The Court has already determined that the  
14 limitation of liability clause in the Bill of Lading is  
15 null and void because it lessens liability to below the  
16 \$500 default limitation in COGSA. Therefore, Defendant  
17 cannot argue that Plaintiffs were on "actual notice" of  
18 a void limitation of liability. Cf. Royal Exchange  
19 Assurance of Am., Inc. v. M/V Hoegh Dene, 1988 A.M.C.  
20 868 (W.D. Wash. 1987)(holding that carrier could still  
21 meet its burden to show shipper had a "fair  
22 opportunity" to opt for higher liability by showing  
23 actual knowledge of the COGSA limitation through  
24 communications and prior practices, rather than just  
25 constructive knowledge through quoting COGSA's  
26 limitation provision in the bill of lading, and such  
27 was an issue of fact).

28 Accordingly, Defendant has failed to raise a

1 genuine issue of material fact as to its limitation of  
2 liability in the Bill of Lading.

3 c. *Proper Calculation of Damages*

4 Because Defendant has failed to raise a genuine  
5 issue of material fact as to whether the Bill of Lading  
6 limited liability, the question then becomes what the  
7 correct value of the damages is.

8 Under COGSA, the "basis of recovery for the usual  
9 carriage of goods [is] the value at the point of  
10 destination." Otis McAllister & Co. v. Skibs, 260 F.2d  
11 181, 183 (9th Cir. 1958); see Ansaldo San Giorgio I v.  
12 Rheinstrom Bros. Co., 294 U.S. 494, 495-96  
13 (1935)(affirming "damages [computed] on the basis of  
14 the market value of the goods at destination on the  
15 date of arrival"); Neptune Orient Lines, Ltd. v.  
16 Burlington N. & Santa Fe Ry. Co., 213 F.3d 1118, 1120  
17 (9th Cir. 2000)("Market value at destination' is the  
18 proper measure of the actual loss . . . ."). However,  
19 the Neptune Orient Lines court noted that this formula  
20 for determining damages is appropriate where "the  
21 shipment is lost or destroyed." 213 F.3d at 1120.  
22 Where the cargo is merely damaged, the measurement of  
23 damages is "the difference between the fair market  
24 value of the goods at their destination in the  
25 condition in which they should have arrived and the  
26 fair market value of the goods in the condition in  
27 which they actually did arrive." Texport Oil Co. v.  
28 M/V Amolyntos, 11 F.3d 361, 365 (2d Cir. 1993).

1 Plaintiffs argue that the market value of the Cargo  
2 is \$217,678.74, "the price Dalian's buyer contracted to  
3 pay." Mot. 8:4-8. However, Defendant points to the  
4 fact that Plaintiffs have not provided any evidence  
5 that Plaintiffs sold the Cargo to Dalian. Opp'n 2:13-  
6 17. The invoice Plaintiffs provided to Defendant named  
7 Grand Union as the buyer, and nowhere on the invoice  
8 does it reference a sale to Dalian. See Chan Decl.,  
9 Ex. 2. Moreover, the invoice for the sale of the Cargo  
10 to Grand Union lists the sale price as \$72,980.00, the  
11 purported fair market value of the Cargo. Id.

12 In response to Defendant's Interrogatories,  
13 Plaintiffs claimed a total of \$154,435.95 in damages,  
14 which included the \$72,980.00 vehicle value, taxes,  
15 penalties paid to the buyer, and shipping. Decl. of  
16 Joan Cochran ("Cochran Decl."), Ex. 5, at 22, ECF No.  
17 47-4. It was not until Plaintiffs filed this Motion  
18 that they argued they were entitled to recover  
19 \$217,678.74 in damages.<sup>4</sup>

20 Further, the only evidence Plaintiffs have provided  
21 to support their claim of \$217,678.74 in damages is the  
22

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23 <sup>4</sup> Plaintiffs claim that they provided the contract regarding  
24 the sale of the Cargo from Dalian to the Chinese buyer, which  
25 contained the \$217,678.74 purchase price, in their Initial  
26 Disclosures. Reply 7:7-11. However, Plaintiffs did not include  
27 this number in any prior computation of damages, including their  
28 Complaint (loss of \$142,841.15), Initial Disclosures ("Damages  
are based upon the cost of repair, freight charges, taxes and the  
amount of a contractual penalty PLAINTIFFS paid to the Cargo  
buyer."), or responses to Defendant's Interrogatories (total  
damages of \$154,435.95).

1 contract for sale of the Cargo from Dalian to the  
2 Chinese buyer. See Wang Decl., Ex. A. As noted,  
3 Defendant objected to this Exhibit based on hearsay.  
4 See Def.'s Evid. Objs. to Wang Decl. 7:9-20. Ms. Wang  
5 did not lay the proper foundation in her Declaration  
6 for an exception to the hearsay rule, and therefore,  
7 the contract is inadmissible.<sup>5</sup> Even if the contract was  
8 admissible evidence, Plaintiffs have failed to prove as  
9 a matter of law that this sale price is in fact the  
10 fair market value of the Cargo at the destination.

11 Plaintiffs have offered different damage  
12 calculations throughout this litigation, only arguing  
13 the highest, \$217,678.74, in the instant Motion.  
14 Plaintiffs have failed to provide evidence confirming  
15 the sale of the Cargo from Plaintiffs to Dalian and the  
16 true market value of the Cargo at destination. As  
17 such, genuine issues of material fact exist as to the  
18 calculation of damages, and the Court **DENIES**  
19 Plaintiffs' Motion as to damages.

### 20 **III. CONCLUSION**

21 Based on the foregoing, the Court **GRANTS**  
22 Plaintiffs' Motion [45] as to the question of liability  
23 under their breach of contract claim, **DENIES as MOOT**  
24

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25 <sup>5</sup> Further, while Plaintiffs offer the Quotation Dalian  
26 received for repairs to the Cargo, see Wang Decl., Ex. B, they  
27 have not provided any evidence of what the value of the Cargo was  
28 when it arrived damaged in China. Therefore, there the Court  
cannot calculate the proper damages owed to Plaintiffs using the  
typical formula. See Texport Oil Co., 11 F.3d at 365.

