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.*,

Defendants.

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

PLAINTIFFS' RESPONSE TO OBJECTIONS BY CLAIMANTS REGARDING PROPOSED DISTRIBUTION OF NET SETTLEMENT FUNDS

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I. INTRODUCTION

Following the filing of Plaintiffs' Renewed Motion to Distribute Net Settlement Funds (ECF No. 1517), Epiq, at the direction of Class Counsel, mailed letters to the 29 claimants whose objections were denied in whole or in part during the internal objection process described in the Declaration of Michael R. O'Connor, Esq., dated January 28, 2019, ECF No. 1519 ("O'Connor Decl."), informing them of the objection process with the Court. Information about objection deadlines was also posted on the claims administration website. Six objections were filed by the March 1, 2019 deadline. Class Counsel received one late-filed objection. Class Counsel reviewed these objections and consulted with Epiq. Based upon this review, Class Counsel recommends that, consistent with their earlier recommendations, all objections be denied. Class Counsel has outlined the rationale for these denials below.

Additionally, as part of Plaintiffs' renewed motion, one claimant needed final adjudication of its proposed award prior to the Court ruling on the renewed motion. Epiq has completed its review of this claim, informed the claimant of its decision, and recommended an award for this claimant. This recommendation is addressed below.

II. FORBES TRUCKING CO.'S CLAIM WAS PROPERLY DENIED BY EPIQ.

Forbes Trucking Co. ("Forbes") filed an objection with the Court on February 5, 2019. ECF No. 1522. Forbes' objection is premised upon its belief that it should be paid $83,120.49—the amount identified as its proposed award in Epiq's now withdrawn 2017 determination letter. Forbes has offered no evidence to support this objection, and Class Counsel recommends that Epiq's 2018 determination that the claim is not eligible for payment be affirmed.

First, Forbes' assertion that the 2017 determination letter should be operative is misplaced. In connection with Class Counsel's withdrawal of their 2017 motion to distribute settlement funds, all claimants were mailed a letter telling them that their initial determination letters were

withdrawn and no longer valid. As all claimants were informed, the 2017 initial determination letters were withdrawn because Epiq identified certain material inaccuracies in claims that warranted a re-review of all claims. Forbes' determination changed because Epiq's subsequent review of its claim determined that it was not substantially supported. This was explained in Epiq's September 28, 2018 determination letter mailed to Forbes. Counsel Decl., Ex. 1[1] ("As explained in our disbursement status letter mailed August 22, 2017, any First and/or Second Round determination letters you may have received are no longer valid."). Therefore, any assertion that the 2017 determination letter should govern fails.

Second, Forbes' objection should be denied because it has provided no documents or other information to substantially support its claim. As part of the claims administration process and consistent with its treatment of other claimants, Epiq asked Forbes to respond to three data request letters. The first, Epiq's 2016 "UPS Letter" sought clarification regarding whether Forbes' claimed UPS purchases included express shipping. *See* O'Connor Decl., ¶¶ 24-25; Ex. M. The second, Epiq's February 2017 "DHL Express Letter," similarly sought clarification regarding whether Forbes' claimed DHL purchases included express shipping. *Id.*; Ex. N. Epiq also requested an affidavit from Forbes on February 23, 2017, seeking: (1) a statement describing actual purchases of Freight Forwarding Services during the class period; (2) a statement that Forbes made these purchases personally or was authorized to act on behalf of the purchasing entity or person, (3) a detailed description of the methodology used to calculate Forbes' claims; (4) a statement that all truck and rail services were ancillary to air and ocean shipments; and (5) a statement attesting that the affidavit contents were true and correct to the best of Forbes' knowledge. *See* Counsel Decl., Ex. 2.

[1] Exhibits 1-48 are hereby attached to the Declaration of Anna M. Horning Nygren, filed herewith ("Counsel Decl.").

Forbes indicated that express purchases were not included in its claim in response to the 2016 UPS letter. In response to Epiq's 2017 affidavit request, Forbes sent an affidavit statement postmarked February 24, 2017 stating "I am unable to provide any of my past records as I stated in my original claim to you all. My purchases and shipping information was lost.…" Counsel Decl., Ex. 3. Forbes did not provide any information explaining how its purchase amounts, pounds of shipments, or number of shipments were estimated or otherwise provide information establishing that it had purchased freight forwarding services. Forbes did not respond to the DHL Express Letter in 2017.

As part of Epiq's additional review of High Value and other inconsistent claims, Epiq re-reviewed Forbes' claim. Epiq's review identified several previously unidentified inconsistencies that justified denial of Forbes' claim in full. First, Forbes' claim included very large round numbers.[2] In Epiq's experience, large round numbers, such as those in Forbes' claim, presented a red flag because shipping units of measurement such as those claimed in this case rarely add up neatly. Therefore, in its reliability review Epiq routinely assessed claims which had large, round numbers and which had no further documentation or explanation in support. *See* O'Connor Decl., ¶ 21. Epiq never received a sufficient explanation to support Forbes' claim, and Forbes explicitly stated that no supporting data was available. While claimants were allowed to provide estimates in support of their claim, estimates were only accepted to the extent that the claimant provided

[2] Forbes claim form consisted of the following responses: Schedule B: $1,400,000; question 1.A.1: 200,000 shipments; question 1.A.2: 10,000 shipments; question 1.B.1: 200,000 shipments; question 1.B.2: 150,000 shipments; question 1.C.1: 200,000 shipments; question 1.C.2: 120,000 shipments; question 2.A.1: 5,000,000 pounds; question 2.A.2: 1,000,000 pounds; question 2.B.1: 1,000,000 pounds; question 2.B.2: 1,000,000 pounds; question 3.A: $750,000 (including $200,000 from the United States to China, which was not a qualified purchase in response to this question); and question 3.B: $700,000.

other forms of supporting data and a detailed explanation of its basis for making such estimates. Forbes did not.

Second, Forbes' response to Schedule B included many intra-US origins and destinations which suggested that Forbes' shipments were either truck or rail shipments or express shipments—types of shipments explicitly excluded from recovery.[3] Finally, Epiq identified a number of internal inconsistencies within Forbes' claim. Epiq deemed claims inconsistent where responses to questions 1.A through 3.B were higher than the initial summary of all purchases in Schedule B. *See* O'Connor Decl., ¶ 37. Forbes' claim was internally inconsistent because its claimed number of pounds of shipments greatly exceeded its total amount of dollars claimed for freight forwarding services from all Defendants. These inconsistencies were further exacerbated by publicly available data consulted by Epiq to determine the reliability of the information provided by Forbes. An online company profile for Forbes Trucking, Co. reports that Forbes "is estimated to generate $157,199 in annual revenues." *See* BuzzFile, Forbes Trucking, Co., *available at* http://www.buzzfile.com/business/Forbes-Trucking-Co.-817-483-7482 (last accessed March 15, 2019). Given the scant information provided by Forbes, and its other inconsistencies, Epiq determined that the claim was not reasonably supported and denied the claim in full.

Epiq sent Forbes a determination letter on September 28, 2018, informing it that its claim was denied. Counsel Decl., Ex. 1. Forbes' October 3, 2018 objection focused on its dissatisfaction with the withdrawal of Epiq's 2017 initial award determination. In its objection, Forbes did not provide any further explanation to support its claimed purchase and shipping amounts. Instead, it

[3] Forbes provided a list or origins and destinations in response to Schedule B of the claim form, but it never explained how these were obtained.

stated: "my computer was hacked I lost all my info,"[4] while also wrongly claiming Epiq "lost my information I provided with the first claim." *See* Counsel Decl., Ex. 4.

As part of the internal objection review process, Epiq informed Forbes that it had provided an insufficient response or failed to respond to an affidavit request letter and the DHL Express letter, and provided Forbes with another opportunity to respond to these letters. *See* Counsel Decl., Ex. 5. Forbes provided two affidavit statements dated October 24, 2018 and October 26, 2018, respectively. The October 24, 2018 affidavit again explained its records were lost, but failed to explain how Forbes calculated its purchase amounts, especially its poundage, number of shipments and routes, as requested by Epiq. *See* Counsel Decl., Ex. 6. The October 26, 2018 affidavit statement merely reiterated Forbes' identity. *See* Counsel Decl., Ex. 7. Forbes also responded to the DHL Express Letter and this response, which indicated Forbes had included express shipping in its claim, resulted in reductions to all sections of its claim. Counsel Decl., Ex. 8.

Because Forbes' responses never provided sufficient information to support its claimed purchases, Epiq again found Forbes' claim unreliable and affirmed its denial. Forbes' renewed February 5, 2019 objection does not add anything substantive to its prior objection and does not cure the fundamental flaws in Forbes' claim. Forbes' claim is entirely reliant on estimates, and Forbes has provided no explanation for how it calculated its claim and provided no proof that it was indeed a purchaser of freight forwarding services. The unfortunate fact that Forbes did not have data available to support its claim does not justify issuing it an award. Despite multiple chances to provide some form of proof of its purchases, it did not. Therefore, Epiq's decision to deny its claim was proper and Forbes' objection should be denied.

[4] This statement was inconsistent with Forbes' February 2017 affidavit which stated that its "records and retenation [sic] policies were damaged and destroyed by water damages to my office which are now unavailable since it has been some years ago. I am unable to provide any of my past records as I stated in my original claim to you all." *See* Counsel Decl., Ex. 3.

III. CBI INDUSTRIES' QUESTION 2.A CLAIM WAS PROPERLY DENIED BY EPIQ.

CBI Industries, Inc. ("CBI") filed an objection with the Court on February 28, 2019. ECF No. 1525. CBI objected to Epiq's decision to deny its question 2.A claim (Security Surcharge) in its entirety. All other portions of CBI's claim were approved. CBI's explanation does not resolve the fundamental inconsistency in its question 2.A response, and Class Counsel recommends that Epiq's determination that CBI is not eligible for payment from the Security Surcharge settlement pot be affirmed.

Epiq's decision to deny CBI's Security Surcharge claim is appropriate because CBI failed to submit information to substantially support its claimed total poundage of shipments. CBI's claim included a Schedule B (Worldwide Surcharge) total of $1,739,793.06 in shipping charges, and a question 2.A (Security Surcharge) response of 8,000,000 pounds of claimed air shipping.

As part of Epiq's additional review of High Value and inconsistent claims, Epiq re-reviewed CBI's claim in 2018 and identified a large inconsistency between the amount CBI claimed to have paid for freight forwarding shipments and the number of pounds it claimed to have shipped. This inconsistency suggested that CBI paid less than a dollar per pound for its international air shipments, which was inconsistent with Epiq's understanding of the industry.

Moreover, Schedule B requested purchase totals over the entire Class Period, so the dollars claimed should presumably have been higher than responses to questions 1.A through 3.B, which requested counts of shipments (questions 1.A – 1.C), weight of shipments (questions 2.A and 2.B), and route-specific dollar amounts from China to the United States (question 3.A), and Hong Kong to the United States (question 3.B). O'Connor Decl., ¶ 37. To the extent there were inconsistencies between these amounts (*i.e.*, a claimed Schedule B amount lower than one or more of the other subsections), claimants were given an opportunity to cure or explain the inconsistency. *See id.*

For claimants who did not respond to Epiq's outreach, a standard reduction was applied to their claimed totals. *Id*.

During Epiq's review, CBI's claim stood out as especially inconsistent in that its question 2.A total of 8,000,000 lbs. of air shipping was substantially larger than its Schedule B total spend of only $1,849,593. As previously discussed, the round number, without more, calls into question the reliability of the number. *See* O'Connor Decl., ¶ 21. This is especially true with this claim because air shipping can be reasonably expected to cost much more than this claim represents (approximately 23 cents per pound of air shipping). *See id*. at ¶ 37.

On June 21, 2018, Epiq requested additional information about CBI's response to question 2.A. Epiq's letter stated:

> Upon initial review of your claim, your 2A or 2B claim for total ***pounds of air shipping*** is greater than or equal to your Schedule B summary of all eligible freight forwarding ***costs***, which should include costs for any air poundage claimed under question 2A or 2B. Please provide a sworn statement explaining this inconsistency or revise your claim. **Whether or not you revise your claim, please provide a sworn statement, either notarized or sworn under penalty of perjury, affirming your original or revised claim amounts, and include a copy of this letter with your response.**

Counsel Decl., Ex. 9. (emphasis in original). CBI never responded to the issues raised in this letter. Consequently, CBI received a partial award, reducing its question 2.A claim in full, because it "did not respond, or did not sufficiently respond" to Epiq's Inconsistent Claim Letter. Counsel Decl., Ex. 10.

On October 9, 2018, CBI objected to Epiq's September 2018 determination letter, upwardly revising its question 2.A response to 10,000,000 pounds. Counsel Decl., Ex. 11. CBI attached a picture of a spreadsheet which showed payments to a Defendant, dollar amounts, a date, and a country name to its objection, but CBI did not explain how its poundage claim was calculated, explain the inconsistency in the claim, or explain the basis for its upward adjustment

of question 2.A by 2 million pounds. *Id*. Because this response did not address Epiq's original concern that CBI's claim was inconsistent and did not provide any support for the pound amounts claimed, Epiq affirmed its denial of CBI's Security Surcharge claim and informed CBI of its decision on December 13, 2018.

CBI's objection dated February 26, 2019 does not remedy the defects Epiq identified in its claim. CBI's objection expresses its confusion in the claim filing process, provides handwritten tables of numbers without units, and reverts back to its question 2.A initial response of 8,000,000 pounds. *See* ECF No. 1525.[5] These handwritten notes also state that page one shows weights per year and these amounts add up to 7,785,000. *Id*. CBI's objection also contains an unsworn statement explaining the very low apparent shipping rates of $0.23 per pound (which also contradicts $0.17 per CBI's earlier objection). *Id.*

CBI's handwritten notes and explanation are unsworn and do not cure a claim total that is extremely inconsistent on its face. The question 2.A total is more than ***400%*** of Schedule B. Given CBI's lack of explanation, Epiq found question 2.A wholly unreliable and ineligible for award. *See* O'Connor Decl., ¶ 19. In contrast, Epiq found CBI's claimed amounts for Schedule B (Worldwide Surcharge), Air Automated Manifest Surcharge ("AMS") (question 1.B) and Ocean AMS (question 1.C), to be credible and supported. Epiq's review of public sources reveals that CBI's company profile appears in line with the claim totals for those questions.[6] As such, because these responses did not suffer the same defects as its question 2.A response, Epiq accepted in full CBI's other responses.

[5] The February 26, 2019 objection mailed to Epiq by CDI contained additional handwritten notes not provided to the Court. *See* Counsel Decl., Ex. 48.

[6] During the Class Period, CBI appears to have been a performance apparel retailer and importer, generating $800,000 in annual revenues. *See* BuzzFile, CBI Industries, Inc., *available at* http://www.buzzfile.com/business/Seagear-Performance-Apparel-305-796-9346 (last accessed March 15, 2019).

All claimants subjected to High Value or inconsistent claim review were required to provide a factual basis for any estimates they provided. *See* O'Connor Decl., ¶¶ 31, 37. CBI's question 2.A claim never met this standard, and its most recent objection does not either. Reducing CBI's question 2.A claim in full, while accepting other properly supported claims, aligns with Epiq's standard practice and is fully appropriate here. *See* O'Connor Decl., ¶¶ 18-19. Epiq's determination should be affirmed.

IV. POWERTRANS FREIGHT SYSTEMS, INC.'S QUESTION 2.A AND 2.B CLAIMS WERE PROPERLY DENIED AND ITS QUESTION 3.B CLAIM WAS PROPERLY REDUCED BY EPIQ.

Powertrans' objection, dated February 25, 2019 focused primarily on Powertrans' confusion with Epiq's claims administration methodology and sought clarification from Epiq about how it was applied. ECF No. 1524. In response to Powertrans' objection, Epiq contacted representatives of Powertrans and explained that Epiq had calculated a full award for Powertrans' response to Schedule B, and questions 1.A, 1.B. and 3.A but that its responses to questions 2.A, 2.B, and 3.B. were unsubstantiated and subject to reductions—full reductions for questions 2.A and 2.b and a fifty percent reduction for question 3.B. Based upon Epiq's discussions with Powertrans, Class Counsel understands that Powertrans is objecting to the decision to deny its questions 2.A and 2.B claims in full and to reduce its question 3.B claim by fifty percent. Because Powertrans failed to provide information sufficient to substantially support its responses to these questions, Epiq's denial decision was proper and should be affirmed.

Powertrans' initial November 7, 2013 claim was flagged as defective. As part of the claims administration process, Epiq sent Powertrans a defective claim notice in December 2015 that requested additional information. Counsel Decl., Ex. 16 at 5. Powertrans provided over 400 pages of spreadsheets on January 11, 2016. This cured the initially-identified defects in its claim because the provided spreadsheets contained dates and purchase amounts. *See* Counsel Decl., Ex. 12.

Powertrans' claim was categorized as a High Value claim and was subject to additional review by Epiq in 2018. *See* O'Connor Decl., ¶¶ 27-36. As part of this review in July 2018, Epiq sought additional data from Powertrans identifying the defendant freight forwarder; currency type; currency amount; date; origin; destination; shipping method; poundage; and number of shipments underlying its claims. Counsel Decl., Ex. 13. Powertrans responded by re-submitting a sample of the exact same data it previously provided with its original deficiency response. *See* Counsel Decl., Ex. 14. Because this data sample contained only dates and purchase amounts, it was deemed insufficient to support Powertrans' High Value claim totals, per Epiq's standard protocol. *See* O'Connor Decl., ¶¶ 19, 32.

Epiq again sought additional data from Powertrans on August 9, 2018, and specified that a sworn statement explaining how its data points were derived was necessary. Counsel Decl., Ex. 15; *see also* O'Connor Decl., ¶ 31. Powertrans responded by telling Epiq it "diligently complied" with all requests and did not provide any new or responsive information. *See* Counsel Decl., Ex. 16. Critically, Powertrans failed to explain how the missing data points were derived. *Id*. As such, Epiq sent Powertrans a Determination Letter on September 28, 2018 denying its claims in full for failure to provide requisite data. *See* Counsel Decl., Ex. 17.

Powertrans objected to Epiq's determination on October 21, 2018. Counsel Decl., Ex. 18. In response, Epiq provided Powertrans with a copy of the prior data request letters and explained how Powertrans' previously supplied data was insufficient. Counsel Decl., Ex. 19, Ex. 13. On October 31, 2018, Powertrans provided additional data. Counsel Decl., Ex. 20. Epiq re-reviewed Powertrans' record in light of its submission and approved as eligible Powertrans' claim amounts for Schedule B (Worldwide Surcharge), question 1.A (Japanese AMS), question 1.B (Air AMS), and question 3.A (Currency Adjustment Factor Surcharge ("CAF")). Powertrans' claimed

amounts for questions 2.A (Security Surcharge) and 2.B (Japanese FSC) were unsubstantiated and denied in full. Its claimed amounts for question 3.B (Peak Season Surcharge ("PSS")) was deemed partially substantiated and Epiq applied a standard fifty percent reduction to this question. *See* Counsel Decl., Ex. 12 at 4; *see also* O'Connor Decl., ¶¶ 18, 32, 34. Epiq notified Powertrans on December 13, 2018 of its determination, *see* Counsel Decl., Ex. 12, and Powertrans filed its objection with the Court on February 27, 2019. ECF No. 1524.

As a result of its conversations with Epiq, Powertrans provided additional data to Epiq on March 13, 2019 in an attempt to cure its outstanding defects. In the interest of fairness to the class, Epiq recommends, and Class Counsel agrees, that it would be inappropriate to permit Powertrans to cure its defects at this late stage of the claims administration process. Powertrans had three opportunities to provide information sufficient to support its claims and it did not. To allow it to do so now, in a manner that would impact the awards of all other claimants who did not object and who may have had their claims reduced for similar reasons would unfairly prejudice other claimants. Moreover, even if such an amendment were appropriate, the data provided by Powertrans is insufficient to cure the defects that lead to the reductions of questions 2.A, 2.B and 3.B of its claim. Epiq's initial review of the data shows that it does not provide origin and destination information, which is needed to substantiate Powertrans' question 2.A, 2.B and 3.B claims. Further, it appears that the totals available on the data provide by Powertrans in response to these questions is lower than the total amounts claimed on its claim form, further justifying Epiq's initial decision that these portions of Powertrans' claim were either not substantiated at all or were only partially substantiated. Therefore, Class Counsel recommends that Epiq's initial decision to deny Powertrans' question 2.A and 2.B claims and reduce its question 3.B claim should be affirmed.

V. MAYMAY INTERNATIONAL INC.'S OBJECTION IS INAPPROPRIATELY RAISED AND SHOULD BE DENIED.

Maymay International ("Maymay") filed three written objections over the course of its communications with Epiq, but to Class Counsel's knowledge, did not formally file its objection with the Court. Maymay's sole objection is that Federal Express ("FedEx") was not named as a Defendant in this case. *See* Counsel Decl., Exs. 21-22. Maymay's claim was denied in full because it did not have any purchases from Defendants. Class members must have "directly purchased Freight Forwarding Services from any of the Defendants, their subsidiaries, or affiliates in the United States OR outside the United States but for shipments within, to, or from the United States." Importantly, FedEx was not named as a Defendant in this action.

Putting aside Maymay's complaint about FedEx, Maymay's claim was properly denied. Maymay's claim form contained no purchase amounts. Despite requests for this information Maymay failed to provide a freight forwarder list or spreadsheet of purchases and shipments or otherwise complete a claim form. Counsel Decl., Ex. 23.

Maymay objected to Epiq's September 28, 2018 Determination Letter, maintaining its belief that it should be able to claim against FedEx. Counsel Decl., Ex. 21. Epiq responded on December 13, 2018, reiterating that a blank claim form cannot receive an award and FedEx is not a Defendant. Counsel Decl., Ex. 24. Maymay's most recent objection, dated February 20, 2019, merely restates that it should be able to file a claim against FedEx. Counsel Decl., Ex. 22.

Assuming but not conceding that Maymay is a valid class member with standing to object (which it has not proven, given its failure to provide proof of qualifying purchases from a Defendant), Epiq's determination that Maymay is not entitled to an award in this case is supported and should be affirmed. *See* O'Connor Decl., ¶ 19 (specifying that a defect is "fatal" if freight forwarders included in the claim are not Defendants).

VI. ARLIKTEX'S CLAIM WAS PAID IN FULL AND ITS OBJECTION SHOULD BE DENIED.

Arliktex's February 22, 2019 objection (ECF No. 1528) sought clarification as to why its proposed distribution had decreased so substantially from its 2017 recommendation.[7] Arliktex sent a similar email to Epiq on February 3, 2019. Counsel Decl., Ex. 25 at 2. Epiq responded to Arliktex on February 4, explaining the claims administration process. *Id.* On February 5, 2019, Arliktex asked whether, "there something that I can submit or do that may change the total amount of the settlement fund we are to receive?" *Id.* In response, Epiq informed Arliktex that it could object to the Court and provided information about the objection process. *Id.* Epiq recommended that Arliktex's claim be paid in full, and it did not make any reductions to its claim. Therefore, no adjustments are needed to Arliktex's claim and its objection should be denied.

For background, Epiq sent Arliktex a Data Request Letter on July 2, 2018, asking Arliktex to clarify its claim methodology and to confirm that Arliktex claimed a number of shipments in response to questions 1.B and 1.C of the claim form instead of the amount paid or some other number. *See* Counsel Decl., Ex. 26. On November 18, 2018, Arliktex corrected its question 1.B and 1.C claim, showing that its initial response had been in Israeli Shekels, and providing the number of shipments it made. This correction substantially reduced its claimed number of shipments in response to each question, reducing Arliktex's pro rata award. Based upon the information provided by Arliktex, Epiq adjusted Arliktex's updated eligible claim totals to reflect the information in its response, accepting Arliktex's revised claim. *See* Counsel Decl., Ex. 27. Arliktex was informed of this decision on December 13, 2018.

[7] As Class Counsel explained in Section II, the 2017 initial determination letters were withdrawn and are no longer valid.

Since Epiq accepted Arliktex's claim as written, there is nothing to cure. While Arliktex's 2017 pro rata award was higher, that is because it did not properly answer questions 1.B and 1.C, making its claim in a dollar amount rather than number of shipments. As a result, its initial claims determination was grossly overinflated. Arliktex cannot now, after seeing the amount of its *pro rata* distribution, upwardly amend its claim to obtain a larger distribution. The time to amend claims total has passed. Arliktex's *pro rata* share was calculated using complete corrected claim totals that Arliktex provided to Epiq, and Arliktex has not presented any argument or support suggesting there was an error in that calculation or that it was made contrary to the Court-approved Plan of Allocation. For these reasons, Arliktex's objection should be denied.

VII. BJ PARTNERS INC.'S CLAIM WAS PROPERLY DENIED BY EPIQ.

BJ Partners, Inc. ("BJ") filed an objection with the Court on March 8, 2019. BJ objects to the fact that O'Connor Decl., Exhibit X (ECF No. 1519-2) does not "list a settlement amount [BJ] is entitled to." ECF No. 1526. BJ's claim number is not identified in Exhibit X because Epiq determined that it was not entitled to an award from the settlement funds. Despite repeated efforts by Epiq to obtain adequate data to support BJ's claim, including the identity of the Defendants BJ shipped with, BJ failed to provide it. It was not until after its claim was denied in full that BJ finally provided the name of a Defendant with which it shipped, and even then, it did so in such an ambiguous manner that Epiq could not reliably assess the credibility of BJ's claim. Because the objection did not cure the defect, Epiq properly denied BJ's claim in full.

Epiq denied BJ's claim because it contained a fatal defect that was never cured despite multiple opportunities to do so. BJ's February 6, 2016 claim consisted of $4,500 in total shipping charges (Schedule B), but failed to identify the Defendant(s) it purchased freight forwarding services from. It did not complete any other questions on the claim form. Epiq mailed BJ a defect

letter on June 28, 2016, asking it to identify the Defendant(s) it shipped with. Counsel Decl., Ex. 28. BJ did not respond to this letter or otherwise cure this defect.

On February 22, 2017, Epiq sent a letter to BJ, seeking information regarding question 2.A. BJ responded to this letter, claiming 4,950 pounds of shipping. ECF No. 1526 at 3. Because this did not identify the Defendant(s) BJ shipped with, its claim was still defective.[8] Accordingly, Epiq informed BJ that its claim was denied on September 28, 2018. Counsel Decl., Ex. 29.

On October 26, 2018, BJ objected to Epiq's determination, claiming it never received Epiq's defect letter because it had moved,[9] and provided an updated address. Counsel Decl., Ex. 29 at 4. Epiq *emailed* BJ a defect letter on November 15, 2018, again asking it to identify the Defendants it had shipped with using the email address provided by BJ. Counsel Decl., Ex. 30. BJ did not respond to this email. Based upon BJ's non-responsiveness, Epiq affirmed that BJ's claim was not eligible for payment. Epiq's December 13, 2018 letter to BJ reiterated the reason for its claim denial, stating "[Y]our claim did not identify a Freight Forwarder from whom you purchased freight forwarding or shipments for some or all of your transactions." Counsel Decl., Ex. 31.

In its objection dated February 28, 2019, but postmarked after March 1,[10] BJ makes an oblique reference to DHL Express. ECF No. 1526. This vague reference alone is insufficient to cure BJ's claim defect. All claimants who purchased from DHL were asked whether they included

[8] BJ's question 2.A claim makes its claim internally inconsistent because its claim of 4,950 pounds in air shipping is higher than total dollars claimed in Schedule B. Because the claim was classified as having a fatal defect for having failed to identify the Defendants it purchased from, it was not subject to an inconsistent claim review. Had it identified the Defendant it purchased from, it would have been subject to this review. *See* O'Connor Decl., ¶ 37.

[9] The claim form instructs all claimants that they "**MUST** notify the Claims Administrator in writing at the address above or online at www.FreightForwardCase.com."

[10] Although not entirely determinative of an outright denial, BJ's objection is postmarked after the March 1, 2019 deadline to object and after its repeated failures to respond to information requests from Epiq. To allow BJ to recover for its claims now would be to reward it for failing to follow any established procedures that were applied consistently to all other claimants.

express shipments as part of their claim and, if so, asked what percentage of their responses consisted of express shipping. O'Connor Decl., ¶ 24. Express shipments are ineligible for settlement funds based upon Class Counsel's conclusion that they were not impacted by Defendants' anticompetitive conduct and, therefore, were not qualifying freight forwarding shipments. *Id*. at ¶ 25. To ensure fair and appropriate distribution of settlement funds, Epiq reduced claims for all other class members whose purchases included express shipments. *Id*. Even if mentioning DHL Express without more were considered a cure for BJ's "naming" defect, it does not address whether BJ's claim included ineligible express shipping. Moreover, given BJ's repeated failure to respond to other requests for information, it would not be productive to engage in further dialog with BJ, nor would it be fair to other claimants who timely responded to Epiq's requests for information. As such, Epiq properly denied BJ's claim, and the Court should correspondingly deny BJ's objection.

VIII. THE CHINESE CHAMBER OF INTERNATIONAL COMMERCE'S CLAIM WAS PROPERLY DENIED BY EPIQ.

The Chinese Chamber of International Commerce ("CCOIC") filed an objection to the denial of its claim on February 27, 2019.[11] Counsel Decl., Ex. 32. Although the CCOIC asserts a myriad of complaints about the denial of its claim, the fact remains that throughout the claims administration process, Class Counsel told the CCOIC that it would be held to the same standards as *all* claimants in this litigation, which included: (1) identifying all of the class members it purported to represent and (2) providing purchase information to show that the claimant is a member of the Class (*i.e.,* the identities of the buyer and seller, the freight forwarding service

[11] While the CCOIC's objection was directed to both Class Counsel and the Court, as of this filing, its objection has not been entered on the docket.

purchased, and the date of the purchase), and providing documentation to substantially support the purchase amounts claimed.[12] Class Counsel never changed their position. Class Counsel held the CCOIC to the same claims filing requirements that were applied to all claimants. While the CCOIC repeatedly proposed alternative ways to attempt to support its claim, none of those proposals addressed Class Counsel's key concerns nor met the fundamental elements consistently required of all claimants—that the CCOIC identify the claimants it represented and provide their purchase data. Ultimately, the CCOIC's claim was denied because it failed to meet those two key requirements consistently required of all claimants in this litigation. The CCOIC's objection merely reiterates the same arguments it has made throughout the claims administration process, and once again it fails to adequately address the two key requirements for filing a qualified claim. As more fully explained below, Class Counsel recommends that the denial of the CCOIC's claim be affirmed.

A. The CCOIC failed to adequately identify the claimants it purports to represent.

The CCOIC's claim failed in the first instance because although it purports to represent *all* Chinese businesses who purchased freight forwarding services in China, it has not identified with specificity the claimants for which it is filing claims. The Court-approved claim process required *all* claimants to identify their name and contact information, and if necessary, the representative's contact information. Claimants also had to provide proof of their authority to file the claim and those claimants who did not provide the requisite proof of authority had a "fatal" defect that resulted in their claim being denied if it was not cured. *See* O'Connor Decl., ¶ 19. Claimants who

[12] *See., e.g.*, Counsel Decl., Exs. 33-38. In Class Counsel's Letter to Jet Deng, Class Counsel responded to the wholly inappropriate threat of CCOIC to individually sue Class Counsel in China if Class Counsel did not approve CCOIC's claim. Although the CCOIC has since temporarily withdrawn that threat, CCOIC appears to leave open the possibility of pursuing collateral litigation in China if their demands are not met. Counsel Decl., Ex. 32 at 9.

filed claims on behalf of their subsidiaries had to identify their subsidiaries and provide a declaration stating under oath or penalty of perjury that they were authorized to file a claim on behalf of the subsidiary. Counsel Decl., Ex. 39 at 8. Entities who filed aggregate claims on behalf of multiple purchasers were subject to the same requirements. These requirements were necessary to ensure that: (1) those who filed claims had the authority to do so and the filing was authorized and (2) companies were not filing duplicate or overlapping claims that would result in double recovery. The Claims Administrator reviewed all claims to identify and eliminate potential duplicative claims. O'Connor Decl., ¶ 20.

Rather than identify its claimants and affirm their desire to participate in the settlement process, the CCOIC asked Class Counsel and Epiq to do the inverse—to assume that all Chinese claimants wished to participate in the process through the CCOIC.[13] The CCOIC then proposed, as a way to eliminate any potential double recovery, that Epiq should assume responsibility for broadly searching and identifying those claimants that might be Chinese businesses, and then deduct any amount awarded to those claimants from the CCOIC's claim. As Class Counsel repeatedly explained to the CCOIC, this approach ignores how the claims administration process was structured. Counsel Decl., Ex. 37. In addition to violating the Court-approved claims process by assuming that all entities in a particular universe (*i.e.*, all Chinese businesses) are presumptively qualified claimants in this case simply by virtue of their location in China, the CCOIC's proposal also unfairly and improperly shifts the burden and costs of establishing the CCOIC's claim onto Class Counsel and Epiq. Identifying potential duplicate claims for claimants that have provided

[13] The CCOIC's request to file a universal claim based upon a general, non-specific description of claimants, instead of identifying those claimants, is fundamentally at odds with the Court-approved claims administration process. Had the CCOIC wished to challenge this process, it could have done so at that time. It did not and now must abide by the requirements established for the claims administration process.

all of the required claim information (name, address, EIN, etc.) is a challenging and time-consuming process that involves running multiple queries to best identify potential duplicate claims followed by detailed review by Epiq staff.[14] Any suggestion that Epiq could easily, readily, and more importantly, accurately, identify and exclude duplicate Chinese claims based upon the scant information the CCOIC has provided shows a gross misunderstanding of the claims review process. *See* Counsel Decl., Ex. 36.

Moreover, the CCOIC's refusal to identify the claimants it represents runs contrary to its assertion that it intends to identify qualifying Chinese claimants and perform a parallel claims administration process to distribute the settlement funds it receives. *Id.* Putting to one side the CCOIC's complete lack of authority from this Court to administer a parallel claims process in this case, if the CCOIC really intended to identify qualified claimants in order to distribute settlement funds at a later date, then—consistent with the requirements imposed on *all* claimants—it could and should have identified those claimants now, as part of this claims administration process, so that their claims could be properly reviewed and their pro rata share of the settlement funds fairly allocated.[15]

Instead, the closest the CCOIC came to identifying the claimants it purports to represent occurred in November 2016, three years after Class Counsel first told the CCOIC that it needed to identify who it represented and well after the first and second round claim filing deadlines passed,

[14] The CCOIC's offer to pay Epiq's fees to perform this review would only insert chaos into the claims administration process. Central to the claims administration process is that claimants are treated equally. To allow one claimant to pay the claims administrator to assist it in administering its claim would only invite requests from other claimants to do the same. Asking Epiq to perform certain paid work for individual claimants would blur the line between neutral administrator and third party provider and cause even greater delays in the administration of claims.

[15] The CCOIC's decision to distribute funds to Chinese businesses is a change in the CCOIC's initial position in this matter. The CCOIC initially asserted that it did *not* intend to disperse any settlement funds it received through the claims administration process and that it would instead use the funds to benefit the shipping community. Counsel Decl., Ex. 40; ECF No. 1252 at 5 ("CCOIC intends to utilize any funds received to provide programs, training, and assistance to Chinese entities engaged in export and import activities. . . ").

when the CCOIC provided Class Counsel with a list of 190,000 member entities with the caveat that the list did not fully identify all Chinese businesses on whose behalf the CCOIC was filing. Counsel Decl., Ex. 41. Putting aside whether providing a list the size of a phone book was a good faith effort to respond to Class Counsel's requirement that all claimants be identified, this list is insufficient to establish the identities of the claimants the CCOIC purports to represent. *See* Counsel Decl., Ex. 37. First, the CCOIC does not just purport to assert a claim on behalf of its members, rather it intends to assert a claim on behalf of *all Chinese businesses that do not file their own claims*.[16] Counsel Decl., Ex. 42. Therefore, despite its size, the membership is under inclusive in that it does not identify non-member Chinese businesses on whose behalf the CCOIC purports to file a claim.

Second, at the same time the CCOIC membership list was over-inclusive because it does not establish which CCOIC member (or any other Chinese entity) directly purchased Freight Forwarding Services in the US or outside the U.S. for shipments within, to, or from the U.S. This is a threshold requirement made of all claimants. Instead, the CCOIC asks Class Counsel and the Court to assume without evidence that *all* CCOIC members purchased freight forwarding services. The CCOIC offered no proof (in the form of shipping data or any other evidence) that this is true. Class Counsel directed Epiq to review the membership list to identify which, if any, CCOIC members appeared within the customer lists Defendants provided so notice could be mailed.[17] Epiq identified 14,428 entities whose names were exact matches with the names on Defendants' customer lists. While this is a sizable number of customers, it accounts for only 7.5% of the

[16] The fact that many Chinese businesses *have* filed their own claims directly with Epiq and met the qualification requirements further belies any basis for the CCOIC's "parallel" proposal.

[17] As part of the notice process, Defendants provided lists of entities who purchased freight forwarding services from them and therefore were known class members based upon Defendants' data. All claimants could have contacted Epiq to find out which Defendant included their name on their customer list so they could determine how they might be a qualified purchaser. *See* Counsel Decl., Ex. 39 at 7; Counsel Decl., Ex. 43.

CCOIC's claimed membership, thus demonstrating the significant over-breadth created by assuming (again, without proof) that every entity on the CCOIC's membership list presumptively purchased freight forwarding services from a Defendant during the class period. Even with a broader (and potentially less accurate) search matching the first 15 letters of names identified on the CCOIC's list with names on Defendants' customer lists, the number of possible purchasers of freight forwarding services did not increase exponentially. 51,552 records fell within the "first 15 match" category. This number, which likely captures entities that are not CCOIC members, represents only 27% of the CCOIC's claimed membership.

While not appearing on a Defendant's customer list is not dispositive on its own, the small number of CCOIC members on Defendants' customer lists is telling. The CCOIC filed an omnibus claim in which it has refused to directly identify purchasers of freight forwarding services or (as discussed below) provide any purchase data (*i.e.,* the identity of the buyer and the seller, the service purchased, and the date of the purchase), and that instead uses high-level estimates to support those claimed purchases. The CCOIC's claim makes no effort to connect purchases to purchasers and sellers, and the flaws in this approach are evident. Epiq's query into the CCOIC membership list suggests that a majority of the entities which the CCOIC purports to represent were not in fact purchasers of freight forwarding services.

These facts are very similar to claims asserted by the CCOIC against various air carriers in London's High Court in 2015. In that matter, the CCOIC asserted 64,696 air cargo cartel claims, but further investigation revealed that only a fraction of those claimants—5,277 entities (8.1% of the claims the CCOIC filed) had actually shipped freight by air. *Bao Xiang Int'l Garment Center v. British Airways PLC,* Case No. HC-2014-000482, Judgment (Oct. 27, 2015). Counsel Decl., Ex. 44. The High Court struck the CCOIC's claims based on this glaring inaccuracy. Here, Epiq's

search of customer lists show that similar to the CCOIC's claims against British Airways, it is likely that only a small fraction of the CCOIC's total membership actually purchased freight forwarding services from Defendants. The CCOIC's refusal to identify individual purchasers, combined with the Epiq's search results, support a denial of claim here. Without specific claimant identities, Epiq has no way to determine whether, in conjunction with a review of claimant data, the claims have been asserted by qualifying class members who purchased freight forwarding services. In order to protect the integrity of the claims administration process, the failure to identify claimants is sufficient to reject the claim.

Any assertion that the CCOIC does not need to identify the Chinese entities on whose behalf it has filed because it will distribute the settlement funds to Chinese businesses once the funds are awarded should be rejected. The CCOIC is purporting to act as a *de facto* and unauthorized claims administrator and determine on its own which Chinese entities are entitled to receive settlement funds. This improperly usurps Epiq's role as the Court-approved administrator, and the Court's own authority ultimately to approve or deny particular claims. While claimants may certainly assign their claims and spend their settlement awards as they feel appropriate, the key considerations are that claimants *knowingly* make those choices, and that the claims administrator and the Court know who those entities are and that they qualified as proper claimants.

B. The CCOIC provided no data to show that its claimants are members of the Class or to support its claimed purchases.

The failings of the CCOIC's claim are only exacerbated by the CCOIC's failure to provide *any* claimant-specific data in support of its aggregate claim, or provide anything beyond a wholly unsupported lump sum total for all Chinese freight. To be a class member, an entity must have "directly purchased Freight Forwarding Services from any of the Defendants, their subsidiaries, or affiliates in the United States OR outside the United States but for shipments within, to, or from

the United States" during the Class Period. Claimants meet these qualifications with data or other information individualized to each claimant. Claimants were told to "preserve and maintain any and all documents they believe will be useful for the claim administrator in determining the amount owed." Counsel Decl., Ex. 39 at 7. Additionally, Epiq provided a number of examples of the types of information that could support a claim, including: Defendant-Specific Airway Bill (AWB), Invoices, Proof of Payment (Canceled Check), In-House Purchase Report, Packing Slips, Defendant-Specific statement of purchases provided to the class member by the Defendant, and Account Audits. *Id.* While these were not the only types of proof of claim, they were common types. Importantly, these types of documentation allowed Epiq to identify the claimant, the Defendant the service was purchased from, when the purchase was made, the route that the shipment was made on and the nature of the shipment (air/ocean)—all information sought on the claim form. As part of the claims administration process, Epiq reviewed and analyzed the supporting claims data and where necessary sought additional data, affidavits or other information to confirm that the claimant's claimed purchases were supported. O'Connor Decl., ¶ 31.

In this case complete data from all Defendants showing all purchases during the class period was not available. As a result, Class Counsel anticipated that some claimants would have to provide some estimates in support of their claim. To account for this, the claim form allowed claimants to explain why they could not identify their purchases with specificity. Counsel Decl., Ex. 45; Counsel Decl., Ex. 39 at 8. But the CCOIC's extreme position—that this permits it to file a universal and omnibus claim based *entirely* on estimates, with no evidence of a specific purchaser, seller, service, or date of purchase—is baseless and illogical, not to mention unfair to all of the qualified claimants who met the requirements. All claimants were consistently required

to provide a factual basis for any estimates they provided and to establish they actually purchased freight forwarding services. The CCOIC should be no exception.

Nothing in the claim form or in FAQ 30 guaranteed that estimates would be accepted as proof of claim, and Epiq consistently subjected estimates to additional scrutiny to assess their reliability and credibility. Where appropriate, Epiq asked for additional information about how a claim was derived or extrapolated. O'Connor Decl., ¶ 31. In some instances Epiq found that the estimates and extrapolation used to support a claim were reliable and recommended that the claim be paid in full. In other instances, Epiq concluded that the estimates used were not reliable and could not substantially support the claim. Where this occurred Epiq requested additional information from claimants. Often this review resulted in revisions to the claim by the claimant or resulted in the claimant providing *additional* data or information about how it calculated its claim. Following this process, Epiq either accepted the claim, or if the claim still had unsupported elements, made reductions to the claim resulting in a lower claim award, or if the estimates and other information provided remained wholly unsupportable, denied the claim entirely. Moreover, and critically, in instances where Epiq determined that estimates or extrapolation were acceptable, the claimant was affirmatively identified *and* the claimant provided information sufficient to show that it was a purchaser of freight forwarding services, based either on information within the claimant's own files or a combination of outside data with verification from the claimant that it reflected that claimant's practices.[18] In other words, the claimant was able to confirm which Defendants it had purchased freight forwarding services from, the time period for these purchases, the routes it shipped on, the dollars spent, number of shipments, and weights even if it had to rely

[18] For instance, if a claimant provided third-party data in support of its claim, it also provided affidavits and/or additional information from its own records establishing its knowledge of its freight forwarding purchases from Defendants.

on extrapolations or estimates to reach the purchase and shipment numbers it submitted. The CCOIC cannot establish any of those key data points.

In addition to its failure to provide fundamental information to demonstrate membership in the Class, the CCOIC's claim would dwarf all other claims and substantially reduce the recovery for those claimants who did provide claimant specific purchase data. Yet, the CCOIC has failed to provide the information required of all other claimants. Being a High Value claim (in fact the largest claim), the CCOIC would have been required to support their purchases with actual transactional data and sworn statements detailing individual shipments. O'Connor Decl., ¶¶ 31-33. Every high-level claimant was required to do this. Those that did not had their claims significantly reduced or denied in full. The CCOIC admits that no data exists showing the purchases of all Chinese businesses. Counsel Decl., Ex. 32 at 11.

A single lump sum figure calculated from Chinese customs data and information from Plaintiffs' complaint discussing market-share for prepaid freight does not support its claim. As discussed above, nothing in the data shows actual freight forwarding purchases by a CCOIC claimant, which is necessary to determine whether a claimant is actually a member of the class. Again, while claimants could provide estimates in support of their claims, these estimates needed to be tied to *specific claimants* and required additional explanation of the methodology for approval (and even then, many claimants provided insufficient explanations to justify approval of these estimates). Indeed, as addressed with the other objections above, Epiq rejected a number of claims where the basis for their purchases was based *solely* on estimates.

As repeatedly explained to the CCOIC by Class Counsel, the data provided by the CCOIC does not support its claims. These statistics *do not* represent the freight forwarding services purchased from any one of the Defendants because Peoples' Republic of China ("PRC") Customs

does not maintain or store records of PRC companies' freight payment records. *See* Declaration of Jo-Anne Daniels at ¶¶ 10-11, dated March 14, 2019 and filed herewith ("Daniels Decl."). The CCOIC has failed to explain, much less support, its claim totals. Any high-level claimant who merely attested to the accuracy of its claims without providing data had its claims denied. The CCOIC should not get special treatment.

Moreover, the CCOIC's lump sums do not establish who paid for the freight, how the freight was shipped (air or ocean) or with what Defendants the shipments were made. The CCOIC tries to avoid these fundamental failures by instead attributing a certain percentage of air and ocean shipments to Defendants based upon market share numbers cited in Plaintiffs' complaint. But not only does this not address the fundamental requirements of Class membership (identities of buyer and seller, service purchased, and date of purchase), the market share numbers cited by Plaintiffs refer to global market share in one isolated year. Fourth Amended Class Action Complaint ¶ 206, ECF No. 1310. The CCOIC has offered no reasonable basis for why these isolated numbers, which do not focus on market share in China and are not limited to pre-paid freight, are an appropriate measure for air and ocean shipments. *See* Daniels Decl., ¶ 13.

Last, the lump-sum figures do not track whether the shipments are prepaid or collect. Freight forwarding purchases are either prepaid or collect. In the case of a shipment from China to the US, if the payment is collect, the receiving party in the United States pays the freight. Chinese customs data does not track payment information and cannot track which shipments were prepaid or collect, only that a shipment occurred. *See* Daniels Decl., ¶ 11. Accordingly, the CCOIC's claim appears to include collect freight payment, thereby including U.S. class members in its claim. Not only does this flaw grossly inflate its numbers, the CCOIC's refusal to provide this and other fundamental information makes it impossible to account for and correct this error.

The CCOIC's contention that it "has never taken the position that the amount of its claim is set in stone" and that it has "continually expressed its willingness to revise its claim estimate in light of the best available data" puts the cart before the horse. It may be true that its claim is "not set in stone," but it is because the CCOIC has no basis for its claim. The CCOIC's willingness to revise its claim is a tacit admission that it knows its claim and data are unsupportable. Contrary to the CCOIC's argument, it is not the job of Epiq or Class Counsel to provide a better number for it to use in support of its claim. The CCOIC, just like any other claimant (including other third party filers who filed on behalf of multiple class members), must show that the entities on whose behalf it purports to file a claim are qualified class members.

Indeed, the CCOIC has access to data that would have allowed it to provide more realistic purchase estimates. The CCOIC has obtained both limited transactional data from certain Defendants and purchase data from some of its members. *See* Counsel Decl., Ex. 41("We have been able to confirm using the Panjiva database that the defendants did, in fact, ship ocean freight from China."); Counsel Decl., Ex. 46 ("The DSV/ABX data has confirmed that CCOIC's claim has value."); Counsel Decl., Ex. 47 ("CCOIC recently reached out to a portion of its membership and solicited their data."). This information—which is the same type of information used by other claimants to support their claims—gives insight into what a supportable claim by a CCOIC member might be. While the CCOIC has pointed to this actual transaction data to argue that its claim has "value," it has refused to provide it to support its claims.[19] Instead, the CCOIC has

[19] Although it had every opportunity to do so, the CCOIC has never provided any such actual transaction data, presumably because it felt that the aggregate claim it supported was not sufficiently large. It should not be allowed to do so now as some sort of fallback. Since 2013, Class Counsel has spent significant time explaining to the CCOIC what the requirements of this claims administration process are. These requirements have not changed. The CCOIC cannot use its failure to obtain the requisite information to further extend the claims administration process and delay full payment of claims to all qualified claimants.

steadfastly relied on its alternative data, and offers to negotiate a more acceptable number using its alternative methodology. But to allow this not only would violate the parameters of the Court-approved claims process, it would be grossly unfair to all other claimants who followed the rules.[20] This is a claims administration process, not settlement negotiations between adverse parties. Class Counsel has consistently maintained that the CCOIC's use of aggregate estimates and refusal to identify actual transactions are not sufficient to establish proof of qualifying purchases. The CCOIC should not be allowed to circumvent a claims administration process that all other claimants have followed. These reasons, combined with the CCOIC's failure to identify the claimants it represents, justifies the denial of its claim.

C. CATA's *Air Cargo* claim has no bearing on the claim in this case.

Rather than remedying the inadequacies in its claim, the CCOIC instead argues that similar data was used to support a claim in a different case, *In re Air Cargo Shipping Services Antitrust Litigation*. But the China Air Transport Association ("CATA") claim in the *Air Cargo* litigation is irrelevant to the circumstances here. The lone footnote addressing CATA in the memorandum in support of distribution of settlement funds does not address the fundamental and disqualifying concerns in this case about the failure to identify claimants and sellers, and the absence of other supporting purchase data ECF No. 1518-2 at 3 n.3. Even so, however, CATA's claim is clearly distinguishable from the facts at issue here.

First, unlike the CCOIC, it appears that CATA's claim was filed solely on behalf of CATA's 2,500 members. In contrast, here the CCOIC has asserted its claim on behalf of *every*

[20] If the CCOIC's claim were allowed, it would reduce the average pro rate distributions to other claimants who met Epiq's requirements *substantially*. Schedule B's pro rata percentage would be reduced by 9.87%; question 1.B's pro rata percentage would be reduced by 13.09%; question 1.C's pro rata percentage would be reduced by an astonishing 43.47%; and question 3.A's pro rata percentage would be reduced by 37.90%. This would tremendously prejudice claimants in those settlement pots.

Chinese business. The footnote does not address whether and how CATA may have identified its members to counsel or the claims administrator, but regardless, the scope of CATA's membership (and claimants filed on behalf of) is *substantially* smaller than the several hundred thousand entities the CCOIC claims are class members.

Second, because of how air cargo is shipped, the U.S. Department of Commerce Data contained defendant carrier-specific purchase information, which would have allowed for a more reliable data set than provided by the CCOIC. Here, customs data for freight forwarding services is not Defendant specific. The CCOIC's only effort to provide Defendant-specific purchase information was to cite to Plaintiffs' statistics about *market share*. Again, the differences between quality of data distinguish this case from *Air Cargo*.

Finally, the *Air Cargo* litigation was a different matter. Class Counsel, with approval of the Court, established the requirements for qualified claimants to obtain recovery in this matter. Class Counsel did not allow any claimant to submit such an omnibus and unsupported claim, and their denial of the CCOIC's claim is consistent with the denial of other claimants who similarly failed to sufficiently support their claims. Class Counsel is not obligated to pay claimants based upon a different claimant being paid after participating in a different class action involving different types of purchases, a different claims administrator, different counsel, and different defendants.[21]

[21] The only similarity between the CATA claim and the CCOIC's claim is CATA's similar reliance on Chinese legal authority addressing its ability to assert its claim. The CCOIC spends a substantial amount of its objection addressing the validity of the assignment of Chinese claims to the CCOIC. Class Counsel has consistently maintained, however, that the CCOIC's claim is so fatally deficient in meeting the fundamentals of establishing class membership that Class Counsel, and this Court, need not reach the issue of whether the CCOIC has sufficient legal authority to file its claim.

D. The Court-approved notice program was robust and should not be challenged seven years after approval.

The CCOIC claims that it should be allowed to assert a claim on behalf of all businesses in China because the Court-approved notice was somehow inadequate when it came to class members in China. While Class Counsel disagrees with all of the CCOIC's assertions, more important is that CCOIC's argument is legally invalid. First, Fed. R. Civ. P 23(c)(2)(B) required, and this Court found, that the several instances of notice to the class in this case were the "best notice that is practicable under the circumstances." *Id.* It is black letter law that "[a] class action settlement is binding on an absent class member if the notice program is procedurally adequate, even if the absent class member does not receive individual notice." *Presidential Life Ins. Co. v. Milken*, 946 F. Supp. 267, 277 & n.11 (S.D.N.Y. 1996) (collecting cases); *In re Auction Houses Antitrust Litig.*, No. 00 CIV 0648(LAK-RLE), 2004 WL 3670993, at *3 (S.D.N.Y. Nov. 17, 2004), report and recommendation adopted, No. 00 CIV 0648(LAK), 2005 WL 23313 (S.D.N.Y. Jan. 5, 2005) (rejecting objector argument that even if general notice was adequate, it was inadequate as to the specific objectors); *see Wai Hoe Liew v. Cohen & Slamowitz*, LLP, 265 F. Supp. 3d 260, 277 (E.D.N.Y. 2017), as revised (June 16, 2017) (dismissing subsequent claims).

This Court has approved notice to the Class on each round of settlements. ECF Nos. 666; 1229; 1367. The CCOIC, actual Chinese class members, and every other class member had three opportunities to object to the notice program, beginning with approval of the first-round settlement notice program in 2012, and not one did. The approval of the notices and the repeated failure of CCOIC to object is fatal to its ability to challenge it now.

The lack of objections to the notice program was for good reason. In total, Epiq sent 3,970,076 (including 2,327,678 unique records) direct mail notices to class members, including 291,884 (including 75,961 unique records) directly to Chinese class members. In addition, there

was a robust publication notice program, which included publication notice in Chinese. The Chinese media outreach had an expected reach of 80-83.3%. Declaration of Katherine Kinsella, dated July 26, 2013, ECF No. 854-2 at 14. As a result of these robust efforts, numerous Chinese entities filed claims.

Moreover, the CCOIC's own conduct may have worked to defeat claims filing by Chinese class members. Instead of informing and encouraging class members to file claims, the CCOIC said it would file an aggregate claim on their behalf, lulling potentially interested class members into not filing claims. Counsel Decl., Ex. 32 at 3-4. That is so, despite knowing that Epiq and Class Counsel had consistently expressed serious reservations about the validity of the CCOIC's aggregate claim. Counsel Decl., Ex. 35. This is perhaps because CCOIC originally never planned to distribute *any* money to class members, but instead use the money "to provide programs, training, and assistance to Chinese entities." ECF No. 1252 at 5. Accordingly, despite CCOIC claiming to represent Chinese businesses, it has potentially harmed actual class members in an attempt to bolster its own invalid claim and by filing a facially and entirely deficient claim.

E. CCOIC seeks to become an unauthorized and unaccountable claims administrator.

Putting to one side the fundamental and fatal deficiencies in its claim, were the CCOIC's claim to be approved, the CCOIC would become an unauthorized claims administrator, in charge of noticing and administering claims for all Chinese businesses. This is highly problematic for several reasons. First, the CCOIC's ability to provide notice and fairly administer claims is not approved by this Court, nor is it clear the Court has any jurisdiction over the administration of Chinese claims. This is particularly alarming given that CCOIC's original position that, if paid, its gargantuan claim would not be paid forward to *any* class members. Instead, the CCOIC said only that it would use the money for education activities that would benefit the Chinese shipping

community. Counsel Decl., Ex. 40; ECF No. 1252 Changing course from that obviously untenable use of funds, the CCOIC now claims in one unsupported sentence that "The funds paid to CCOIC will be paid out to Chinese businesses." Counsel Decl., Ex. 32 at 2. And yet, CCOIC has not explained in the slightest how it plans to distribute funds, what expertise it has in claims administration, and what accountability exists to ensure that any money will actually be paid to class members. The Court is the protector of absent class members and should not allow millions of hard-earned settlement dollars to disappear into an unaccountable fund, where at best, the likelihood of the money reaching Chinese class members is remote.

IX. EPIQ HAS RESOLVED THE OUTSTANDING CLAIMS ADMINISTRATION ISSUE AND RECOMMENDS THAT THE CLAIM BE PAID.

Prior to filing Plaintiffs' Renewed Motion To Distribute Net Settlement Funds, Amend The Plan Of Allocation, Distribute Funds To Late-Filed Claimants, And Set Deadlines For Objections To Claim Determinations, Epiq identified one claimant whose claim needed further review before a final award determination could be made. ECF No. 1517 at 4 n.2. In order to keep the claims administration process moving forward, Class Counsel filed their motion for distribution, noting that this claimant's claim would need to be resolved before any ruling on the distribution motion. That review is now complete.

This claimant was identified for additional review based upon its status as a High-Value claimant, after review of its supporting data raised additional questions about whether certain portions of its claim were substantially supported. Epiq requested, and received, additional supporting data and information from this claimant. Epiq reviewed the claimant data and based upon its review of the claim, it determined that the information provided in response to the claimant's NES and question 3.A claim was only partially supported. Consistent with the reductions applied to other claimants whose claims were only partially supported, Epiq applied a

reduction to the claimant's NES and question 3.A claim. Epiq informed the claimant of its claims determination including the decision to reduce its NES and question 3.A claim.

As a result of the reduction to the claimant's NES and question 3.A claim, the pro rata NES and question 3.A claim awards for all NES and question 3.A (CAF) claimants increased. These proposed awards are set forth in Revised Exhibit X, attached to the Supplemental Declaration of Michael O'Connor and filed herewith.. Because Epiq's determination resulted in an increase in pro rata awards to certain claimants, the objection process does not need to be reopened as to other claimants, and Class Counsel recommends that all claims be paid in accordance with Revised Exhibit X.

In the interest of fairness to the claimant, Class Counsel requests that the Court grant the impacted claimant until March 22, 2019 to file any objection it may have to its claims determination. With the Court's approval, Class Counsel would then either file its response to this objection or inform the Court that no objection was received by April 5, 2019.

Dated: March 15, 2019

Respectfully submitted,

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