

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

PRECISION ASSOCIATES, INC.;
ANYTHING GOES LLC d/b/a MAIL BOXES
ETC., and JCK INDUSTRIES, INC., on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

PANALPINA WORLD TRANSPORT
(HOLDING) LTD., *et al.*,

Defendant.

No. 08-CV-00042 (BMC) (PK)

**DECLARATION OF MICHAEL R.
O’CONNOR, ESQ.**

I, MICHAEL R. O’CONNOR, ESQ., hereby declare and state as follows:

1. I am a Vice President at Epiq Class Actions & Claims Solutions, Inc. (“Epiq”) and a licensed attorney in Oregon. Prior to joining Epiq in 2010, I was an owner at the Garvey Schubert Barer law firm in Portland, Oregon, and was engaged in private practice for 13 years. I received my Juris Doctorate from the University of Oregon Law School in 1997 and my Bachelor of Arts degree from Yale University in 1994. I have first-hand knowledge of, and am competent to testify, regarding the matters stated herein.

2. Epiq was established in 1968 as a client services and data processing company. Epiq has been administering bankruptcies since 1985 and settlements since 1993, including settlements of class actions, mass tort litigations, Securities and Exchange Commission enforcement actions, Federal Trade Commission disgorgement actions, insurance disputes, bankruptcies, and other major litigation. Epiq has administered thousands of settlements, including some of the largest and most complex cases ever settled.

Overview of Epiq’s Responsibilities in this Matter¹

3. Epiq’s responsibilities in connection with these settlements include but have not been limited to:

- (a) Printing and mailing Court Approved Notices and Claim Forms, including address research and re-mails for initial notice and all subsequent mailings.
- (b) Establishing and maintaining a toll-free number in six languages with a recorded phone line and phone agents.
- (c) Establishing and maintaining an informational website in six languages, with online claim filing prior to the final Round 3 deadline.
- (d) Claims processing, database management, reviewing and processing correspondence.
- (e) Analyzing claimant data, addressing inaccuracies in data, and conducting high level review of data.
- (f) Award calculations and distribution of settlement funds, including reissues and any supplemental distributions described below.

Summary of Claim Forms Received

4. Epiq has completed processing for all three separate rounds of settlements reached in this case. The filing deadline for submitting Round 1 Claim Forms was August 24, 2015. At Class Counsel’s direction, Epiq continued processing Round 1 claims received via the website or postmarked through September 24, 2015. A copy of the Round 1 claim form is attached as Exhibit E.

¹ Exhibits A, B, C, and D, the Declarations of Julie Redell for Epiq and Katherine Kinsella for Kinsella Media, filed in connection with Plaintiffs’ motions for final approval of the Round 1 and 2 settlements, detail the Class Notice process.

5. The filing deadline for submitting Round 2 Claim Forms was March 31, 2016. At Class Counsel's direction, Epiq continued processing Round 2 claims received via the website or postmarked through May 31, 2016. A copy of the Round 2 Claim Form is attached as Exhibit F.

6. The filing deadline for submitting Round 3 Claim Forms was April 3, 2017. At Class Counsel's direction, Epiq continued processing Round 3 claims received via the website or postmarked through December 15, 2017. The Round 3 Claim Form is substantially the same as the Round 2 Claim Form and is attached as Exhibit G.

7. There are two substantial differences between the Round 1 and Rounds 2 and 3 Claim Forms. First, the Round 1 Claim Form has a January 1, 2001 through September 14, 2012 Class Period. The Round 2 and 3 Claim Forms have a shorter Class Period of January 1, 2001 through January 4, 2011. Epiq accounted for the differences in Class Periods when making Round 1, 2 and 3 award calculations. Second, Question 2A of the Round 1 Claim Form sought information "For air shipments from anywhere in the world *into* the United States." Question 2A of the Rounds 2 and 3 Claim Form sought information "For air shipments from anywhere in the world *to or from* the United States." This difference was addressed by mailing and processing responses to the 2A Letter described in paragraph 26, below.

8. All Claim Forms contained a "Schedule B," which is the table at the beginning of each Claim Form where claimants summarized their claimed transactions from all Defendants. "Eligible Schedule B" refers to all transactions listed in Schedule B, which Epiq verified as without deficiencies and eligible for award calculation after claims review. Non-fatal and fatal deficiencies are outlined in paragraphs 18 and 19, below.

9. The Claim Forms requested claims data corresponding to each of the specific surcharge-based settlement funds approved by the Court in the Plan of Allocation.² Specifically, data sought for claims against the Worldwide Freight Forwarding Services settlement fund correspond to Schedule B of the Claim Form. Claims against the New Export System Fee (“NES”) Surcharge settlement fund were calculated based on claimant responses to Schedule B, which showed transactions originating in the UK with a US destination, and supplemented by a custom request on the Defective Claim Letters mailed after the Round 1 and Round 2 claim filing deadlines.³ Data regarding the Japanese Automated Manifest Surcharge (“AMS”) and Japanese Security & Explosives Examination Surcharges corresponds with Question 1A. Data regarding Air AMS corresponds with question 1B. Data regarding the Ocean AMS corresponds with question 1C. Data regarding the Security Surcharge corresponds with question 2A. Data regarding the Japanese Fuel Surcharge corresponds with question 2B. Data regarding the Currency Adjustment Factor Surcharge (“CAF”) corresponds with 3A. Data regarding the Peak Season Surcharge (“PSS”) corresponds with question 3B.

10. Epiq was unable to provide class members with preprinted claim forms because not all Defendants provided purchase data. For those Defendants who did provide purchase data, the data was provided in a manner that either: (a) could not be processed in a manner that allowed for pre-population of claim forms; or (b) would have been cost prohibitive to process for the pre-population of claim forms. Instead, class members relied on their accounting and shipping records to provide purchase and shipping data related to certain shipping routes and

²The Plan of Allocation is attached as Exhibit H.

³ NES claim totals for Round 3 were solely based on claimant responses to Schedule B showing transactions originating in the UK with a US destination. Epiq did not supplement this claims data with a separate NES request as the query for UK to US Schedule B was deemed sufficient, and the mailing redundant.

time periods in response to the claim forms. The information sought from class members corresponded with the shipping routes, time period, and/or manner in which the supra-competitive surcharge was applied. For example, for those surcharges that were imposed based on the number of shipments, such as the AMS surcharges, questions 1A through 1C of the claim form sought information about the number of shipments made.

11. There were three rounds of claim filing, with round eligibility based upon the postmark date or online submission date of the earliest claim received from each claimant. Epiq received 8,549 paper Claim Forms and 4,567 online Claim Forms during the Round 1 claim filing period postmarked or submitted online by September 24, 2015 and recommends accepting all such claims as timely for Round 1. Any eligible claims filed or postmarked after September 24, 2015 until December 15, 2017 were considered for Round 2 and 3 distribution. Claims eligible for award calculation from Round 1 funds are also eligible for award calculation from Round 2 and 3 funds.

12. In addition to these timely Round 1 claims, Epiq received 2,092 paper Claim Forms and 2,285 online Claim Forms during the Round 2 claim filing period postmarked or submitted online after September 24, 2015 and by the Round 2 processing deadline of May 31, 2016. Epiq recommends accepting all such claims as timely for Round 2. Any eligible claims filed or postmarked after May 31, 2016 until December 15, 2017 were considered for Round 3 distribution. Claims eligible for award calculation from Round 2 funds are also eligible for award calculation from Round 3 funds.

13. In addition to these timely Rounds 1 and 2 claims, Epiq received 875 paper Claim Forms and 555 online Claim Forms during the Round 3 claim filing period after May 31, 2016 postmarked or emailed by December 15, 2017, or submitted online by the Round 3 processing

deadline of May 3, 2017 when online claim filing was shut down. Epiq recommends accepting all such claims as timely for Round 3. Any claims postmarked after the final processing deadline of December 15, 2017 were deemed “late” and were denied.⁴

14. The total number of 18,944 claims⁵ eligible for award calculation includes claims in complete and incomplete statuses where those claims had a greater-than-zero claim for at least one claim question and the claimants did not opt out of one or more settlements. The total number of claims eligible for award calculation excludes claims in denied, invalid, duplicate or withdrawn statuses. Denied and invalid claims are discussed in greater detail in paragraph 19 below.

15. Epiq received 27 complete requests to opt out of one or more Round 1 settlements, postmarked by the Round 1 exclusion deadline of June 25, 2013. Epiq received three complete requests to opt out of one or more Round 2 settlements, postmarked by the Round 2 exclusion deadline of September 18, 2015. Epiq received one complete request to opt out of one or more Round 3 settlements, postmarked by the Round 3 exclusion deadline of September 20, 2016. Epiq received no requests to opt out after the final opt out deadline.

⁴ Claim processing deadlines were extended for each round to provide a grace period for Class Members whose claims were filed near the respective deadlines. The grace period for Round 2 was longer than for Round 1 because Epiq had planned the initial distribution following Round 2, and wanted to be as inclusive as possible before the distribution plan was finalized. As noted in previous filings, and detailed here, that initial distribution was delayed to perform additional claims reviews. The extension for Round 3 claim filing was longer than for previous rounds because Round 3 was the final round, and late claims would be wholly ineligible for consideration. As such, Epiq tried to maximize the opportunity for Class Members to file until Epiq began final preparations to distribute for all rounds, planned for Q1 2018. Although that distribution was delayed for Phase 2 High-Value reviews, the claim processing deadline of December 15, 2017 could not be further extended in the interest of maintaining a static set of claims data for review, and because the Round 3 processing deadline had been widely communicated and enforced. *Pro rata* awards were calculated based on these processing deadlines.

⁵ Many claimants filed more than one claim. Paragraph 20 describes de-duplications efforts. For some claimants, their eligible claim totals are the sum of eligible non-duplicative claim totals from multiple claims.

16. Because of the international nature of the freight forwarding business, some claimants submitted claims in non-US Dollars. To process claims submitted in non-US Dollars in response to Schedule B, question 3A, and/or question 3B, Epiq built a currency table within the database based on exchange rate data purchased from a third party vendor, XE. Epiq used average exchange rates for the entire Class Period for all currencies in circulation. Epiq created a program within the database to convert all foreign currencies to USD.

Defective Claim Outreach

17. As a first step in the claim review process, Epiq reviewed all Rounds 1, 2 and 3 claims on a rolling basis to identify any defects summarized in paragraphs 18 and 19, below. Where Epiq identified defects, it mailed Defective Claim Letters to impacted claimants which advised them of any defects and requested information to cure those defects. Epiq mailed 5,957 Defective Claim Letters to Round 1 eligible claimants, 1,110 Defective Claim Letters to Round 2 eligible claimants, and 192 Defective Claim Letters to Round 3 eligible claimants. Defective Claim Letter mailings began in December 2015 with a final mailing in December 2017. A sample Defective Claim Letter is attached as Exhibit I.

18. A claimant's failure to cure a "non-fatal defect" over the course of claims administration, meaning a defect rendering a claim *partially* eligible for an award, resulted in that claim being placed in incomplete status. Non-fatal defects include: (a) some missing purchase dates; (b) some missing origins or destinations; (c) some purchase dates outside the Class Period; (e) some transactions with non-Defendant freight forwarders; (f) some missing freight forwarders; (g) Schedule B corrupt or unreadable; or (h) no Schedule B provided. Non-fatal defects do not render claims wholly ineligible for an award, because some portion of the

claims are eligible for award calculation. Recommended awards for these claims are calculated based upon the eligible portion of each claim.

19. A claimant's failure to cure a "fatal defect" over the course of claims administration, meaning a defect rendering a claim *wholly* ineligible for award calculation, resulted in that claim being placed in a denied or invalid status. Fatal defects include: (a) all shipment dates outside the Class Period; (b) all freight forwarders included in the claim are not Defendants; (c) no listed purchase amounts; (d) no valid currencies; (e) no listed purchase dates; (f) no origins or destinations; (g) no proof of authority; (h) no signature; (i) a claim filed after the Round 3 deadline, or (j) the claim was identified as wholly unreliable during Epiq's review processes, and the claimant provided an inadequate response to Epiq's request for additional support, as explained in paragraphs 21 through 38, below. In total, 491 claimants were deemed wholly ineligible in a denied status and 175 claimants were deemed wholly ineligible in an invalid status.

20. Additional claim review efforts were aimed at identifying possible duplicative claims. This included multiple claim submissions from a single source for a single entity (where it was unclear if claims were cumulative or if later claims replaced earlier submissions), or multiple claim submissions from multiple sources for a single entity (where it was unclear which representative was authorized or if the claims were from distinct entities—potentially conflicting claims). In such instances Epiq sent claimants a Multi-Submission Letter or a Conflicting Claim Letter, as appropriate, to solicit clarification.

(a) In total, Epiq mailed Multi-Submission Letters to 585 claimants between December 2015 and December 2017. Based on responses or non-responses, 270

of these claimants withdrew their claims, and were not included in award calculations. A sample of the Multi-Submission Letter is attached as Exhibit J.

(b) In total, Epiq mailed Conflicting Claim Letters to 132 claimants between June 2016 and May 2018. Based on responses or non-responses, 65 of these claimants withdrew their claims, and were not included in award calculations. A sample of the Conflicting Claim Letter is attached as Exhibit K.

Requests for Additional Claim Support

21. In addition to outreach related to claim defects or potentially duplicative claims, Epiq undertook a comprehensive reliability review for Round 1 and 2 claims beginning in July 2016. Epiq ran automated analyses of the entire Round 1 and 2 claim populations to identify any claims where additional outreach was necessary, focusing on: (a) representatives filing for multiple entities without explanation; (b) large claims filed with only a PO Box address; (c) inconsistent or blank transaction dates; (d) generic origins/destinations; (e) extremely large or round claim amounts; and (f) name/address matching by a third part vendor. Where automated analysis was inconclusive, Epiq manually analyzed all supporting documentation on file, and attempted to verify claimant identity for claims filed on behalf of businesses.

22. Where the automated and manual reliability reviews identified claims as potentially unreliable, Epiq mailed Affidavit Request Letters where Schedule B claims were above \$25,000 (as a rough estimate of overall claim value), if not already subject to previous outreach by Epiq or Class Counsel. Epiq performed the same automated and manual analyses for Round 3 claims beginning on January 29, 2018.

23. In total, Epiq mailed Affidavit Request Letters to a total of 4,598 claimants beginning in August 2016 with the last mailing in December 2017. Affidavit Request Letters

required a sworn statement: (a) that claims were within the Class Period; (b) detailing the individual's authority to file; (c) describing the methodology for claim preparation; and (d) confirming whether Schedule B included ineligible truck and rail shipping, not ancillary to qualifying purchases for freight forwarding services. As of January 23, 2019 Epiq received 2,250 complete responses to the Affidavit Request Letters. If claimants did not respond or provided an incomplete response to the Affidavit Request Letter, Epiq applied a standard reduction to the claim. 2,348 claims received a standard reduction. A sample of the Affidavit Request Letter is attached as Exhibit L.

24. Express shipments will be deemed ineligible for distribution from the settlement funds based upon Class Counsel's conclusion that express shipments were not impacted by Defendants' anticompetitive conduct and, therefore, were not qualifying freight forwarding shipments as set forth in the Plan of Allocation. In order to ensure fair and appropriate distribution of settlement funds, Epiq reviewed claims to determine whether they included express shipments and, when they did, reduced claims accordingly.

25. To do so, Epiq focused on UPS and DHL purchases, two freight forwarders known for their express shipping services. Epiq mailed letters to all claimants with UPS and/or DHL purchases, asking them whether they included express shipments as part of their claim and asking what percentage of their responses consisted of express shipping. In total, Epiq mailed UPS Express Letters between September 2016 and December 2017 to 6,765 claimants who claimed UPS shipping purchases on Schedule B. Epiq received complete UPS Express responses from 4,871 claimants. Likewise, Epiq mailed DHL Express Letters between February 2017 and December 2017 to 5,517 claimants who claimed DHL shipping purchase on Schedule B. Epiq received complete DHL Express responses from 3,601 claimants. Non-responders or

claimants who provided incomplete responses were subject to standard reductions. These reductions were applied to 1,894 claimants for UPS and 1,916 claimants for DHL. Samples of the UPS and DHL Express Letters are attached as Exhibits M and N.

26. Epiq identified a subset of claimants who filed Round 1 eligible claims, using a Round 2 Claim Form. Question 2A on the Round 1 Claim Form used less restrictive language than on the Round 2 Claim Form. To provide an opportunity for this subset of claimants to update their claims consistent with the broader language on the Round 1 Claim Form, Epiq mailed 2A Letters, which asked claimants to provide information related to the broader Round 1 Claim Form language. In total, Epiq mailed 2A Letters between February 2017 and October 2017 to 6,323 claimants. Epiq received responses from 1,120 claimants. Since this was an opportunity for affected claimants to increase their question 2A claim totals, non-responses did not result in a reduction. A sample of the 2A Letter is attached as Exhibit O.

High-Value Claim Review

27. In February 2017, Epiq reached out to 166 claimants who had the highest totals for each claim question. The files for each of these claimants were re-reviewed, and if claim totals were not clearly supported by data and/or correspondence on file, claimants were asked to provide: (a) detailed underlying claims data (“Green Letter”); (b) a response to an Affidavit Request Letter and any available supporting data (“Yellow Letter”); or (c) revisions to or clarifications of apparent outlier claim amounts potentially claimed in error (“Orange Letter”).

28. In total, Epiq mailed Green Letters to 88 claimants, Yellow Letters to 69 claimants between February 2017 and October 2017. Epiq received 36 responses to Green Letters, and 44 to Yellow Letters. Non-responses or insufficient responses to Green and Yellow Letters were included in more detailed high-value outreach and reviews discussed in paragraphs

29 through 35 below. The nine claimants in the “Orange Letter” population received their letters via email and were contacted directly by phone to initiate discussions, and correct the issues identified in their claims. All nine “Orange Letter” claimants revised their claims and cured all discrepancies. Samples of the Green, Yellow and Orange Letters are attached as Exhibits P, Q, and R.

29. In August 2017, it was determined that some claims may have contained material inaccuracies.⁶ As a result of these findings, Class Counsel and Epiq undertook additional reviews to identify and correct any material inaccuracies in claims with the largest claim totals for each claim question or the highest projected claim values overall (the “High-Value” population) before finalizing claims data and performing pro rata award calculations. In the months between those findings in August 2017 and updated Determination Letters mailed on September 28, 2018, Epiq identified specific categories of claims where additional scrutiny and outreach would have the greatest value to the Class, narrowly focused to achieve the most cost-effective results without overburdening claimants or causing unnecessary delay in disbursements. As detailed below, the scope of claimants considered High-Value and the depth of reviews evolved over the course of those reviews.

30. Epiq conducted a further detailed review of all claims with proposed awards of over \$250,000 to verify their accuracy. In an abundance of caution, this review was expanded to include all claims with proposed awards over \$150,000 and any claimants under that dollar threshold who were projected to receive substantial increases to their proposed awards as a result of anticipated reductions of proposed awards to other high-value claims (“Phase 1 High-Value”). In total, 159 claimants were subject to Phase 1 High-Value review.

⁶ As detailed in earlier filings with the Court, in response to this Class Counsel withdrew their 2017 motion for distribution.

31. Phase 1 High-Value reviews involved detailed additional analyses of supporting claims data and, where necessary, additional requests for data, affidavits, or other information necessary to support the claimed amounts. Where additional support from the claimant was not already on file to facilitate initial analyses, Epiq mailed Data Request Letters in August 2017 to 48 High-Value claimants. Data Request Letters contained general requests for detailed purchase and shipping data, and asked claimants for an explanation of how their claim was derived or extrapolated. A sample of the Phase 1 Data Request Letter is attached as Exhibit S.

32. During its review of Data Request Letter responses, and any data or supporting documentation on file for Phase 1 High-Value claimants, Epiq identified several material inaccuracies impacting a subset of Phase 1 High-Value claimants which required further outreach. Epiq mailed custom letters to 74 claimants highlighting specific concerns and requesting more robust data and explanations to support their claims (“Data Cure Letters”). Data Cure Letters were customized based on individual analysis of each High-Value claim, but focused on one or more areas of concern: (a) apparent duplication of data used to support claims; (b) outlier claim amounts—i.e., claims far exceeding the amounts claimed by other high value claimants; (c) claim totals supported by non-Defendant purchases, or purchases outside the class period; (d) incorrect use of units (cost, count of shipments, weight); (e) internal inconsistencies in the claim; and (f) inconsistencies or outliers as compared to all claims data. A sample of the Phase 1 Data Cure Letter is attached as Exhibit T.

33. After all 159 Phase 1 High-Value reviews, Epiq found 26 claims fully supported and accepted in whole, and 75 claims fully supported after revisions or corrections by claimants. Epiq received insufficient supporting data, explanation, or no response for 53 claims, resulting in

reductions to one or more eligible claim total. Five claims were ultimately withdrawn by Phase 1 High-Value claimants or denied in whole.

34. As a result of these claim reductions, the projected *pro rata* distribution to other claimants increased significantly, moving 221 new claimants into High-Value categories, including four Round 3 claims (“Phase 2 High-Value”). Preliminary reviews of the Phase 2 High-Value population identified inaccuracies similar to the Phase 1 High-Value population. In fairness to all claimants, the Phase 2 High-Value population was subject to outreach and data analysis modeled after Phase 1 High-Value review. Letters to the Phase 2 High-Value population were revised and customized to focus on common findings within the Phase 1 High-Value reviews, combining “request” and “cure” language into one letter for efficiency with later communications handled by direct phone and email communications. Phase 2 High-Value Data Cure Letters were mailed on April 28, 2018, with outreach continuing until October 29, 2018. A sample of the Phase 2 Data Cure Letter is attached as Exhibit U.

35. After all 221 Phase 2 High-Value reviews, Epiq found nineteen claims fully supported and accepted in whole, and 69 claims fully supported after revisions or corrections by claimants. Epiq received insufficient supporting data, explanation, or no response for 131 claims, resulting in reductions to one or more eligible claim total. Two claims were ultimately withdrawn by Phase 2 High-Value claimants or denied in whole.

36. Prior to the Phase 1 and Phase 2 High-Value reviews, 91.1% in total awards were allocated to High-Value claimants, and 8.9% total awards were allocated to all other claimants. Outreach and review of the Phase 1 and Phase 2 High-Value populations resulted in 79.8% in total awards allocated to High-Value claimants and 20.2% total awards allocated to all other claimants. Overall reductions and corrections to the High-Value populations resulted in

substantial increases to *pro rata* percentages awarded to all claimants. A comparison of *pro rata* percentages by claim question before and after High-Value reviews is attached as Exhibit V. The changes in *pro rata* payment can be attributed to substantially lower claim totals in the aggregate and an increase to the Settlement Funds due to additional payments of settlement funds and interest received on those funds. The *pro rata* payment percentage for those questions which sought “number of shipments” rather than shipping costs or weight in pounds is substantially higher because of the unit of measure sought.

Inconsistent Claim Outreach

37. In parallel with High-Value reviews, Epiq reached out to 275 claimants from all three rounds of claims who filed internally inconsistent claims, but were not in the High-Value populations. To avoid overburdening claimants, outreach was limited to claims below High-Value where projected awards were greater than \$5,000. Claims were deemed inconsistent where responses to any question 1A through 3B were higher than the initial summary of all purchases in Schedule B. Because Schedule B requested all purchase totals from all Defendants regardless of routes over the entire Class Period, Schedule B was an important measure of consistency since under most circumstances the total dollars claimed for all purchases (after conversion) would be higher than total claims under subsections 1A through 3B, which requested counts of shipments (questions 1A – 1C), weight of shipments (2A and 2B), and a subset of overall dates, origins and destinations (3A and 3B). Based on review of the High-Value populations, Epiq frequently found that internal inconsistencies proved to be due to claimant errors. As such, Epiq mailed Inconsistent Claim Letters to 275 claimants between June 2018 and July 2018 seeking clarification or correction of apparent inconsistencies. Epiq received 66 sufficient explanations or corrections, resulting in acceptance of their final claims in whole. 207

claimants did not respond, or did not provide sufficient supporting data or explanations to support their claim totals, and were subject to standard reductions. Two claimants withdrew their claims. A sample Inconsistent Claim Letter is attached as Exhibit W.

38. Epiq worked in close collaboration with Class Counsel throughout the additional claims review processes, including weekly status calls, and meeting on six occasions for multi-day, in-person discussions of review progress. During these multi-day in-person meetings, Epiq representatives presented on review progress and explained the reasoning behind final determinations for all High-Value claimants.

Claims Processing Results

39. As a result of information submitted by claimants and the verification processes described above, Epiq recommends issuing payments for 10,857 complete claims where claimants cured all defects in a timely manner, and are eligible for complete payments. The total award determinations for complete claims are \$313,065,632.82. *Pro rata* awards for complete claims are detailed in the Determinations Table at Exhibit X.

40. Epiq recommends partial payment for 1,571 incomplete claims where claimants: (a) failed to cure non-fatal deficiencies in a timely manner; (b) provided insufficient responses to one or more request letter(s) related to additional claim reviews; and/or (c) are eligible for partial payments calculated based on the complete portions of their Claim Forms after any applicable reductions. The total award determinations for partial payment of incomplete claims is \$28,557,902.04. *Pro rata* awards for incomplete claims are detailed in the Determinations Table at Exhibit X.

41. Within the categories of complete claims and incomplete claims for which Epiq recommends payment or partial payment, 6,723 of those claims would result in a *pro rata* award

greater than zero and less than \$100. In consultation with Class Counsel, Epiq recommends that a floor on minimum award amounts be established and that these 6,723 claims each be awarded a one-time *de minimus* payment of \$100, and that these claims be excluded from any supplemental payment of funds reserved or unclaimed from the initial distribution, unless that claimant's total award after the subsequent distribution(s) would have exceeded \$100 absent a minimum payment.

42. Epiq recommends no payment for a group of 357 claimants with complete claims, 1,726 claimants with incomplete claims calculated at \$0 for their total *pro rata* awards and 1,117 claimants with withdrawn claims. These claimants filed no eligible claim totals or their claim totals were reduced to zero based on insufficient responses to Epiq's request letters. *Pro rata* awards for \$0 awards are detailed in the Determinations Table at Exhibit X.

43. Epiq recommends claims filed by 666 claimants be denied in their entirety where they failed to cure one or more fatal deficiencies in a timely manner or were found invalid, as described in paragraph 19 above, or were found wholly unreliable after Epiq's additional review processes. An Aggregate Claim Summary is attached as Exhibit Y.

Eligible Claim Determinations and Objections

44. Epiq mailed determination letters to 15,205 claimants on September 28, 2018 with a 30-day objection deadline. Epiq received 147 objections to determinations, and worked closely with all objectors to resolve any concerns raised in their letters. Following interim outreach and discussions with all objectors, 105 objections were resolved in agreement with objectors, and 42 objections were denied in whole or in part. Formal objection responses were mailed to all 147 objectors by December 13, 2018 noting final determination amounts eligible for award calculations. A copy of the Determination Letter is attached as Exhibit Z.

45. In preparation of this Declaration, Epiq identified one claimant we have decided to contact with additional questions about a portion of its claim. We expect final adjudication of that claim prior to the Court hearing on Class Counsel's motion.⁷ Should the claim require adjustment, such an adjustment would not materially change payments for other claimants, and if anything, other claimants' payments would increase slightly.

46. Counsel's Motion to Disburse will include an additional 30-day period for claimants to object to the Court if they disagree with the proposed award.

(a) Claimants who object to the award proposed by Class Counsel, but whose objection is not sustained by the Court and who do not appeal the Court's determination, will receive payment for their Court-approved *pro rata* award in the initial distribution.

(b) Funds reserved for claimants who object to the award proposed by Class Counsel, but whose objection is not sustained by the Court and who successfully appeal the Court's determination, and residual funds unclaimed from the initial distribution after appropriate efforts to ensure eligible claimants negotiate their payments, will be distributed in a supplemental distribution.

(c) For any claimants whose objections with the Court are denied and who choose to appeal that denial, Epiq, in consultation with Co-Counsel, will calculate an appropriate reserve to be held while the appeal is pending.

⁷ Because adjudication of this claim is not yet final, its award information has been redacted from Exhibit X.

Proposed Process for Distributing the Net Settlement Fund

47. Following formal responses to all objectors to the determination letters, Epiq calculated *pro rata* awards for all claims in all three rounds of settlements. On January 23, 2019, Epiq completed award calculations and submitted them to Class Counsel for approval.

48. If the Court grants the motion to distribute the Net Settlement Funds, and following the expiration of the period to appeal the Court's order, Epiq will: (a) finalize the *pro rata* distribution amounts for all claimants found eligible by the Court, making any adjustments that may be necessary to address the resolution of objections, in accordance with the Plan of Allocation and available settlement funds;⁸ (b) print and mail distribution checks to claimants with claims eligible for award calculation ("Authorized Claimants") by prepaid first-class mail or by wire by request of certain international claimants or for particularly large awards; (c) issue replacement checks for undeliverable mailings and upon request by Authorized Claimants; and (d) continue to respond to inquiries from Class Members.

49. To encourage Authorized Claimants to cash their distribution checks promptly and to avoid or reduce future expenses relating to uncashed checks, all distribution checks will bear the notation: "void if not negotiated within ninety (90) days of date of issue."

50. For Authorized Claimants whose checks are returned as undeliverable, Epiq will attempt to locate new addresses by running the undeliverable addresses through online databases and/or by calling or otherwise contacting Authorized Claimants. If new addresses are located, Epiq will update the database accordingly and re-issue distribution checks to Authorized Claimants at their updated addresses.

⁸ The settlement pools of funds are summarized at Exhibit AA.

51. In the event Authorized Claimants lose or damage their checks, or otherwise require a new check, Epiq will issue replacement checks upon ensuring that the first check was never negotiated and upon receiving written instructions from the Authorized Claimants, provided that the Authorized Claimants return the first check, where possible.

52. Epiq's recommendation for the distribution of any reserved funds and residual funds unclaimed from the initial distribution after appropriate efforts to ensure eligible claimants negotiate their payments will be addressed in a separate declaration.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed January 28, 2019 in Washington, DC.



Michael R. O'Connor