UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRECISION ASSOCIATES, INC., *et al.*, Plaintiffs, v. PANALPINA WORLD TRANSPORT (HOLDING) LTD., *et al.* Defendants.	CASE NO. 08-CV-00042 (JG)(VVP)

JOINT DECLARATION OF CO-LEAD COUNSEL IN SUPPORT OF CO-LEAD COUNSEL'S PETITION FOR A SECOND INTERIM AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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W. Joseph Bruckner, Daniel E. Gustafson, Christopher Lovell, and Steven N. Williams declare:

1. Each of us is a partner in one of the four law firms that, in an order dated June 2, 2009, were appointed by this Court to serve as Interim Co-Lead Counsel ("Co-Lead Counsel") in this litigation. ECF No. 115. Collectively, our firms, together with 10 other firms who have performed work in this case as directed by Co-Lead Counsel, have acted as counsel for the putative class ("Class Counsel"). In our capacities as Co-Lead Counsel and Class Counsel, we have prosecuted, and continue to prosecute, this case on behalf of the Class. We make this joint declaration in support of Co-Lead Counsel's petition for a second interim award of attorneys' fees and reimbursement of expenses of the 14 total law firms (the four Co-Lead firms plus the 10 other Class Counsel) included in this interim application.

2. We have personal knowledge of the matters set forth in this declaration. If called as a witness, each of us could and would testify competently as to the matters described herein.

I. PRELIMINARY STATEMENT

3. The purpose of this declaration is to set forth in summary fashion the background and history of this case, including the discovery that has been conducted, the extensive motion practice that has occurred, and the arms-length negotiations that led to the settlement agreements that have been preliminarily approved by the Court.

A. First Round Settlements

4. The Court previously granted final approval to settlements with 10 Defendant families ("First Round Settlements"). *See* ECF Nos. 879-88. The work required to achieve those settlements from the negotiation of an agreement in principal through final approval is already described in detail in Plaintiffs' preliminary and final approval submissions. *See* ECF Nos. 526-27, 574-76, 588-90, 637-640, 644-47, 667-70, 686-89, and 711-15 (preliminary approval); and

854-55 (final approval). In addition, the process of providing notice of the First Round Settlements to potential Class members involved a lengthy (and ultimately successful) fight by Co-Lead Counsel to obtain access to transactional data, including potential Class members' identification and contact information, from non-settling Defendants. *See*, *e.g.*, ECF Nos. 525, 529, 531-34, 536, 540, 543, 545, 546, 550-51, 553-59, and 561.

5. Class Counsel sought a first interim fee award in connection with the First Round Settlements, and at the direction of the Court, *see* ECF No. 866, Class Counsel submitted a supplemental fee application specifically excluding from that interim fee petition certain fees and expenses dating from the inception of the case that did not directly relate to the achievement and administration of the First Round Settlements, but related instead to the continued litigation of the case. *See generally* ECF No. 875. Following that supplemental fee application, the Court awarded Class Counsel a first interim fee award of attorneys' fees totaling 15% of the settlement proceeds from the First Round Settlements, for a first interim fee award of $16,853,536.74, *see* ECF No. 984 (awarding as attorneys' fees 15% of the First Round Settlement proceeds of $112,356,911.58), and also awarded Class Counsel's costs incurred in connection with the First Round Settlements, *id.* The first interim fee award did not cover any fees or expenses incurred after January 28, 2013. The first interim fee award also did not include any fees or expenses dating from the inception of the case that did not directly relate to the achievement and administration of the First Round Settlements, but related instead to the continued litigation of the case.

6. Certain First Round Settlements required Defendants to pay to the benefit of the Class in this case some or all future proceeds they recovered in *In re: Air Cargo Shipping Services Antitrust Litigation*, MDL No. 1775 (E.D.N.Y.) ("*Air Cargo*"). In addition to the

recoveries on which the Court calculated the first interim fee award, those Defendants now also have made supplemental payments to the Settlement Fund in this case based on the second and third *Air Cargo* distributions. Those funds have now been deposited into the First Round Settlement escrow accounts, as follows:

a) Vantec has paid an additional $766,818.22;

b) EGL has paid an additional $1,425,149.75;

c) Expeditors has paid an additional $8,705,150.84;

d) UAC has paid an additional $7,022.30;

e) K+N has paid an additional $5,428,666.10;

f) Morrison has paid an additional $1,742,155.80; and

g) UTi has paid an additional $3,017,398.97

7. Accordingly, the payments received in the First Round Settlements since the date of Class Counsel's first interim fee and expense petition, less the most-favored-nation refunds due to Vantec and Nishi-Nippon, total $6,363,226.46.[1]

B. <u>Second Round Settlements</u>

8. Since the First Round Settlements, Plaintiffs have reached, and the Court has preliminarily approved, settlements with 11 additional Defendant groups (the "Second Round Settlements") which provide for initial cash payments totaling a minimum of $179,623,497.87,

[1] The settlement agreements with First Round Settlement Defendants Vantec and Nishi-Nippon each have a "most favored nations" provision, which provides that a portion of the settlement amount paid by each is to be refunded in the event Plaintiffs settle with the remaining Japanese Defendants for less than a set, formula-determined amount. Plaintiffs now have reached a settlement agreement with the remaining Japanese Defendants, which the Court has preliminarily approved. ECF Nos. 1175, 1189. If the settlement with the remaining Japanese Defendants is granted final approval, Vantec would receive a $4,863,216.77 refund under the MFN in its settlement agreement, (or, in other words, will be owed a net refund of $4,096,398.55, after crediting its additional *Air Cargo* payment of $766,818.22); and Nishi-Nippon would receive a $9,865,918.75 refund under the MFN in its settlement agreement.

nearly all of which have been received and deposited in interest-bearing escrow accounts. The amount ultimately recovered under the Second Round Settlements will likely exceed that amount as additional money will be paid to the Class as a result of certain settling Defendants' agreement to pay to the Class in this case proceeds they will receive in *Air Cargo*. Each settlement agreement in the Second Round Settlements includes specified funds to pay for notice to the settlement Class and other related expenses, and most settlement agreements require the settling Defendant to provide substantial cooperation that has and will assist Plaintiffs in prosecuting their claims against DHL and Hellmann, the only two remaining Defendant groups.

9. Under the 11 Second Round Settlements that have been preliminarily approved and soon will be heard by this Court for final approval:

a) SDV Logistique Internationale ("SDV") has paid $1,955,573.19 (including a $350,000 lump sum and $1,605,573.19 in *Air Cargo* proceeds actually received), will pay 75% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

b) Panalpina World Transport (Holding) Ltd. and Panalpina, Inc. (collectively "Panalpina") has paid $39,158,425.45 (including a $35 million lump sum and $4,158,425.45 in *Air Cargo* proceeds actually received), will pay 100% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

c) Geodis S.A. and Geodis Wilson USA, Inc. (collectively "Geodis") must pay $3,000,000,[2] and must provide substantial cooperation to Plaintiffs;

[2] Geodis must pay a total of $3 million, but under the terms of its settlement agreement, the final $1 million of that total is not due until the Court grants final approval of the Geodis settlement. Because Geodis's final payment is for an amount certain, and (assuming final approval) that final payment likely will be made on a date that will precede payment of any Second Round Settlement proceeds to qualified claimants (the Court will consider final approval of the Geodis settlement on November 2, 2015, and the deadline for claims against the Second Round Settlement proceeds is March 31, 2016), Class Counsel are seeking fees based on the full $3 million. If the Court grants Class Counsel's fee petition, and also grants final approval of the Geodis settlement, Class Counsel will not deduct any fees from Geodis's final payment until such funds are actually paid, in the escrow account, and available for distribution to qualified Class member claimants.

d) Jet Speed Logistics, Ltd. also known as Jet Speed Air Cargo Forwarders (HK), Ltd; Jet Speed Logistics (USA), LLC; and Jet-Speed Air Cargo Forwarders, Inc. (USA) (collectively "Jet Speed") must pay $750,000,[3] will pay 100% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

e) DSV A/S; DSV Solutions Holding A/S; and DSV Air & Sea Ltd. formerly known as DFDS Transport (HK) Ltd. (collectively "DSV") has paid $1,500,000, will pay 100% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

f) Toll Global Forwarding (USA), Inc.; Baltrans Logistics, Inc.; and Toll Holdings, Ltd. (collectively "Toll") has paid $900,000, will pay 100% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

g) Agility Holdings, Inc.; Agility Logistics Corp.; Geologistics Corp.; and Geologistics International Management (Bermuda) Limited (collectively "Agility") must pay $17,859,499.23 (including $16 million in a series of payments for fixed amounts[4] and $1,859,499.23 in *Air Cargo* proceeds actually received), will pay 100% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

h) United Parcel Service, Inc. and UPS Supply Chain Solutions, Inc. (collectively "UPS") will pay 100% of all future *Air Cargo* proceeds with

[3] Jet Speed's settlement agreement calls for it to make three equal payments of $250,000 (in addition to its *Air Cargo* proceeds). The first two such payments have been deposited in the escrow account; the third must be made in May 2016. Because Jet Speed's final payment is for an amount and a date certain, and will be received by the time Second Round settlement proceeds will be distributed to qualified claimants, Class Counsel are seeking fees based on the full $750,000. If the Court grants Class Counsel's fee petition, Class Counsel will not deduct any fees from Jet Speed's final payment until such funds are actually paid, in the escrow account and available for distribution to qualified Class member claimants.

[4] Agility's final fixed-amount payment of $5 million is not due until 15 days after the Court grants final approval of its settlement or until January 4, 2016, whichever is later. Because Agility's final fixed payment is for an amount certain and must be made on a date that likely will precede payment of any Second Round Settlement proceeds to qualified claimants (the Court will consider final approval of the Agility settlement on November 2, 2015, and the deadline for claims against the Second Round Settlement proceeds is March 31, 2016), Class Counsel are seeking fees on the entire $17,859,499.23. If the Court grants Class Counsel's fee petition, and also grants final approval of the Agility settlement, Class Counsel will not deduct any fees from Agility's final payment until such funds are actually paid, in the escrow account, and available for distribution to qualified Class member claimants.

a minimum payment of $7,000,000 and a cap of $25,000,000, and must provide substantial cooperation to Plaintiffs;[5]

i) Dachser GmbH & Co., KG, doing business as Dachser Intelligent Logistics and Dachser Transport of America, Inc. (collectively "Dachser") has paid $2,500,000, will pay 100% of all future *Air Cargo* proceeds, and must provide substantial cooperation to Plaintiffs;

j) A group referred to collectively herein as the "Japanese Defendants" and consisting of:

- Hankyu Hanshin Express Holding Corporation, formerly known as Hankyu Express International Co., Ltd.; its subsidiary, Hankyu Hanshin Express Co., Ltd.; and its U.S. subsidiary, Hanshin Air Cargo USA, Inc. (collectively "Hankyu Hanshin");
- Japan Aircargo Forwarders Association ("JAFA");
- Kintetsu World Express, Inc. and its U.S. subsidiary, Kintetsu World Express (U.S.A.), Inc. (collectively "Kintetsu");
- "K" Line Logistics, Ltd., and its U.S. subsidiary "K" Line Logistics (U.S.A.), Inc. (collectively "'K Line'");
- MOL Logistics (Japan) Co., Ltd., and its U.S. subsidiary, MOL Logistics (USA) Inc. (collectively "MOL Logistics");
- Nippon Express Co., Ltd. and its U.S. subsidiary, Nippon Express USA, Inc. (collectively "Nippon Express");
- Nissin Corporation and its U.S. subsidiary, Nissin International Transport U.S.A., Inc. (collectively "Nissin");
- Yamato Global Logistics Japan Co., Ltd., and its U.S. affiliate, Yamato Transport U.S.A. Inc. (collectively "Yamato"); and
- Yusen Air & Sea Service Co., Ltd. and its U.S. subsidiary, Yusen Air & Sea Service (U.S.A.) Inc. (collectively "Yusen")

[5] Because UPS's total payment is for an amount and date(s) not yet certain, and because to date UPS has not paid anything to the Class under its settlement agreement, at this time Class Counsel are not seeking the Court's award of fees on any amounts to be received in the future under the UPS settlement. Rather, we intend to do so at an appropriate time after those funds are deposited in the escrow account. Although the UPS settlement does not directly affect the amount sought in this fee petition, Class Counsel describe the settlement here to provide the Court with a full and accurate picture of the work performed on behalf of, and the benefit obtained for, the Class.

has collectively paid $100,000,000 (up to $10 million of which, under certain circumstances, may be returned to the Japanese Defendants under a ratchet-down provision in their settlement agreement),[6] and must provide substantial cooperation to Plaintiffs; and

k) for the severed Japanese Claims only, Deutsche Post AG; Danzas Corporation (doing business as DHL Global Forwarding); DHL Express (USA) Inc.; DHL Forwarding Japan K.K.; DHL Japan Inc.; Exel Global Logistics, Inc.; Air Express International USA, Inc. (collectively "DHL") has paid $5,000,000.

10. The Court has approved a class notice program for the Second Round Settlements, and has set the Final Fairness Hearing for November 2, 2015. ECF No. 1229 ("Order Approving Class Notice"). In due course, Plaintiffs will move for final approval of the Second Round Settlements and for distribution to claimants of the Second Round Settlement proceeds available, less any amounts that may revert to the Japanese Defendants as a result of their ratchet-down provision, and less any attorneys' fees and litigation expenses awarded by the Court. At an appropriate time, Plaintiffs will also seek an order regarding distribution of Round One Settlement monies not included in prior distributions, less any attorneys' fees and litigation expenses awarded by the Court.

C. Summary Of Requested Fees And Costs

11. At this time, in accordance with the deadline set in the Order Approving Class Notice, Class Counsel request 25% of the proceeds that have been deposited in the escrow funds established pursuant to the Second Round Settlements and that are not subject to ratchet-down based on opt-outs, as well as 25% of the Air Cargo proceeds that have been deposited in the

[6] Because the opt-outs from these settlements are not yet known, it is not yet possible to know whether and how much of that $10 million must be refunded to the Japanese Defendants. Accordingly, Class Counsel seek fees based only on the $90 million not potentially subject to refund. At an appropriate time after the amount of any ratchet-down refund has materialized, Class Counsel will seek the Court's award of fees on the amount remaining in the $10 million.

escrow accounts established pursuant to the First Round Settlements since first interim fee award (the "Total Available Settlement Fund").

12. For purposes of this fee petition, the Total Available Settlement Fund consists of $168,986,724.33, calculated as follows:

$21,092,361.98	New *Air Cargo* proceeds from First Round Settlements
- $14,729,135.52	MFN refund due to Vantec and Nishi-Nippon
+ $179,623,497.87	Second Round Settlements guaranteed payments and *Air Cargo* proceeds received
-$7,000,000.00	UPS guaranteed minimum payment not yet due
-$10,000,000.00	Maximum refund to Japanese Defendants under ratchet-down
= $168,986,724.33	Total Available Settlement Fund

13. Co-Lead Counsel also seek reimbursement of expenses in the amount of $4,046,323.05, as described in more detail below.

D. Summary Of Class Counsel's Work On Behalf Of The Class

14. As discussed in detail in the following sections of this Joint Declaration, this litigation has been vigorously litigated for more than seven-and-a-half years, and is still ongoing. Defendants' many motions to dismiss Plaintiffs' complaints were not, for the most part, resolved until more than 6 years after the original complaint was filed. It was not until January 2014, after the parties had filed a total of nearly two thousand pages of briefing, that the operative complaint was upheld. DHL and Hellmann later filed more limited Rule 12 motions, as described below.

15. From the inception of the case through August 15, 2015, Class Counsel:

- Prepared a First Amended Class Action Complaint consisting of 326 numbered paragraphs containing specific and detailed allegations against Defendants, including names, dates, places and subject matters of conspiratorial meetings and other communications;

- Responded to 18 motions to dismiss the First Amended Complaint and 11 objections on Magistrate Judge Pohorelsky's resulting Report & Recommendation;

- Prepared a Corrected Third Amended Class Action Complaint, comprising 593 numbered paragraphs and additional detailed and specific allegations;

- Responded to 15 motions to dismiss the Corrected Third Amended Complaint (including the 13 initial motions and two later-filed motions by Hellmann and JAFA, respectively), one motion to sever certain claims, and 11 objections on Magistrate Judge Pohorelsky's resulting Report & Recommendation;

- Filed 22 non-ministerial motions (including 12 motions to compel) and 2 objections;

- Made 14 appearances before Magistrate Judge Pohorelsky and 4 appearances before Judge Gleeson;

- Attempted to negotiate a confidentiality order with Defendants concerning confidential material to be produced in discovery and, when Defendants refused to agree, successfully moved the Court for a confidentiality order;

- Participated in lengthy briefing and motion practice to obtain customer lists from non-settling Defendants to assist in providing Class notice;

- Participated in Rule 26(f) conferences, negotiating multiple disputed provisions;

- In addition to the motions described above, responded to a total of 3 pre-motions and submitted briefing in response to 4 motions;

- Reviewed 84,842 Plaintiff documents, and ultimately produced 46,064 of those documents, to Defendants;

- Utilized advanced analytical search tools, as well as keyword searches, to identify the most relevant documents of the more than 5.1 million documents produced by Defendants;

- Ultimately reviewed 1,062,552 million Defendant documents (including translating and reviewing several documents in Japanese, German, and Italian);

- Engaged in innumerable meetings and conferences with Defendants to obtain and understand Defendants' transactional data;

- Prepared witness and Defendant factual summaries to assist in depositions, discovery responses, work by experts engaged by Plaintiffs, and trial;
- Prepared for and conducted 50 depositions in 4 countries spread across three continents;
- Prepared and served 16 sets of discovery requests;
- Responded to 20 sets of document requests propounded by Defendants;
- Interviewed 43 witnesses and prepared for and participated in approximately 18 attorney proffers;
- Prepared for and engaged in arms-length settlement negotiations and several mediations that led to the 10 First Round Settlements and the 11 Second Round Settlements;
- Prepared and supervised an extensive program to provide notice to potential claimants of the First Round Settlements and engaged in extensive communications with Class Members relating to the claims-administration process;
- Prepared and supervised an extensive program to provide notice to potential claimants of the Second Round Settlements and engaged in extensive communications with Class Members relating to the claims-administration process;
- Conducted legal research and factual research regarding pertinent issues; and
- Worked with industry and economic consultants and experts to develop pleadings, evaluate transactional data, guide discovery, formulate settlement strategies, assess damages, and prepare for Plaintiffs' class certification motion.

16. In light of the excellent result achieved by counsel on behalf of the Settlement Class in reaching the settlements and in light of the extensive work performed by counsel on behalf of the Settlement Class and the putative litigation Class, Plaintiffs' Counsel respectfully request that the Court award attorneys' fees of 25% of the $168,986,724.33 Total Available Settlement Fund, as set forth in chart form at paragraph 322, below.

17. Defendants in this case are represented by outstanding law firms whose attorneys have spared no effort or expense in the defense of their clients. The 19 law firms for the Second Round Settlement Defendants include several of the top litigation defense firms in the United States:

FRANKFURT KURNIT KLEIN & SELZ, P.C.
Counsel for DSV

HAUSFELD LLP
Counsel for Geodis

SQUIRE SANDERS (US) LLP
Counsel for Yamato

DAVIS, POLK & WARDWELL
Counsel for Nippon Express

BAKER & HOSTETLER LLP
Counsel for Yusen

HILL, RIVKINS, & HAYDEN LLP
Counsel for JAFA

MORRISON & FOERSTER LLP
Counsel for UPS

KOBRE & KIM LLP
Counsel for Toll

NIXON PEABODY LLP
Counsel for MOL Logistics

BAKER & MCKENZIE LLP
Counsel for Panalpina

LEVUN GOODMAN & COHEN, LLP
Counsel for Jet Speed

GIBSON, DUNN & CRUTCHER LLP
Counsel for "K" Line

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Counsel for DHL

SKADDEN ARPS SLATE MEAGHER & FLOM LLP
Counsel for Hankyu Hanshin

WILMER CUTLER PICKERING HALE AND DORR, LLP
Counsel for Nissin

CARROLL MCNULTY & KULL LLC
Counsel for Dachser

HOGAN LOVELLS LLP
Counsel for SDV

MOUND, COTTON, WOLLON & GREENGRASS
Counsel for Kintetsu

THOMPSON HINE LLP
Counsel for Nippon Express

18. The Second Round Settlements provide a significant value to settlement class members by providing substantial payments for the damages they incurred and by permitting access to significant cooperation that will greatly assist in obtaining significant recoveries from the remaining Defendants, which are jointly and severally liable for the damages caused by the conspiracies.[7] The efforts of Co-Lead Counsel in prosecuting this case and reaching the settlements, as well as the significant benefits the settlement Class will derive therefrom, justify the award of an attorneys' fee of 25% of the Total Available Settlement Fund.

II. COMMENCEMENT OF THE LITIGATION

A. Initial Investigation And Proceedings

19. Co-Lead Counsel developed this case long before the filing of any government complaints. Plaintiffs' first complaint was filed on January 3, 2008 following many months of preparation, investigation, and research by Co-Lead Counsel into the freight forwarding industry. ECF No. 1. No criminal or other enforcement proceedings had begun when we commenced our investigation and filed our clients' first complaint. The Japan Fair Trade Commission did not begin levying fines until 2009, and the first criminal charges by the United States Department of Justice ("DOJ") were not announced until 2010.

20. Once the complaint was filed, we began the complex process of effectuating proper service on foreign entity Defendants.

21. On January 29, 2009, Plaintiffs filed a stipulation and proposed order to appoint our four firms, Lovell Stewart Halebian LLP, Lockridge Grindal Nauen PLLP, Cotchett, Pitre &

[7] As the leniency applicant to the Department of Justice, DHL will likely seek an order that it is not subject to treble damages or joint and several liability pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA"), Pub. L. No. 108-237, § 213(a)-(b), 118 Stat. 661, 666-668 (June 22, 2004). Plaintiffs will challenge any such motion and will argue that DHL's limited, untimely and ultimately unsatisfactory cooperation has not earned it ACPERA's benefit, but the question ultimately is for the Court to decide.

McCarthy, LLP and Gustafson Gluek PLLC as Interim Co-Lead Counsel in this case. ECF No. 99. Plaintiffs further moved for the same appointment of Interim Class Counsel pursuant to Fed. R. Civ. P. 23(g), including additional supporting materials. ECF No. 100. (The stipulation and motion also sought to include a fifth firm among the Interim Co-Lead Counsel, but soon after the papers were filed, that firm withdrew from this litigation. ECF Nos. 106 and 107.) The stipulation and proposed order also contained a timeline for Plaintiffs to file an Amended Complaint and for Defendants to serve their responses to that Amended Complaint, and provided that, in light of the forthcoming amendment, Defendants need not respond to the original Complaint. ECF No. 99. The stipulation further provided for agreed-upon means of service of that Amended Complaint. *Id*.

22. On April 29, 2009, before the Court had acted on that stipulation and proposed order or the related motion, a number of Defendants filed a request for a pre-motion conference regarding their intention to move to dismiss the operative Complaint, prior to any Amended Complaint being filed and without regard to the previously filed stipulation. ECF No. 108-1. Plaintiffs responded to that request for a pre-motion conference. ECF No. 109. On June 2, 2009, Magistrate Judge Pohorelsky held a pre-motion conference concerning the appointment of Interim Co-Lead Counsel and the timing of any motions to dismiss. ECF No. 114.

23. That same day, Magistrate Judge Pohorelsky signed an order designating our four law firms as Interim Co-Lead Counsel. ECF No. 115. That order charged Interim Co-Lead Counsel with (a) the initiation, response, scheduling, briefing, and argument of all motions; (b) the scope, order, and conduct of all discovery; (c) making work assignments to other Plaintiffs' counsel, as appropriate; (d) the retention of experts; (e) appearances at hearings and

conferences with the Court; (f) the timing and substance of any settlement negotiations with Defendants; and (g) other matters concerning the prosecution of resolution of this litigation.

24. In the same order appointing Interim Co-Lead Counsel, Magistrate Judge Pohorelsky ordered Interim Co-Lead Counsel to file an Amended Class Action Complaint within 42 days, described acceptable means of service of that Amended Complaint, and directed Defendants to respond to that Amended Complaint within 42 days of its filing. The order stayed all discovery pending resolution of any motions to dismiss the Amended Complaint. *Id*.

B. The First Amended Class Action Complaint

25. Prior to our appointment as Co-Lead Counsel, we believed the Department of Justice had granted conditional leniency under its Corporate Leniency Program to one of the Defendants in this case, but we did not know the identity of the leniency applicant. To that end, upon our appointment as Interim Co-Lead Counsel, Co-Lead Counsel wrote to all Defendants exhorting the leniency applicant to come forward immediately and begin cooperating with Plaintiffs prior to the July 2009 deadline for filing the First Amended Class Action Complaint ("FACAC"). If the leniency applicant did not do so, we told Defendants, it would prejudice — not benefit — the Class, and as a result Plaintiffs would ultimately oppose any petition to the Court by the leniency applicant for the damages limitations available under ACPERA. Despite this communication, the leniency applicant (later revealed to be the DHL Defendants) refused to come forward until after the FACAC was filed (and in fact DHL moved to dismiss Plaintiffs' complaint as lacking sufficient allegations of its own involvement — admitted to the DOJ — in the conspiracies alleged).

26. Faced with the refusal of the leniency applicant to cooperate with Plaintiffs at that time, for the benefit of the Class we sought cooperation from other Defendants. We then reached an initial "ice-breaker" settlement with the Schenker Defendants, which included both a

substantial cash payment and material cooperation. Although the Schenker settlement is a good result for the Class in and of itself, the fact that the leniency applicant refused to come forward and cooperate at that material stage in the litigation changed the tenor of settlement talks with Schenker and forced Co-Lead Counsel to expend additional resources that we would not otherwise have needed to had the leniency applicant come forward in a timely fashion.

27. Following the Court's extension of time, Plaintiffs filed a First Amended Class Action Complaint ("FACAC") on July 21, 2009. ECF No. 117. Based in part on information obtained from Schenker, in the FACAC Plaintiffs added new claims, named new Defendants, and made more detailed allegations. In particular, the FACAC alleged dozens of dates, times, places of and participants in conspiratorial meetings, phone calls, and emails, and it described the unlawful agreements the conspirators reached at those meetings. It comprised 80 pages and 326 numbered paragraphs and alleged that Defendants engaged in a collection of interrelated conspiracies to fix, inflate, and maintain prices of freight forwarding services (including numerous specific surcharges and fees for freight forwarding services) over the course of January 1, 2001 until the date of the filing of the FACAC.

III. MOTIONS TO DISMISS THE FIRST AMENDED CLASS ACTION COMPLAINT

28. Briefing on the first round of motions to dismiss lasted 3 years and was "voluminous." Report and Recommendation dated Jan. 4, 2011 ("R&R on FACAC") [ECF No. 468] at 9. Indeed, Magistrate Judge Pohorelsky's January 4, 2011 Report and Recommendation included a separate 8-page appendix itemizing the papers filed in connection with only the first round of motions to dismiss. *See* R&R on FACAC Appendix at 107-14. All discovery remained stayed until December 2013, shortly after the last Report and

Recommendation on motions to dismiss Plaintiffs' Corrected Third Amended Class Action Complaint was issued. ECF No. 977.

A. Scheduling Issues Regarding Motions To Dismiss The FACAC

29. The first motion to dismiss filed in this case was filed by Defendant Expeditors International of Washington, Inc. ("Expeditors") on August 13, 2009. ECF No. 119. A week after Expeditors filed its motion to dismiss, Plaintiffs filed a request for a conference for the purpose of setting a briefing schedule on Expeditors' motion as well as on the numerous other motions Plaintiffs anticipated would be filed in the coming months. ECF No. 122. Plaintiffs and Expeditors were unable to resolve their dispute, *see id.*; ECF No. 124, but Plaintiffs reached an agreement with all of the other Defendants who were named both in the original Complaint and in the FACAC regarding a briefing schedule on the anticipated motions to dismiss. ECF Nos. 122, 123.

30. Plaintiffs filed a stipulation they had reached with those other Defendants setting forth a briefing schedule that would require those Defendants to file any motions to dismiss by October 15, 2009, and under which all briefing on those motions would be concluded by January 29, 2010. ECF No. 123. Plaintiffs further informed the Court that they expected all the newly named domestic Defendants would be served soon enough that any motion to dismiss filed by those newly named domestic Defendants could also follow that same briefing schedule. ECF No. 122. Plaintiffs suggested the possibility that the Court hear two rounds of motions to dismiss the FACAC: one involving all such motions filed by the original Defendants and the newly served domestic Defendants, and a second, later round involving all such motions filed by newly served foreign Defendants. *Id.*

31. Magistrate Judge Pohorelsky held a scheduling conference on September 10, 2009, at which the parties discussed the briefing schedule for the pending and anticipated

motions to dismiss the FACAC. ECF No. 146. At that scheduling conference, the Court orally approved a briefing schedule for those motions.

32. Plaintiffs later reached an agreement with eighteen foreign Defendants who were served after October 28, 2009 ("Later-Served Defendants") as to a briefing schedule on those Later-Served Defendants' anticipated motions to dismiss. *See* ECF No. 305. Magistrate Judge Pohorelsky entered that Stipulated Order on December 31, 2009. ECF No. 309.

B. Defendants' Motions To Dismiss The FACAC

1. Joint Omnibus Motions To Dismiss the FACAC

33. On November 16, 2011, the 27 First-Served Defendants[8] jointly filed a motion to dismiss. ECF No. 234. In their 49-page brief, they argued that: (1) the FACAC did not plausibly connect the global and regional conspiracies to the local conspiracies; (2) on all but one of their claims, Plaintiffs did not adequately plead standing; (3) Plaintiffs improperly grouped all Defendants, or corporate families of Defendants; (4) the allegations on which the global and regional conspiracies were based were conclusory and also were beyond the jurisdiction of the Court; (5) the allegations regarding the local conspiracies were inadequate under *Twombly*; and (6) claims alleging certain local conspiracies were time-barred. A twenty-eighth Defendant, Expeditors, separately filed a joinder as to the joint omnibus motion. ECF No. 240. Geodis also

[8] The "First-Served Defendants" were: Deutsche Post AG; DHL Express (USA), Inc.; Excel Global Logistics, Inc.; Air Express International (USA), Inc.; United Parcel Service, Inc.; UPS Supply Chain Solutions, Inc.; EGL, Inc.; EGL Eagle Global Logistics, LP; Hanshin Air Cargo USA, Inc.; Dachser Transport of America, Inc.; MOL Logistics (USA), Inc.; Jet-Speed Logistics (USA), LLC; Jet-Speed Air Cargo Forwarders (USA), Inc.; Vantec World Transport (USA), Inc.; UTi Worldwide, Inc.; Kuehne + Nagel, Inc.; Kuehne + Nagel International AG; Nissin International Transport U.S.A., Inc.; Panalpina, Inc.; Panalpina World Transport (Holding) Ltd.; "K" Line Logistics (U.S.A.), Inc.; Kintetsu World Express (U.S.A.), Inc.; Geo-Logistics Corp.; Hellmann Worldwide Logistics, Inc.; Nippon Express USA, Inc.; Yamato Transport U.S.A., Inc.; and Yusen Air & Sea Service (USA), Inc.

incorporated by reference the arguments made by the First-Served Defendants in the joint omnibus motion. ECF No. 445-1 at 1.

34. On April 1, 2010, nineteen Later-Served Defendants[9] filed a joint motion to dismiss. ECF No. 387. In their 16-page brief, the Later-Served Defendants incorporated all of the arguments made by the First-Served Defendants in their joint omnibus motion to dismiss, and also challenged the sufficiency of the FACAC with respect to the Japanese claims. In particular, the Later-Served Defendants argued that Plaintiffs had inadequately pleaded the overarching Japanese conspiracy under *Twombly* and failed to adequately allege standing for the Japanese claims, and that the Japanese claims were partially barred by the statute of limitations.

2. Joint Motions To Dismiss The FACAC Pursuant To The FTAIA

35. On November 16, 2011, the First-Served Defendants filed a second joint motion to dismiss, this one alleging that the Court lacked subject-matter jurisdiction under the Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a ("FTAIA"). ECF No. 235. The 21-page brief argued that the FACAC did not adequately allege either that (1) their freight forwarding services involved import commerce within the meaning of the FTAIA, or (2) their conduct abroad had a direct, substantial, and reasonably foreseeable domestic effect within the meaning of the FTAIA. Expeditors International of Washington, Inc. separately filed a joinder as to the joint motion to dismiss pursuant to the FTAIA. ECF No. 240. Geodis also incorporated by reference the

[9] The "Later-Served Defendants" were: ABX Logistics Worldwide NV/USA, who had been sued as ABX Logistics Group; Airborne Express, Inc., now known as DHL Japan, Inc.; Dachser GmbH, who had been sued as Dachser Intelligent Logistics; DHL Global Forwarding Japan K.K.; DSV A/S; DSV Solutions Holding A/S; Hanshin Air Cargo Co., Ltd.; Hankyu Hanshin Express Holdings Corporation; K Line Logistics, Ltd.; Kintetsu World Express, Inc.; MOL Logistics (Japan) Co., Ltd.; Nippon Express Co., Ltd.; Nishi-Nippon Railroad Co., Ltd.; Nissin Corporation; SDV International Logistics; United Aircargo Consolidators, Inc.; Vantec World Transport Co., Ltd.; Yamato Global Logistics Japan Co., Ltd; and Yusen Air & Sea Service Co., Ltd.

arguments made by the First-Served Defendants in this joint FTAIA motion. ECF No. 445-1 at 1.

36. The Later-Served Defendants filed their own joint motion to dismiss pursuant to the FTAIA on April 1, 2010. ECF No. 386. In their 12-page brief, the Later-Served Defendants incorporated all the arguments made in the First-Served Defendants' motion regarding the FTAIA, and also argued that, for those same reasons, the claim alleging a Japanese regional fuel surcharge agreement did not satisfy the FTAIA.

3. Joint Motion To Dismiss By The U.S. Subsidiaries

37. Nine U.S. subsidiaries of Japanese parent corporations (collectively "U.S. Subsidiaries")[10] jointly filed a motion to dismiss the FACAC on November 16, 2009. ECF No. 233. The U.S. Subsidiaries' 9-page brief argued that the FACAC failed to state any allegations of wrongful conduct by them, as opposed to by their Japanese parent corporations, and that the FACAC should therefore be dismissed as to the U.S. Subsidiaries under *Twombly*.

4. Foreign Defendants' Joint Motion To Dismiss For Lack Of Personal Jurisdiction

38. On April 1, 2010, twelve foreign Defendants (collectively the "Foreign Defendants")[11] filed a motion to dismiss for lack of personal jurisdiction. ECF No. 392. The Foreign Defendants argued in their 10-page brief that Plaintiffs had not sufficiently pleaded that

[10] The nine U.S. Subsidiaries were: Nippon Express USA, Inc.; Yusen Air & Sea Service (USA), Inc.; Kintetsu World Express (U.S.A.), Inc.; Nissin International Transport U.S.A., Inc.; Vantec World Transport (USA), Inc.; "K" Line Logistics (U.S.A.) Inc.; Yamato Transport U.S.S.; Inc.; MOL Logistics (U.S.A.), Inc.; and Hanshin Air Cargo USA, Inc.

[11] The eleven Foreign Defendants were: Vantec World Transport Co., Ltd.; ABX Logistics Worldwide NV/SA, who was sued under the name as ABX Logistics Group; Dachser GmbH, which was sued under the name Dachser Intelligent Logistics; DSV A/S; DSV Solutions Holding A/S; "K" Line Logistics, Ltd.; Nippon Express Co., Ltd.; Nissin Corporation; United Aircargo Consolidators, Inc.; Yamato Global Logistics Japan Co., Ltd.; and Yusen Air & Sea Service Co., Ltd.

any U.S. subsidiary acted as an agent of a Foreign Defendant, and that Plaintiffs did not adequately allege that any Foreign Defendant transacted business in the United States.

5. Defendant-Specific Motions To Dismiss

39. In addition to the numerous multi-Defendant motions to dismiss described above, individual Defendants or corporate groupings of Defendants also filed a total of twelve motions to dismiss, or supplemental memoranda in support of a joint motion to dismiss, concerning Defendant-specific arguments. In general, these motions argued that the allegations as to particular Defendants or groups of Defendants were inadequate under *Twombly* and Rule 8 or relied on improper corporate groupings. Defendant-specific motions or supplemental memoranda in support of a joint motion were filed by:

a. Expeditors International of Washington, Inc., filed August 13, 2009 [ECF No. 119] (23 pages)

b. Dachser Transport of America, Inc., filed November 12, 2009 [ECF No. 220] (6 pages)

c. UTi Worldwide Inc., filed November 16, 2009 [ECF No. 239] (10 pages)

d. Jet-Speed Air Cargo Forwarders (USA), Inc. and Jet-Speed Logistics (USA), LLC, filed November 16, 2009 [ECF No. 242] (6 pages)

e. Toll Global Forwarding (USA), Inc., filed November 16, 2009 [ECF No. 247] (10 pages)

f. Morrison Express Corporation (U.S.A.), filed December 15, 2009 [ECF No. 297] (12 pages)

g. DSV A/S and DSV Solutions Holding A/S, filed April 1, 2010 [ECF No. 383] (3 pages)

h. SDV International Logistics, filed April 1, 2010 [ECF No. 390] (6 pages)

i. Dachser GmbH & Co. KG, filed April 1, 2010 [ECF No. 391] (6 pages)

j. Morrison Express Logistics Pte., Ltd. (Singapore), filed April 8, 2010 [ECF No. 396] (challenging personal jurisdiction) (3 pages)[12]

k. Morrison Express Logistics Pte., Ltd. (Singapore), filed April 8, 2010 [ECF No. 397] (challenging the sufficiency of the FACAC's factual allegations under *Twombly*) (14 pages)

l. Geodis S.A. and Geodis Wilson USA,[13] filed September 1, 2010 [ECF No. 445] (26 pages)

C. Plaintiffs' Responses To Defendants' Motions To Dismiss The FACAC

1. Plaintiffs' Opposition To Defendants' Joint Omnibus Motions To Dismiss The FACAC

40. On January 29, 2010, Plaintiffs filed a 51-page memorandum opposing the First-Served Defendants' joint omnibus motion to dismiss. ECF No. 322. The memorandum delineated those facts in the FACAC that were suggestive enough to render the conspiracies and corporate groupings plausible and therefore sufficient under *Twombly*. The memorandum also set forth the allegations in the FACAC that demonstrated constitutional standing, as well as those allegations that provided a basis for concluding that the Defendants engaged in fraudulent concealment, thus tolling any applicable statute of limitations.

41. On May 17, 2010, Plaintiffs filed a 19-page memorandum opposing the Later-Served Defendants' joint omnibus motion to dismiss. ECF No. 405. Plaintiffs incorporated the arguments they had already made in opposition to the First-Served Defendants' motion and also

[12] This motion by Morrison Express Logistics Pte., Ltd. (Singapore) sought dismissal based on an alleged lack of personal jurisdiction. In support of that argument, it incorporated the arguments set forth in the Foreign Defendants' motion to dismiss for lack of personal jurisdiction and submitted a declaration from its General Manager, denying that it had any office in the United States. ECF No. 396-2.

[13] In addition to alleging factual insufficiency under *Twombly* and Rule 8, this motion also argued that Plaintiffs had not established the existence of personal jurisdiction over Geodis S.A. and that service of process was defective as to Geodis S.A. ECF No. 445. In support of its personal-jurisdiction and service-of-process arguments, the Geodis Defendants also filed a five-page narrative declaration.

described, claim by claim, specific facts alleged in the FACAC that rendered plausible the conspiracies separately challenged by the Later-Served Defendants. Plaintiffs further argued that, based on the allegations in the FACAC, they had constitutional standing and antitrust standing to pursue the claims alleged against the Later-Served Defendants. Finally, Plaintiffs argued that their claims against the Later-Served Defendants were not time-barred because of the continuing nature or fraudulent concealment of those conspiracies.

2. Plaintiffs' Opposition To Defendants' Joint Motions To Dismiss The FACAC Pursuant To The FTAIA

42. On January 29, 2010, Plaintiffs filed a 22-page memorandum in opposition to the First-Served Defendants' joint motion to dismiss pursuant to the Foreign Trade Antitrust Improvements Act ("FTAIA"). ECF No. 327. Plaintiffs argued that the conduct and the freight forwarding services at issue in the litigation involved import trade and import commerce and therefore were not excluded by the FTAIA's jurisdictional limitations. Plaintiffs further argued that even if the Court were to conclude that the FTAIA did apply, the conduct nevertheless would be actionable notwithstanding the FTAIA because it had a direct, substantial, and reasonably foreseeable effect on import or export commerce between the United States and foreign nations and thus met one of the FTAIA's exceptions. Plaintiffs cited a raft of factual allegations in the FACAC to support each of these arguments.

43. On May 17, 2010, Plaintiffs filed a 17-page memorandum opposing the Later-Served Defendants' motion to dismiss pursuant to the FTAIA. ECF No. 407. Plaintiffs argued, supported by specific citations to allegations contained in the FACAC, that the conduct and the freight forwarding services at issue in the Later-Served Defendants' motion involved import trade and import commerce and therefore was not excluded by the FTAIA's jurisdictional

limitations, and, in any event, had a direct, substantial, and reasonably foreseeable effect on export and import commerce in the United States.

3. Plaintiffs' Opposition To The Joint Motion To Dismiss The FACAC By The U.S. Subsidiaries

44. On January 29, 2010, Plaintiffs filed a 23-page memorandum opposing the U.S. Subsidiaries' motion to dismiss. ECF No. 326. The memorandum described specific facts contained in the FACAC that, together, sufficiently alleged Sherman Act violations by the U.S. Subsidiaries under *Twombly*.

4. Plaintiffs' Opposition To The Foreign Defendants' Joint Motion To Dismiss The FACAC For Lack Of Personal Jurisdiction

45. On May 17, 2010, Plaintiffs filed a 27-page memorandum opposing the Foreign Defendants' joint motion to dismiss for lack of personal jurisdiction. ECF No. 410. Plaintiffs pointed to numerous specific factual allegations in the FACAC showing that personal jurisdiction existed over the Foreign Defendants. Plaintiffs also submitted a declaration attaching fourteen exhibits showing the extent of the Foreign Defendants' activities and physical presence in New York or elsewhere in the United States, either directly or through subsidiaries. Under these facts, Plaintiffs argued, the Court possessed personal jurisdiction over the Foreign Defendants pursuant to New York's personal jurisdiction statutes or, in the alternative, pursuant to Federal Rule of Civil Procedure 4(k)(2). Finally, Plaintiffs argued that, to the extent that the Court might continue to harbor doubt about whether personal jurisdiction exists, Plaintiffs were entitled to discovery on the question.

5. Plaintiffs' Opposition To Defendant-Specific Motions To Dismiss The FACAC

46. Plaintiffs filed separate memoranda opposing each of the Defendant-specific motions to dismiss the FACAC. Generally speaking, each of those memoranda described the

particular factual allegations that rendered the claims against the specific Defendant viable under *Twombly* and Rule 8, and which supported the corporate groupings employed in the FACAC. Plaintiffs filed the following memoranda in opposition to Defendant-specific motions to dismiss:

a. Jet-Speed Air Cargo Forwarders (USA), Inc. and Jet-Speed Logistics (USA), LLC, filed January 29, 2010 [ECF No. 323] (9 pages)

b. Toll Global Forwarding (USA), Inc., filed January 29, 2010 [ECF No. 324] (10 pages)

c. Dachser Transport of America, Inc., filed January 29, 2010 [ECF No. 325] (9 pages)

d. UTi Worldwide Inc., filed January 29, 2010 [ECF No. 328] (22 pages, plus 5-page chart exhibit summarizing newly discovered facts that Plaintiffs could plead against UTi should the Court dismiss claims against UTi under *Twombly*)

e. Morrison Express Corporation (U.S.A.), filed January 29, 2010 [ECF No. 329] (23 pages, plus 8-page chart exhibit summarizing newly discovered facts that Plaintiffs could plead against Morrison should the Court dismiss claims against Morrison under *Twombly*)

f. Expeditors International of Washington, Inc., filed January 30, 2010 [ECF No. 330] (26 pages)

g. Dachser GMBH & Co. KG, filed May 17, 2010 [ECF No. 406] (11 pages)

h. DSV A/S and DSV Holding A/S,, filed May 17, 2010 [ECF No. 408] (20 pages)

i. SDV International Logistics, filed May 17, 2010 [ECF No. 409] (25 pages)

j. Morrison Express Logistics Pte., Ltd., filed May 24, 2010 [ECF No. 413] (16 pages) (regarding the sufficiency of factual allegations under *Twombly*)

k. Morrison Express Logistics Pte., Ltd., filed May 24, 2010 [ECF No. 414] (20 pages of briefing plus a declaration attaching 13 exhibits regarding personal jurisdiction)

l. Geodis S.A. and Geodis Wilson USA, filed September 22, 2010 [ECF No. 455] (25 pages plus a declaration attaching 10 exhibits regarding personal jurisdiction)

D. Defendants' Replies In Further Support Of Their Motions To Dismiss The FACAC

1. Defendants' Replies Regarding Their Joint Omnibus Motions To Dismiss The FACAC

47. On March 5, 2010, the First-Served Defendants filed a 29-page reply brief in further support of their joint omnibus motion to dismiss. ECF No. 372. In their reply, the First-Served Defendants reiterated their arguments that Plaintiffs had not alleged injury-in-fact sufficient to confer standing, that the regional and global conspiracies were not plausible, that the FACAC depended in part on impermissible and unsupported corporate groupings, that the individual conspiracies were not sufficiently alleged under *Twombly*, and that some of the claims were time-barred because Plaintiffs had not adequately pleaded fraudulent concealment.

48. On June 16, 2010, the Later-Served Defendants filed a 14-page reply in further support of their joint omnibus motion to dismiss. ECF No. 422. It re-emphasized that the FACAC should be dismissed under *Twombly*, and that certain claims also were time-barred.

2. Defendants' Replies Regarding Their Joint Motions To Dismiss Pursuant To The FTAIA

49. On March 5, 2010, the First-Served Defendants filed a 16-page reply brief in further support of their joint motion to dismiss under the FTAIA. ECF No. 373. That reply argued that Plaintiffs' analysis of the FTAIA was flawed as a legal matter, and that the statute actually barred Plaintiffs' claims because those claims related to wholly foreign conduct that did not produce a direct, substantial, and reasonably foreseeable effect within the United States.

50. On June 16, 2010, the Later-Served Defendants filed a 10-page reply brief in further support of their joint motion to dismiss under the FTAIA. ECF No. 421. The Later-Served Defendants reiterated their argument that the conduct at issue in this litigation does not relate to import trade or commerce, and did not result in a direct, substantial, and reasonably foreseeable effect on United States trade or commerce.

3. U.S. Subsidiaries' Reply

51. On March 5, 2010, the U.S. Subsidiaries filed a 12-page reply memorandum in further support of their motion to dismiss. ECF No. 366. They argued that the FACAC contained no allegations of specific actions by the U.S. subsidiaries that could establish that they participated in the conspiracies alleged, and that their respective corporate relationships with a corporate parent or corporate grouping were insufficient to support a claim for liability.

4. Reply By The Foreign Defendants Regarding Personal Jurisdiction

52. On June 16, 2010, the Foreign Defendants filed an 11-page reply memorandum in further support of their motion to dismiss for lack for personal jurisdiction. ECF No. 424. In that brief, the Foreign Defendants deny that Plaintiffs had showed personal jurisdiction under either the personal jurisdiction statutes of New York or under Rule 4(k)(2).

5. Defendants' Replies In Support Of Defendant-Specific Motions

53. The Defendants who had filed separate motions arguing that they should be dismissed for improper corporate grouping or on other individualized grounds under *Twombly* each filed replies in further support of those motions:[14]

a. Expeditors International of Washington, Inc., filed March 4, 2010 [ECF No. 361] (14 pages, plus a declaration annexing a 78-page trade publication mentioned in a single paragraph of the FACAC)

b. Dachser Transport of America, Inc., filed March 5, 2010 [ECF No. 364] (6 pages)

c. Jet-Speed Air Cargo Forwarders (USA), Inc. and Jet-Speed Logistics (USA), LLC, filed March 5, 2010 [ECF No. 367] (10 pages)

d. UTi Worldwide Inc., filed March 5, 2010 [ECF No. 368] (10 pages)

e. Toll Global Forwarding (USA), Inc., filed March 5, 2010 [ECF No. 370] (9 pages)

f. Morrison Express Corporation (U.S.A.), filed March 5, 2010 [ECF No. 371] (11 pages)

g. Dachser GmbH & Co. KG, filed June 15, 2010 [ECF No. 418] (7 pages)

h. DSV A/S and DSV Holding A/S,, filed June 16, 2010 [ECF No. 419] (6 pages)

i. SDV International Logistics, filed June 16, 2010 [ECF No. 423] (10 pages)

j. Morrison Express Logistics Pte., Ltd., filed June 23, 2010 [ECF No. 430] (11 pages of briefing regarding the sufficiency of factual allegations under *Twombly*, plus a 3-page declaration attaching six exhibits)

k. Morrison Express Logistics Pte., Ltd., filed June 23, 2010 [ECF No. 431] (9 pages of briefing regarding personal jurisdiction, plus a 3-page declaration attaching 6 exhibits regarding personal jurisdiction)

l. Geodis S.A. and Geodis Wilson USA, filed October 6, 2010 [ECF No. 459] (11 pages plus a 3-page appendix)

[14] Both UTi and Morrison Express also argued that the Court should not consider the proffer of newly discovered facts contained in a separate exhibit to Plaintiffs' response briefs on those Defendants' motions.

E. Hearing On The Motions To Dismiss The FACAC[15]

54. Judge Gleeson referred the motions to dismiss to Magistrate Judge Pohorelsky for a report and recommendation in the first instance. Magistrate Judge Pohorelsky heard argument on the numerous motions to dismiss on September 15, 2010.[16] *See* ECF No. 454. The hearing lasted approximately six hours, including breaks. *Id*. at 1, 119.

F. Post-Hearing Submissions

55. Shortly after the September 15, 2010 hearing, the U.S. Department of Justice announced that six freight forwarders,[17] each also a Defendant in this case, had been charged with and agreed to plead guilty to (and pay fines for) criminal violations of Section 1 of the Sherman Act. The criminal proceedings related to four antitrust conspiracies also at issue in this litigation: the Air Automated Manifest System, the New Export System, the China Currency Adjustment Factor, and the Peak Season Surcharge. On October 1, 2010, Plaintiffs filed a letter notifying the Court of these facts, attaching the U.S. Department of Justice's press release, and urging the Court to take judicial notice of these recent matters of public record as it considered the plausibility of the allegations in the FACAC. ECF No. 457.

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[15] After the briefing on the motions to dismiss the FACAC was largely concluded, Plaintiffs filed a stipulation to permit Plaintiffs to file a Second Amended Class Action Complaint ("SACAC") incorporating purely ministerial changes to the FACAC that would ease the process of effectuating service on certain foreign Defendants. ECF Nos. 433, 470. Under the Stipulation, all pending motions to dismiss the FACAC would be deemed motions to dismiss the SACAC and the filing of the SACAC need not delay the resolution of the pending motions to dismiss. ECF No. 433 at ¶¶ 2-3. That stipulated order was later entered by the Court.

[16] Briefing had not concluded on Geodis's motion at the time of the September 15, 2010 hearing, and the hearing therefore did not address the Geodis-specific issues, but no separate hearing was ever held on that motion.

[17] The Defendants charged by the U.S. Department of Justice in September 2010 were Schenker AG; BAX Global, Inc.; EGL, Inc.; Geologistics International Management (Bermuda) Limited; Kuhne + Nagel International AG; and Panalpina Worldwide Transport (Holding) Ltd.

56. In response to Plaintiffs' letter about the U.S. Department of Justice criminal proceedings, United Parcel Service, Inc. and UPS Supply Chain Solutions, Inc. filed a letter on October 5, 2010. ECF No. 458. That letter argued that the criminal proceedings had no effect on the standing deficiencies or FTAIA challenges that Defendants had described in their briefing, and were irrelevant in assessing the alleged implausibility of the global and regional conspiracy claims.

G. Report And Recommendation On The Motions To Dismiss The FACAC

57. Magistrate Judge Pohorelsky issued a lengthy report and recommendation on the motions to dismiss the FACAC on January 4, 2011 ("FACAC R&R"). ECF No. 468. The FACAC R&R comprised 106 pages, and contained an additional 8-page chart listing the various briefs filed in connection with the motions to dismiss. The FACAC R&R recommended sustaining Claim 1 of the FACAC (regarding the security surcharge) as to ABX Logistics Group, Exel Global Logistics Inc., DHL Danzas, and Geologistics only, and that in all other respects the FACAC be dismissed without prejudice, with the opportunity for Plaintiffs to replead.

58. Notwithstanding the recommendation to dismiss most claims, in many respects the FACAC R&R represented a vindication of Plaintiffs' arguments on the dismissal motions. Magistrate Judge Pohorelsky found that the local conspiracies themselves, with the exception of Claim 15 (regarding the AMS surcharge), were plausibly pleaded under *Twombly* as a general matter, as was Claim 12, the Japanese regional conspiracy. He also rejected nearly all of the Defendant-specific *Twombly* arguments, along with Defendants' contentions that the FTAIA barred Plaintiffs' claims and that certain claims were time-barred. He further concluded that, except as to DSV, Plaintiffs had made out a prima facie case of personal jurisdiction under New York law and were entitled to jurisdictional discovery. As to Geodis's argument that service of

process was defective, he concluded that although the summons appeared to contain a technical defect, the defect could be cured.

59. However, Magistrate Judge Pohorelsky agreed with Defendants that Plaintiffs had not sufficiently pleaded constitutional or antitrust standing for the majority of their claims, did not adequately plead facts in support of the corporate groupings that underpinned the FACAC, and had not adequately pleaded two of the regional conspiracies or the global conspiracy under *Twombly*.

H. Objections To The FACAC R&R

60. Plaintiffs filed one objection to the FACAC R&R, and Defendants filed a total of 11 objections.

1. Plaintiffs' Objection To The FACAC R&R

61. On February 18, 2011, Plaintiffs filed a 9-page objection arguing that the FACAC R&R erred in a single respect: by failing to credit the FACAC's corporate groupings of Defendant families. ECF No. 483. Plaintiffs argued that those corporate groupings were adequately supported by specific factual allegations in the complaint, and the reasonable inferences that must be drawn from them.

2. Defendants' Objections To The FACAC R&R

a) *Defendants' Omnibus Objections*

62. A total of forty-seven Defendants[18] — all of the First-Served Defendants except EGL, Inc. and EGL Eagle Global Logistics, LP,[19] all of the Later-Served Defendants, and three

[18] After originally joining in several objections, the Defendant Nishi-Nippon Railroad Co., Ltd. and the Vantec Defendants later withdrew from all such objections due to having reached settlements with Plaintiffs. ECF Nos. 508, 626.

[19] The EGL Defendants separately filed objections that substantively incorporated the same arguments raised in the Foreign Defendants' objections docketed at ECF No. 473. After

additional Defendants, Morrison Express Corporation (U.S.A.) and Morrison Express Logistics Pte. Ltd. (Singapore), and Toll Global Forwarding (USA), Inc. — jointly filed an objection to the FACAC R&R, totaling 29 pages, on February 18, 2011. ECF No. 473. These Defendants objected that Plaintiffs should not be permitted to amend their complaint, that the FACAC R&R erred in concluding that certain claims were not time-barred, and, to the extent that the FACAC R&R concluded certain claims were plausibly pleaded under *Twombly*, that conclusion constituted further error. Finally, they argued that the complaint should be dismissed with prejudice due to misjoinder.

b) *Foreign Defendants' Objections Regarding Personal Jurisdiction*

63. A total of eleven foreign Defendants — all those who had originally joined in the joint motion to dismiss for lack of personal jurisdiction, minus the two DSV Defendants, plus two others, MOL Logistics (Japan) Co. and Morrison Express Logistics Pte. Ltd. — jointly filed 16 pages of objections regarding their personal-jurisdiction arguments. ECF No. 471. They argued that Plaintiffs had not made a prima facie showing of personal jurisdiction under New York law, and that jurisdictional discovery was inappropriate.

c) *Defendants' Objections Regarding FTAIA*

64. Forty-seven Defendants — all of the First-Served Defendants except EGL, Inc. and EGL Eagle Global Logistics, LP, all of the Later-Served Defendants, and Morrison Express Corporation (U.S.A.), Morrison Express Logistics Pte. Ltd. (Singapore), and Toll Global Forwarding (USA) Inc. — jointly filed 21 pages of objections to the FACAC R&R's conclusions regarding the inapplicability of the FTAIA. ECF No. 474. In their objections, they reiterated their argument that the conduct at issue here did not relate to import trade or import commerce,

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Plaintiffs had filed responses to those objections, the EGL Defendants later withdrew those objections due to having reached a settlement with Plaintiffs. ECF No. 516.

and did not directly, substantially, or reasonably foreseeably affect domestic or import commerce.

d) *Objections by the "Non-Meeting" Defendants*

65. Five Defendants named in the 2005 Peak Season Surcharge conspiracy (Claim 7) who were not specifically alleged to have attended any conspiratorial meetings in 2005 — Morrison Express Corporation (USA), Morrison Express Logistics Pte. Ltd. (Singapore), UTi Worldwide, Inc., Jet-Speed Air Cargo Forwarders (USA), Inc., and Jet-Speed Logistics (USA), LLC (collectively the "'Non-Meeting' Defendants") — jointly filed 6 pages of objections. ECF No. 482. The "Non-Meeting" Defendants argued that the FACAC had not plausibly alleged their participation in that conspiracy because it did not specifically name them as participants in the 2005 meetings, though it did allege their attendance at later meetings.

e) *Defendant-Specific Objections*

66. Seven Defendant-specific objections were filed:

a) EGL Inc. and Eagle Global Logistics LP's Objections, filed February 18, 2011 [ECF No. 472] (4 pages)

b) SDV, filed February 18, 2011 [ECF No. 476] (4 pages)

c) Expeditors International of Washington, Inc., filed February 18, 2011 [ECF No. 477] (7 pages)

d) ABX Logistics Group, filed February 18, 2011 [ECF No. 478] (9 pages)

e) Geo-Logistics, filed February 18, 2011 [ECF No. 479] (4 pages)

f) Toll Global Forwarding (USA) Inc., filed February 18, 2011 [ECF No. 480] (5 pages)

g) Geodis S.A. and Geodis Wilson USA, Inc., filed February 18, 2011 [ECF No. 481] (12 pages)

I. Responses To The Objections To The R&R

1. Plaintiffs' Response To Defendants' Omnibus Objections

67. Plaintiffs filed a 27-page response to Defendants' omnibus objections. ECF No. 488. They argued that that Magistrate Judge Pohorelsky had correctly concluded that the local conspiracies and the Japanese regional conspiracy were sufficiently pleaded under *Twombly*, that the claims were not time-barred, that Defendants' objection regarding misjoinder had been waived because it was not raised in any motion to dismiss and was otherwise legally incorrect, and that Magistrate Judge Pohorelsky did not abuse his discretion in permitting Plaintiffs leave to re-plead.

2. Plaintiffs' Response To Objections Regarding Personal Jurisdiction

68. Plaintiffs filed a 12-page response to Defendants' objection regarding personal jurisdiction. ECF No. 493. They argued that Magistrate Judge Pohorelsky had correctly concluded that the Foreign Defendants were subject to personal jurisdiction under New York law, and that Plaintiffs were entitled both to jurisdictional discovery and to replead their claims.

3. Plaintiffs' Response To The "Non-Meeting" Defendants' Objections

69. Plaintiffs filed a 6-page response to the "Non-Meeting" Defendants' objections, ECF No. 494, arguing that they had plausibly pleaded the 2005 Peak Season conspiracy against those Defendants when they plausibly pleaded those Defendants' participation in a Peak Season conspiracy in subsequent years (including by alleging specific activities in which the "Non-Meeting" Defendants had participated during 2006 and 2007) and further had alleged that the 2005 conspiracy included additional, as-yet-unnamed participants.

4. Plaintiffs' Response To The Objections Regarding The FTAIA

70. Plaintiffs filed a 20-page response to Defendants' objections regarding the FTAIA. ECF No. 495. Plaintiffs argued that Magistrate Judge Pohorelsky had correctly applied the FTAIA, both because the conduct at issue involved import trade or import commerce, and

because it had a direct, substantial, and reasonably foreseeable impact on export and import commerce in the United States.

5. Plaintiffs' Responses To Defendant-Specific Objections

71. Plaintiffs also filed the following responses to Defendant-specific objections:

a) SDV, filed March 21, 2011 [ECF No. 489] (12 pages)

b) EGL, Inc. and EGL Eagle Global Logistics LP, filed March 21, 2011 [ECF No. 490] (4 pages)

c) Geodis S.A. and Geodis Wilson USA, Inc., filed March 21, 2011 [ECF No. 492] (10 pages)

d) ABX Logistics Group, filed March 21, 2011 [ECF No. 497] (6 pages)

e) Expeditors International of Washington, Inc., filed March 21, 2011 [ECF No. 498] (8 pages)

f) Toll Global Forwarding (USA) Inc., filed March 21, 2011 [ECF No. 499] (9 pages)

g) Geo-Logistics, filed March 21, 2011 [ECF No. 500] (5 pages)

h) Toll Global Forwarding (USA) Inc., filed March 21, 2011 [ECF No. 499] (9 pages)

i) Geodis S.A. and Geodis Wilson USA, Inc., filed March 21, 2011 [ECF No. 492] (10 pages)[20]

6. Defendants' Response To Plaintiffs' Objections

72. Defendants filed a 17-page response to Plaintiffs' objections. ECF No. 491. They argued that the R&R correctly rejected the corporate groupings Plaintiffs used in the FACAC, and once again pressed their position that Plaintiffs should be denied permission to replead.

[20] Geodis requested leave to file a reply in further support of its objections and filed a proposed reply as an exhibit to that request. ECF No. 506. In a 4-page brief, Plaintiffs opposed that request as unwarranted under Rule 72, and unnecessary in this instance, ECF No. 507, and the Court ultimately denied the request.

7. Supplemental Submission Regarding Plaintiffs' Objections To The R&R

73. On September 29, 2011, Plaintiffs filed a 3-page letter, with 7 enclosures, informing the Court that, the previous day, the U.S. Department of Justice had filed criminal informations against six additional Defendants in this litigation, accusing them of participating in a conspiracy to fix and impose certain components of freight forwarding services during the Class Period alleged in the FACAC. ECF No. 535. Those six Defendants had agreed to plead guilty and to pay criminal fines ranging between $2.6 million and $10.4 million. Plaintiffs urged the Court to consider those matters of public record in connection with its review of Defendants' various *Twombly* arguments.

J. Order On Objections To The FACAC R&R

74. On August 13, 2012, this Court adopted Magistrate Judge Pohorelsky's Report and Recommendation in its entirety, granting the motions to dismiss in part, denying them in part, and granting Plaintiffs leave to replead. ECF No. 628.

IV. PLAINTIFFS' EFFORTS TO REACH AGREEMENT ON A PROTECTIVE ORDER

75. Plaintiffs sought Defendants' consent to a proposed protective order with Defendants, in order to facilitate settlement and any cooperation Plaintiffs might obtain thereby. But Defendants declined to consent. Therefore, on February 25, 2011, Plaintiffs filed a proposed protective order based on the one entered in *Air Cargo*, and also submitted a two-page letter urging the Court to adopt it. ECF No. 484.

76. In response, a large contingent of Defendants filed a three-page letter opposing Plaintiffs' request for entry of a protective order, arguing that no protective order was necessary because discovery had been stayed, and that Plaintiffs had begun, but not "completed" the meet and confer process. ECF No. 485.

77. In reply, Plaintiffs filed a 2-page letter describing their exhaustive (but ultimately unfruitful) efforts to negotiate a protective order with Defendants, and explained again that immediate entry of a protective order would assist in settlement and result in no prejudice to any Defendant. ECF No. 501.

78. On June 30, 2011, Plaintiffs filed a two-page letter supplementing and renewing their request for entry of a protective order. ECF No. 517. Plaintiffs argued that immediate entry of a protective order was necessary to facilitate the ability of recently settled Defendants to fulfill their cooperation obligations under their respective settlement agreements. Jet Speed again filed a letter opposing the request for entry of a protective order. ECF No. 518.

79. Magistrate Judge Pohorelsky granted Plaintiffs' motion for a protective order. ECF Nos. 520-21.

V. NEGOTIATION WITH DEFENDANTS REGARDING APPOINTMENT OF DEFENSE LIAISON COUNSEL

80. Plaintiffs initially suggested the Court appoint defense liaison counsel in March 2011, in response to the apparent confusion of communication among Defendants regarding Plaintiffs' proposal for a protective order. ECF No. 501. On October 11, 2011, the Court ordered the parties to confer on a proposal regarding the appointment of defense liaison counsel, ECF No. 541, and the parties did so; a mutually agreed-upon proposed order appointing defense liaison counsel was filed and subsequently entered by the Court. ECF Nos. 547, 548.

VI. THE THIRD AMENDED CLASS ACTION COMPLAINT

81. After significant additional research, including cooperation from the then-settling Defendants and the leniency applicant (as previously described in connection with Plaintiffs' first interim fee award, *see* ECF No. 875), Plaintiffs filed their Third Amended Class Action

Complaint and Exhibit A on November 15, 2012. ECF No. 677. It added new factual details, added certain claims, and removed others, and added new named Plaintiffs and Defendants.

A. Motion For Leave To Add Plaintiffs

82. Along with the Third Amended Class Action Complaint, Plaintiffs also filed a motion to add proposed plaintiffs to their pleading. ECF No. 676. In support of that motion, Plaintiffs filed a 6-page brief arguing that the addition of ten additional named plaintiffs was appropriate under the three-part standard applied under Fed. R. Civ. P. 21. Defendants requested briefing on the motion, ECF No. 683, and Magistrate Judge Pohorelsky granted that request. ECF No. 683.

83. Defendants filed an 11-page brief opposing Plaintiffs' motion to add named plaintiffs, arguing that Plaintiffs had not made an adequate showing in support of including the proposed plaintiffs. ECF No. 690. Defendants argued that the motion should be denied or at least deferred and decided in connection with Defendants' forthcoming motions to dismiss the CTAC.

84. In reply, Plaintiffs filed a 6-page brief arguing that not only had they satisfied the Rule 21 standard, but that the addition of the proposed plaintiffs would address the standing issues addressed by the Court on the previous round of motions to dismiss, and was consistent with the very purpose of the Court's leave to amend. ECF No. 697. Plaintiffs further argued that no reason existed for delaying a ruling on the motion to add plaintiffs.

85. Magistrate Judge Pohorelsky heard argument on the motion to add parties at the December 19, 2012 status conference, *see* ECF No. 698-1, and granted Plaintiffs' motion, ECF No. 704.

VII. FILING OF THE CORRECTED THIRD AMENDED CLASS ACTION COMPLAINT

86. On February 6, 2013, Plaintiffs filed a letter requesting to correct and amend the Third Amended Class Action Complaint to correct references to some Defendant entities, and to add certain Hellmann entities. ECF No. 717. Hellmann Worldwide Logistics, Inc., the original Hellmann entity, filed a three-page letter opposing that request. ECF No. 725. The Court referred that request to Magistrate Judge Pohorelsky, and on February 27, 2013, he granted Plaintiffs' request in all respects, pursuant to Rule 15. ECF No. 726.

87. Plaintiffs filed their Corrected Third Amended Class Action Complaint ("CTAC") on March 27, 2013. ECF No. 746. It named as additional entities as new or corrected Defendants. It comprised 163 pages and 593 numbered paragraphs, plus one exhibit. The CTAC remains the operative pleading in this case.

VIII. MOTIONS TO DISMISS THE CTAC

88. On May 24, 2013, Defendants filed a total of 13 motions to dismiss the CTAC, and one motion to sever certain claims.[21] The Court referred all such motions to Magistrate Judge Pohorelsky for a report and recommendation.

A. Defendants' Motions

1. Defendants' Joint Motion To Dismiss The CTAC

89. Forty-two Defendants[22] filed a 48-page memorandum in support of their joint omnibus motion to dismiss the CTAC. ECF No. 783. Defendants argued that the problems

[21] Many of the papers filed in connection with motions to dismiss the CTAC were duplicates of papers previously filed (or served but not filed) in connection with motions to dismiss the uncorrected version of the Third Amended Complaint. For simplicity, this joint declaration cites to the briefing on the dismissal motions using only the post-March 2013 filings made with respect to the CTAC. For this reason, some of the ECF citations included in this joint declaration may give the incorrect impression of the briefs having been filed out of order (for example, with a Defendant's reply being filed before Plaintiffs' responsive brief).

[22] These Defendants were: United Parcel Service, Inc.; UPS Supply Chain Solutions, Inc.; Geo-Logistics Corporation; Hankyu Hanshin Express Holdings Corporation; Hankyu Hanshin

described in the January 2011 had not been cured by repleading. Specifically, they argued that Plaintiffs had not alleged constitutional or antitrust standing and had not plausibly pleaded the global conspiracy alleged in Claim 10, and that that the corporate groupings used in the CTAC were inadequate.

2. Defendants' Motion To Dismiss The CTAC Pursuant To The FTAIA

90. Those same 42 Defendants also filed an 11-page memorandum in support of their motion to dismiss the CTAC pursuant to the FTAIA. ECF No. 787. In their brief, Defendants acknowledged that the Court had already broadly held that the conduct at issue in the litigation was not excluded from the Court's jurisdiction by the FTAIA, but argued that insofar as the claims in the CTAC involved shipments between foreign states that were purchased or sold in the United States, such claims neither qualified as import trade or import commerce, nor did they have a direct, substantial, and reasonably foreseeable effect on domestic or import commerce in the United States. Defendants argued that the FTAIA barred Plaintiffs' claims insofar as they stemmed from shipments between foreign states, regardless of where they were purchased or sold.

3. Japanese-Claim Defendants' Motion To Dismiss

Express Co., Ltd.; Hanshin Air Cargo Co. Ltd.; Hanshin Air Cargo USA, Inc.; Nippon Express USA, Inc.; MOL Logistics (USA), Inc.; MOL Logistics (Japan), Co., Ltd.; Kintetsu World Express, Inc.; Kintetsu World Express (U.S.A.), Inc.; Hellmann Worldwide Logistics, Inc.; Yusen Air & Sea Service (U.S.A.), Inc. and Yusen Air & Sea Service Co., Ltd.; "K" Line Logistics, Ltd.; "K" Line Logistics (U.S.A.), Inc.; Nissin Corporation; Nissin International Transport U.S.A., Inc.; Panalpina World Transport (Holding) Ltd.; Panalpina, Inc.; Dachser Transport of America, Inc.; Dachser GmbH; Yamato Global Logistics Japan Co., Ltd.; Yamato Transport U.S.A., Inc.; Jet-Speed Logistics, Ltd.; Jet-Speed Logistics (USA), LLC; Jet-Speed Air Cargo Forwarders (USA), Inc.; Deutsche Post AG; DHL Express (USA), Inc.; Exel Global Logistics, Inc.; Air Express International (USA), Inc.; Danzas Corporation; DHL Japan, Inc.; DHL Global Forwarding Japan K.K.; DSV A/S; DSV Solutions Holding A/S; Nippon Express Co., Ltd.; Toll Global Forwarding (USA), Inc.; SDV Logistique Internationale; Geodis S.A.; and Geodis Wilson USA, Inc.

91. Eighteen Defendants named in the Japanese claims — 10 Japanese Defendants and their 8 U.S. subsidiaries or affiliates (collectively the "Japanese-Claim Defendants") — filed an 11-page brief in support of their joint motion to dismiss the claims alleging Japanese regional conspiracies (Claims 2, 4, 7, and 11; collectively the "Japanese Claims"). ECF No. 804. The Japanese-Claim Defendants argued that the U.S. subsidiaries should be dismissed because Plaintiffs did not sufficiently allege their involvement in the conspiracies under *Twombly* and had not pleaded facts giving rise to any form of vicarious liability or veil-piercing. They further argued that, to the extent that the Japanese Claims were based on routes other than Japan-to-U.S. routes, Plaintiffs had not plausibly pleaded those claims under *Twombly*.

4. Motion To Sever The Japanese Claims

92. The Japanese-Claim Defendants also moved to sever the Japanese Claims, and filed a 15-page memorandum in support of that motion. ECF No. 810. They argued that, in light of the fact that the CTAC no longer alleged a single overarching global conspiracy, the Japanese Claims were completely distinct from the other claims alleged in the CTAC, could not properly be joined with the non-Japanese claims under Rule 20(a)(2), and that, in any event, it would be inefficient, impractical, and prejudicial if the Japanese Claims proceeded as part of the same litigation.

5. Defendant-Specific Motions To Dismiss The CTAC

93. Ten Defendants also filed Defendant-specific motions, or supplemental memoranda in support of joint motions, to dismiss the CTAC, primarily under *Twombly* and on the theory that the corporate groupings used in the CTAC were legally insufficient:

a) DSV A/S and DSV Solutions Holding A/S, filed May 24, 2013 [ECF No. 778] (6 pages)

b) Dachser Transport of America, Inc., filed May 24, 2013 [ECF No. 781] (10 pages)

c) Dachser GmbH & Co. KG, which was sued as Dachser Intelligent Logistics, filed May 24, 2013 [ECF No. 782] (10 pages)

d) SDV Logistique Internationale, filed May 24, 2013 [ECF No. 789] (13 pages)[23]

e) Toll Global Forwarding, filed May 24, 2013 [ECF No. 786] (4 pages)

f) Kintetsu World Express (U.S.A.), Inc.; Kintetsu World Express, Inc., Nippon Express Co., Ltd.; and Nippon Express USA, Inc., filed May 24, 2013 [ECF No. 809] (7 pages)

g) Yamato Transport U.S.A., Inc., filed May 24, 2013 [ECF No. 793] (3 pages)

h) Jet Speed Logistics, Ltd.; Jet Speed Logistics (USA), LLC; and Jet Speed Air Cargo Forwarders, Inc., filed May 24, 2013 [ECF No. 792] (6 pages)

i) Geodis S.A. and Geodis Wilson U.S.A., Inc., filed May 24, 2013 [ECF No. 806] (14 pages)[24]

j) GeoLogistics Corporation (n/k/a Agility Holdings, Inc.), filed May 24, 2013 [ECF No. 799] (6 pages)[25]

B. <u>Plaintiffs' Responses</u>

1. <u>Plaintiffs' Response To Defendants' Joint Omnibus Motion To Dismiss The CTAC</u>

94. Plaintiffs filed a 42-page brief in opposition to Defendants' joint omnibus motion to dismiss, ECF No. 827, arguing: (1) the CTAC alleged standing as directed by the Court and as required by operative case law, because Plaintiffs alleged that they paid the surcharges at issue; (2) the CTAC plausibly alleged liability with respect to each Defendant, based on detailed

[23] After the parties had fully briefed SDV's motion, SDV and the Plaintiffs reached a settlement agreement, and SDV withdrew the motion. ECF No. 859.

[24] In addition to Geodis's arguments about the plausibility of Plaintiffs' factual allegations, Geodis "preserved" the arguments the Court previously rejected regarding an alleged lack of personal jurisdiction.

[25] GeoLogistics also argued that Plaintiffs had failed to establish the existence of personal jurisdiction.

factual allegations that support grouping Defendants into corporate families and in which all Defendants aided and assisted the conspiracies, and acted as alter egos and agents or their affiliated companies; and (3) the CTAC's allegations of a global conspiracy were plausible. In support of their plausibility arguments, Plaintiffs also filed 15 exhibits comprising 303 pages that describe the various guilty pleas and fines paid by various Defendants. ECF No. 829.

2. Plaintiffs' Response To Defendants' Motion To Dismiss The CTAC Pursuant To The FTAIA

95. Plaintiffs filed a 10-page response opposing Defendants' motion to dismiss based on the FTAIA. ECF No. 828. Plaintiffs argued that, under the specific terms of the CTAC (and the FACAC before that), they seek to recover only as to import trade and import commerce, or for freight forwarding services purchased in the United States which, as the Court already recognized, is not barred by the FTAIA. Furthermore, Plaintiffs argued, the conduct at issue in this litigation resulted in a direct, substantial, and reasonably foreseeable injury within the United States, and for that alternative reason, the FTAIA did not bar Plaintiffs' claims.

3. Plaintiffs' Response To The Japanese-Claim Defendants' Motion To Dismiss

96. Plaintiffs filed an 11-page response opposing the Japanese-Claim Defendants' motion to dismiss. ECF No. 816. Plaintiffs argued that the CTAC properly groups the corporate families of the Japanese-Claim Defendants, that the CTAC properly alleged an agency relationship between each Japanese parent company and its U.S. subsidiaries, and that the CTAC plausibly alleges a conspiracy to fix charges on all routes from Japan, not merely those from Japan to the United States.

4. Plaintiffs' Response To The Motion To Sever The Japanese Claims

97. Plaintiffs filed a 15-page brief opposing the Japanese-Claim Defendants' motion to sever. ECF No. 817. Plaintiffs argued that joinder of all claims alleged in the CTAC was

proper under Rule 20 because the CTAC alleged coordinated global conduct, overlapping claims, and a Defendant (DHL) common to each claim, and because the Japanese-Claim Defendants have already been subject to criminal actions or fines for their unlawful conduct throughout the world. Plaintiffs further argued that the Court should not exercise its discretion to sever the claims.

5. Defendant-Specific Motions To Dismiss The CTAC

98. Plaintiffs filed briefs opposing each of the Defendant-specific motions and supplemental memoranda:

a) DSV A/S and DSV Solutions Holding A/S, filed May 28, 2013 [ECF No. 819] (11 pages)

b) Dachser Transport of America, Inc. and Dachser GmbH & Co. KG, filed May 28, 2013 [ECF No. 818] (9 pages)

c) SDV Logistique Internationale, filed May 28, 2013 [ECF No. 824] (12 pages)

d) Toll Global Forwarding, filed May 28, 2013 [ECF No. 825] (6 pages)

e) Kintetsu World Express (U.S.A.), Inc.; Kintetsu World Express, Inc., Nippon Express Co., Ltd.; and Nippon Express USA, Inc., filed May 28, 2013 [ECF No. 823] (6 pages)

f) Yamato Transport U.S.A., Inc., filed May 28, 2013 [ECF No. 826] (4 pages)

g) Jet Speed Logistics, Ltd.; Jet Speed Logistics (USA), LLC; and Jet Speed Air Cargo Forwarders, Inc., filed May 28, 2013 [ECF No. 822] (7 pages)

h) Geodis S.A. and Geodis Wilson U.S.A., Inc., filed May 28, 2013 [ECF No. 820] (12 pages)

i) GeoLogistics Corporation (n/k/a Agility Holdings, Inc.), filed May 28, 2013 [ECF No. 821] (7 pages)

C. Defendants' Replies

1. Defendants' Reply In Further Support Of Their Joint Omnibus Motion To Dismiss The CTAC

99. Defendants filed a 28-page reply in further support of their omnibus motion to dismiss. ECF No. 785. They reiterated their arguments that Plaintiffs lacked standing as to all claims and had not plausibly alleged a global conspiracy or any facts sufficient to show agency or to pierce the corporate veil.

2. Defendants' Reply In Further Support Of Their Motion To Dismiss The CTAC Pursuant to the FTAIA

100. Defendants filed a 14-page reply brief arguing that the FTAIA barred Plaintiffs' recovery as to any charges for foreign-to-foreign shipments. ECF No. 791.

3. The Japanese-Claim Defendants' Reply In Further Support Of Their Motion To Dismiss

101. The Japanese-Claim Defendants filed an 11-page reply in support of their motion to dismiss. ECF No. 805. They restated their arguments that the U.S. subsidiaries should be dismissed under *Twombly* and that Plaintiffs had not plausibly pleaded any claim as to routes other than Japan-to-U.S. routes.

4. The Japanese-Claim Defendants' Reply In Further Support Of Their Motion To Sever

102. The Japanese-Claim Defendants also filed a 13-page reply in support of their motion to sever, arguing that the Japanese Claims do not arise out of the same transaction or series of transactions as the other claims, and that even if the Court found that Rule 20(a)(2) could be satisfied, the Court should exercise its discretionary power to sever. ECF No. 812.

5. Replies In Further Support Of Defendant-Specific Motions to Dismiss the CTAC

103. The following Defendant-specific replies were filed:

a) DSV A/S and DSV Solutions Holding A/S, filed May 24, 2013 [ECF No. 780] (11 pages)

b) Dachser Transport of America, Inc., and Dachser GmbH & Co. KG, filed May 24, 2013 [ECF No. 784] (11 pages)

c) SDV Logistique Internationale, filed May 24, 2013 [ECF No. 790] (7 pages)

d) Toll Global Forwarding, filed May 24, 2013 [ECF No. 788] (4 pages)

e) Kintetsu World Express (U.S.A.), Inc.; Kintetsu World Express, Inc., Nippon Express Co., Ltd.; and Nippon Express USA, Inc., filed May 24, 2013 [ECF No. 811] (8 pages)

f) Yamato Transport U.S.A., Inc., filed May 24, 2013 [ECF No. 795] (3 pages)

g) Jet Speed Logistics, Ltd.; Jet Speed Logistics (USA), LLC; and Jet Speed Air Cargo Forwarders, Inc., filed May 24, 2013 [ECF No. 794] (5 pages)

h) Geodis S.A. and Geodis Wilson U.S.A., Inc., filed May 24, 2013 [ECF No. 807] (11 pages)

i) GeoLogistics Corporation (n/k/a Agility Holdings, Inc.), filed May 24, 2013 [ECF No. 802] (7 pages)

D. Hearing On The Motions To Dismiss

104. Magistrate Judge Pohorelsky held a 3-hour hearing on the motions to dismiss and the motion to sever on June 13, 2013. ECF No. 839.

E. Supplemental Submissions

105. On June 12, 2013, Plaintiffs submitted a 3-page letter summarizing and attaching 6 recent orders in the *In re: Wire Harness Cases*, 12-md-02311 (E.D. Mich.). ECF No. 834. Plaintiffs explained that the orders, entered June 6, 2013, were relevant to the plausibility of each Defendant's participation in the conspiracies and in the global agreement.

106. On August 28, 2013, Defendants submitted a one-paragraph letter attaching a recent decision in *In re Apple iPhone Antitrust Litigation*, and urged the Court to consider that decision in connection with Defendants' argument in their joint omnibus motion that Plaintiffs

lacked constitutional standing. ECF No. 868. In response, on September 3, 2013, Plaintiffs submitted a 2-page letter (1) distinguishing the *iPhone* decision, and (2) submitting a recent opinion in *In re Dairy Farmers of America, Inc., Cheese Antitrust Litigation* that, Plaintiffs argued, found that standing existed in circumstances similar to those presented in this case. ECF No. 869.

F. CTAC R&R

107. On September 20, 2013, Magistrate Judge Pohorelsky issued a Report and Recommendation on the motions to dismiss the CTAC and on the motion to sever ("CTAC R&R"). ECF No. 878. The CTAC R&R, which comprised 72 pages, concluded that "the allegations in the TAC have largely remedied the inadequacies in the SAC." CTAC R&R at 3. It recommended denying the motions to dismiss in substantial part and granting the motion to sever, but consolidating the severed claims with the remaining claims for coordinated discovery.

108. In particular, the CTAC R&R recommended: (1) sustaining the global conspiracy claim against all but four Defendant groups named in that claim, (2) dismissing the Japanese Claims to the extent they sought relief for freight forwarding services on shipments originating outside Japan, but expressly rejecting the Japanese-Claim Defendants' arguments that the Japanese Claims could not be brought with respect to routes other than Japan-to-U.S. routes, (3) dismissing the complaint as to Toll Global Forwarding (USA), Inc. under *Twombly*, and (4) dismissing "Agility Logistics Corporation," reforming the complaint to replace that entity with Agility Holdings, Inc., and allowing Plaintiffs to serve an amended summons. The CTAC R&R recommended affirming the CTAC in all other respects.

G. Objections To The CTAC R&R

109. Defendants filed eleven objections to the CTAC R&R on October 21, 2013. Nippon Express USA, Inc. filed a request for oral argument on those objections, which request

Plaintiffs opposed as unnecessary. ECF Nos. 972-73. The Court ultimately declined to hear argument on the objections.

1. Defendants' Two Objections Regarding Their Omnibus Motion To Dismiss

110. Defendants filed 21 pages of objections to the CTAC R&R, objecting only with respect to the conclusion that Plaintiffs had alleged standing. ECF No. 904.

111. They separately filed 10 pages of objections, objecting to the CTAC R&R insofar as it found the CTAC had satisfied Rule 8(a) with respect to its corporate groupings of Defendants. ECF No. 906.

2. Objection By The U.S. Subsidiaries Regarding The Japanese Claims

112. Eight of the U.S. Subsidiaries named in the Japanese Claims[26] filed 13 pages of objections to the CTAC R&R. ECF No. 909. They argued that the CTAC had not plausibly alleged that any U.S. Subsidiary joined the conspiracies alleged in the Japanese Claims, and that neither the CTAC nor the U.S. criminal plea agreements provided a basis for imposing liability on the U.S. Subsidiaries.

3. Objections Regarding The Global Conspiracy

113. Eleven Defendants named in the global conspiracy (Claim 10)[27] filed 10 pages of objections, arguing that Claim 10 was not sufficiently pleaded under *Twombly*. ECF No. 911.

[26] This group includes all U.S. Subsidiaries who jointly moved to dismiss the FACAC, except for Vantec, which had settled.

[27] These Defendants were: GeoLogistics Corporation; Agility Logistics Corp.; Geologistics International Management (Bermuda) Ltd.; Hellmann Worldwide Logistics, Inc.; Deutsche Post AG; DHL Express (USA), Inc.; Exel Global Logistics, Inc.; Air Express International (USA), Inc.; Danzas Corporation; DHL Japan, Inc.; and DHL Global Forwarding Japan K.K.

4. Objections Regarding the FTAIA

114. The 42 Defendants who had moved to dismiss the CTAC under the FTAIA filed 14 pages of objections renewing their arguments. ECF No. 913.

5. Defendant-Specific Objections

115. The following Defendant-specific objections were filed:

a) DSV A/S and DSV Solutions Holdings AS [ECF No. 905] (5 pages)[28]

b) Dachser GmbH & Co. KG, which was sued as Dachser Intelligent Logistics [ECF No. 907] (7 pages)

c) Dachser Transport of America, Inc. [ECF No. 908] (7 pages)

d) Geodis S.A. and Geodis Wilson U.S.A., Inc. [ECF No. 910] (22 pages)[29]

e) Kintetsu World Express, Inc., Kintetsu World Express (U.S.A.), Inc.; Nippon Express Co., Ltd.; and Nippon Express USA, Inc. [ECF No. 912] (9 pages)

f) Nippon Express USA, Inc. [ECF No. 915] (14 pages)

H. Plaintiffs' Responses To Objections to the CTAC R&R

116. On November 18, 2013, Plaintiffs filed responses opposing the various objections to the CTAC R&R, arguing that in each instance the CTAC R&R was correctly decided:

a) Plaintiffs' opposition regarding standing objections [ECF No. 943] (12 pages)

b) Plaintiffs' opposition regarding corporate-grouping objections [ECF No. 944] (10 pages)

[28] On November 20, 2013, Defendant DSV Air & Sea Ltd. by stipulation joined the individual motion and objections the other DSV Defendants filed, as well as the joint motions the other DSV Defendants joined. ECF No. 964.

[29] On January 21, 2014, after briefing on these objections was concluded, the Geodis Defendants informed the Court that they had reached a settlement in principal with Plaintiffs, and therefore conditionally withdrew their objections. ECF No. 989.

c) Plaintiffs' opposition to objections by the U.S. Subsidiaries [ECF No. 949] (13 pages)

d) Plaintiffs' opposition to objections regarding the Global Conspiracy [ECF No. 946] (15 pages)

e) Plaintiffs' opposition regarding FTAIA objections [ECF No. 941] (11 pages)

f) Plaintiffs' opposition objections by DSV A/S and DSV Solutions Holdings AS [ECF No. 951] (8 pages)

g) Plaintiffs' opposition to objections by Dachser GmbH & Co. KG and Dachser Transport of America, Inc. [ECF No. 958] (7 pages)

h) Plaintiffs' opposition to objections by Geodis S.A. and Geodis Wilson U.S.A., Inc. [ECF No. 960] (14 pages)

i) Plaintiffs' opposition to objections by Kintetsu World Express, Inc., Kintetsu World Express (U.S.A.), Inc.; Nippon Express Co., Ltd.; and Nippon Express USA, Inc. [ECF No. 954] (7 pages)

j) Plaintiffs' opposition to objections by Nippon Express USA, Inc. [ECF No. 956] (8 pages)

I. Order on the CTAC R&R

117. On January 28, 2014, the Court issued a 2-page order adopting the CTAC R&R in full. ECF No. 992.

IX. EARLY DISCOVERY DISPUTES

A. Early Disputes Regarding Materials Produced To Government Regulators

118. While the motions to dismiss the CTAC were pending before Magistrate Judge Pohorelsky, he held a status conference on March 7, 2013 to discuss, among other things, Plaintiffs' request for the production of materials Defendants previously provided to government entities. ECF No. 732. Defendants opposed any request for production of these materials until after the Court's resolution of the motions to dismiss the CTAC. ECF No. 733. Following the status conference, Magistrate Judge Pohorelsky ordered briefing on the issue. ECF No. 735.

119. On March 21, 2013, all Defendants (except the DHL Defendants) submitted a total of 5 letter briefs comprising altogether 17 single-spaced pages of argument why they should not be compelled to produce materials provided to government entities. ECF Nos. 739-742, 769. (Dachser and Kintetsu styled their submissions as requests to stay discovery. *See* ECF Nos. 739 and 741.) In general, Defendants argued that such a production would be burdensome, potentially prejudicial, and premature. Kintetsu also specifically argued that it had submitted potentially privileged information to the U.S. Department of Justice, and re-reviewing those submissions now for production to Plaintiffs would be burdensome. These Defendants urged the Court to maintain the discovery stay until final resolution of the motions to dismiss.

120. On March 28, 2013, Plaintiffs filed two letter briefs responding to Defendants' arguments. Plaintiffs first responded to Kintetsu's argument in a 6-page letter brief, ECF No. 753, pointing out that (1) Kintetsu was an admitted antitrust felon, and its criminal violations related to the specific civil conspiracies at issue here; and (2) Kintetsu's plea agreement only required it to produce non-privileged material. Under these facts, Plaintiffs argued, any doubt about burden should be resolved in Plaintiffs' favor. Moreover, Plaintiffs argued, Kintetsu had failed to make any particular showing as to the burdensome nature of production, and had waived any privilege by voluntarily producing materials to government entities.

121. Plaintiffs separately filed a 6-page letter brief responding to the other Defendants' arguments opposing production of information provided to government entities. ECF No. 754. Plaintiffs argued that Defendants had made no showing as to burden, that courts routinely ordered productions under similar circumstances, that such productions were appropriate under Rule 6(e), and that the defects previously identified by the Court had been cured through repleading.

122. Some Defendants filed replies on the issue. On April 1, 2013, Kintetsu filed a 2-page reply attempting to make a more specific showing of burden. ECF No. 755. And on April 2, 2013, UPS filed a two-page reply reiterating its argument that it should not be required to make any productions because the Department of Justice had taken no action against UPS, and that Plaintiffs' amended pleading failed to state a claim against UPS. ECF No. 757.

123. Five days after issuing the CTAC R&R, on September 25, 2013, Magistrate Judge Pohorelsky denied the motions to stay in light of his findings in the CTAC R&R that virtually all of the claims in the action should proceed, and he ordered the parties to meet and confer on a proposed discovery plan, to be filed by October 25, 2013. ECF No. 889.

B. Discovery Plan

124. Plaintiffs filed two proposed discovery plans under Rule 26(f), one as to the Japanese Claims, ECF No. 918, and one as to the remaining claims, ECF No. 917. These proposals presented intractable disputes among the parties about (1) whether the Japanese Claims (which were severed but, per the CTAC R&R, recommended for consolidation for discovery) should be governed by a separate discovery plan; (2) the appropriate end date for document preservation; (3) the production by Defendants of materials produced to government entities; (4) whether discovery as to standing was necessary; (5) the mechanism and timing for production by Plaintiffs of materials produced by Settling Defendants; (6) the timing of production by Defendants of transactional data; (7) the appropriate schedule for class certification, summary judgment, and dispositive motions and for trial; (8) the maximum number of interrogatories permitted; and (9) conditions for depositions, including the maximum number (and depositions to be excluded from that maximum number), location, and time limits for depositions requiring translators.

125. On October 31, 2013, the parties filed letters in support of their respective discovery-plan proposals. *See* ECF Nos. 922 (Japanese-Claim Defendants, 5 pages); 923 (Non-Severed Defendants, 5 pages); 924 (Plaintiffs, 10 pages, plus 12 exhibits attaching unpublished orders). In particular, the Japanese-Claim Defendants requested that Plaintiffs be required to file a separate complaint against them. Plaintiffs opposed that request as not contemplated by the CTAC R&R, unnecessary, and likely to cause confusion.

126. Magistrate Judge Pohorelsky heard argument on the parties' proposals at the November 7, 2013 status conference, and ruled, among other things, that Plaintiffs would not be required to file a separate complaint against the Japanese-Claim Defendants, and that a joint discovery plan would be issued that would apply to both severed and non-severed claims. ECF No. 936.

127. On November 26, 2013, the parties submitted revised proposed orders on a discovery plan. After extensive negotiations, the parties reached agreement on all disputed terms of the proposed plan, with the sole exception of Defendants' obligation to produce documents produced to the U.S. Department of Justice and other governmental entities. Plaintiffs and Defendants each submitted a 2-page letter brief arguing their respective positions, along with a corresponding proposed order. ECF Nos. 967 (Defendants' letter and proposed order); 968 (Plaintiffs' proposed order); 969 (Plaintiffs' letter). Defendants sought to limit their obligation only to documents that, in their view, related to the claims in this case. That formulation potentially would have allowed a Defendant to avoid producing materials it produced to a regulator regarding a surcharge at issue in this case, so long as the producing Defendant was not named with respect to the related claim in this litigation. Plaintiffs sought production of all such

documents that a Defendant had, in response to a subpoena or document request, produced to any government entity investigating anticompetitive conduct in the freight forwarding industry.

128. On December 17, 2013, Magistrate Judge Pohorelsky entered an order on the proposed discovery plan, adopting Plaintiffs' proposal regarding productions to government entities. ECF No. 977. The order deemed all previously served discovery requests effectively served as of December 17, the date of order's entry.

C. U.S. Subsidiaries' Motion For A Discovery Stay

129. On November 6, 2013, while the objections to the CTAC R&R were pending, the U.S. Subsidiaries named in the Japanese Claims moved to stay discovery until their pending objections were resolved. ECF No. 931-32. The Court referred the motion to Magistrate Judge Pohorelsky, who set a briefing schedule.

130. Plaintiffs filed their 7-page opposition to the motion to stay on November 12, 2013, arguing that the U.S. Subsidiaries had not shown good cause and had violated Local Rule 37.3(a) by failing to meet and confer. ECF No. 938. The U.S. Subsidiaries filed their 14-page reply, and a declaration attaching for exhibits relating to the meet-and-confer and good-cause issues, in further support of their motion on November 26, 2013. ECF No. 966.

131. On December 17, 2013, Magistrate Judge Pohorelsky denied the motion to stay discovery pending a ruling on the objections to the CTAC R&R. ECF No. 976.

D. Defendants' Motions For Protective Orders

132. On December 16, 2013, Dachser GmbH & Co. KG filed a 5-page brief in support of its motion for a protective order, arguing that its productions to European Community and Brazilian regulators should be protected from disclosure in this case under EC, Brazilian, and German law. ECF No. 975. In support of this argument, Dachser GmbH & Co. KG submitted a

declaration attaching two exhibits pertaining to EC and German law. Defendant Hellmann Worldwide Logistics GmbH & Co. KG later joined Dachser's motion. ECF No. 978.

133. Plaintiffs filed a 13-page brief opposing the motion for a protective order. ECF No. 980. Plaintiffs argued, among other things, that international comity weighed in favor of disclosure under each prong of the 7-factor test used in this District.

134. Defendants requested permission to file a reply, ECF No. 986, but Magistrate Judge Pohorelsky deferred the request.

135. At the March 25, 2014 status conference, Magistrate Judge Pohorelsky denied the motions for a protective order, rendering the request for a reply moot. ECF No. 1006.

X. PLAINTIFFS' DISCOVERY

A. Defendants' Production Of Transactional And Cost Data

136. The Court's December 2013 Order On Discovery Plan ordered the parties to complete their discovery conferences regarding the scope, format, parameters, and timing of transactional and cost data by January 31, 2014. ECF No. 977 at 3. The nature of these discussions required Plaintiffs to meet and confer, often several times, with individual Defendant families. The parties requested and were granted a one-month extension to complete these conferences, until February 28, 2014. ECF No. 991. The production of transactional data was discussed at the March 25, 2014 status conference, and Magistrate Judge Pohorelsky directed Defendants to produce transactional data, for a period through January 31, 2013, by May 12, 2014. ECF No. 1006.

137. Following Defendants' production of transactional data, Plaintiffs engaged in extensive discovery conferences with each Defendant group about those productions discussing topics including the data fields that might contain relevant information, how each database might be queried to extract relevant data, issues concerning legacy systems and older data, and how

different database tables related to one another. Throughout the process of meeting and conferring on and reviewing the data, Plaintiffs worked closely with their economic consultants for analysis and to identify additional areas of follow-up.

B. Plaintiffs' First Requests For Production To Defendants

138. On October 18, 2013, Plaintiffs served their first requests for production of documents ("RFPs") on all Defendants. These RFPs comprised between 4 and 12 requests (depending on the Defendant served), primarily seeking materials produced to government entities and transactional data relating to particular surcharges.

139. As Defendants produced documents in response to this and other RFPs, those documents were loaded into a document database for review by Plaintiffs. Plaintiffs used a document review platform that allowed them to review documents as efficiently yet productively as possible by using data analytics, e-mail threading, de-duplication, keyword searching, and similar techniques.

140. In addition to reviewing the documents produced by Defendants, Plaintiffs have engaged in extensive discovery conferences with Defendants DHL and Hellmann about privilege logs. To date, Hellmann has produced no privilege log, despite claiming that certain material withheld from production is privileged and despite multiple diligent attempts by Plaintiffs to obtain a proper privilege log.[30] DHL has produced a privilege log and, after challenges by Plaintiffs, has amended it somewhat (narrowing it in some respects, and expanding it in others) over the course of many discovery conferences. Plaintiffs continue to meet and confer with DHL regarding its privilege log.

[30] The issue of Hellmann's privilege log (or lack thereof) was heard and addressed by the Magistrate Judge on August 25, 2015. Because Plaintiffs' fee petition is based on time expended only through August 15, 2015, the August 25 proceedings are not described in depth herein.

C. Plaintiffs' First Set Of Interrogatories To Defendants

141. On October 18, 2013, Plaintiffs served their first set of interrogatories on all Defendants. This set comprised four interrogatories seeking a variety of information relating to the identification of potential witnesses, information produced to government entities, and communications with co-Defendants.

142. Subsequently, the parties conducted many discovery conferences to clarify the scope of these interrogatories and the substance of Defendants' responses, and certain Defendants such as DHL have served multiple supplemental responses, requiring additional review. Ultimately, Plaintiffs filed two motions to compel responses to these interrogatories, as discussed below.

D. Plaintiffs' Second Set Of RFPs

143. On January 29, 2014, Plaintiffs served Defendants with a second set of RFPs, comprising a single request for production of any judgment-sharing agreement in this case.

144. On March 3-5, 2014 Defendants served their responses and objections to this second set of RFPs. All such responses stated objections as to privilege and confidentiality, though numerous Defendants responded that, notwithstanding those objections, they possessed no such agreement. Notably, no Japanese Defendant denied possessing such an agreement, and Plaintiffs sought to meet and confer with them regarding their objections to the RFP. Ultimately, Plaintiffs moved to compel responses to this RFP, as described below.

E. Plaintiffs' First Set Of RFPs To JAFA

145. On March 7, 2014, Plaintiffs served JAFA with a first set of RFPs, comprising 39 requests. The requests pertained generally to document retention, documents relating to governmental investigations, organizational structure, meeting records, communications with or among JAFA members, pricing or surcharge-related documents, identification of potential

witnesses with pricing authority, transactional data, customer communications, and antitrust compliance practices.

146. JAFA failed to timely serve responsive documents or objections, and Plaintiffs ultimately moved to compel, as described below.

F. Plaintiffs' First Set Of Interrogatories To JAFA

147. On March 7, 2014, Plaintiffs served JAFA with a first set of interrogatories, comprising 11 interrogatories relating primarily to governmental investigations, membership, organizational structure, meeting attendance, communications regarding surcharges, and identification of potential witnesses.

148. JAFA failed to timely serve responsive documents or objections, and Plaintiffs ultimately moved to compel, as described below.

G. Plaintiffs' Third Set Of RFPs To All Defendants

149. On March 13, 2014, Plaintiffs served Defendants with a third set of RFPs comprising 37 requests, relating primarily to corporate structure, certain communication and other records for individuals with pricing authority, document retention, pricing documents, meeting attendance, communications with or regarding trade associations, communications regarding surcharges, invoices, service offered, governmental investigations, and antitrust compliance.

150. Following Defendants' service of responses and objections, and discovery conferences on those objections, Plaintiffs filed five motions to compel relating to these requests: three relating to DHL, and two relating to Hellmann, all of which are described below.

H. Plaintiffs' Fourth Set Of RFPs To All Defendants

151. On April 8, 2014, Plaintiffs served their fourth set of RFPs on all Defendants. The requests comprised a single RFP, seeking all documents seized by any government regulator relating to anticompetitive conduct in the freight forwarding industry.

152. Defendants served their responses and objections, and Plaintiffs continue to review their responses for appropriate follow-up.

I. Plaintiffs' Fifth Set Of RFPs To DHL And Hellmann

153. On June 9, 2014, Plaintiffs served their fifth set of RFPs on DHL and Hellmann. The requests comprised 5 RFPs, primarily seeking financial documents for each corporate family. DHL and Hellmann served their responses and objections, and Plaintiffs continue to review their responses for appropriate follow-up.

J. Plaintiffs' Second Set Of Interrogatories To DHL And Hellmann

154. In June 9, 2014, Plaintiffs served their second set of interrogatories on DHL and Hellmann. This set comprised 8 interrogatories, primarily seeking identification of trade routes on which Defendants operate and, for each route, trade volumes, competitors, pricing (including rate increases, surcharges, and fees), and processes relating to pricing.

155. DHL and Hellmann served their responses and objections, and Plaintiffs continue to review those responses for appropriate follow-up.

K. Plaintiffs' Third Set Of Interrogatories To DHL and To Hellmann

156. On March 17, 2015, Plaintiffs served DHL and Hellmann with a third set of interrogatories, comprising a single request seeking identification of trial witnesses.

157. On April 20, 2015, DHL and Hellmann served responses and objections. Plaintiffs continue to review those responses for appropriate follow-up.

L. Plaintiffs' Interrogatory to Hellmann Seeking Contact Information For Witnesses

158. On April 24, 2015, Plaintiffs served Hellmann with a single interrogatory seeking contact information for two potential witnesses.

159. Hellmann timely provided responsive information.

M. Plaintiffs' Fourth Set Of Interrogatories To DHL

160. On May 6, 2015, Plaintiffs served DHL with a fourth set of interrogatories, comprising 11 requests, pertaining primarily to DHL's participation in the U.S. Department of Justice's leniency program and its corporate structure.

161. DHL served responses and objections on June 8, 2015, and Plaintiffs continue to review them for appropriate follow-up.

N. Plaintiffs' Fifth Set Of Interrogatories To DHL

162. On July 10, 2015, Plaintiffs served DHL with a fifth set of interrogatories, comprising 2 requests, pertaining to codes or abbreviations used in DHL's transactional databases and to facts that support DHL's affirmative defenses. DHL served its responses and objections on August 12, 2015, and Plaintiffs continue to review them.

O. Plaintiffs' Sixth Set Of RFPs To DHL

163. On July 10, 2015, Plaintiffs served DHL with a sixth set of RFPs, comprising 4 requests seeking materials relating to named Plaintiffs, to codes or abbreviations used in DHL's transactional databases, and to facts that support DHL's affirmative defenses. DHL served its responses and objections on August 12, 2015, and Plaintiffs continue to review them.

P. Plaintiffs' Sixth Set Of Interrogatories To Hellmann

164. On July 10, 2015, Plaintiffs served Hellmann with a sixth set of interrogatories, comprising 2 requests, pertaining to codes or abbreviations used in Hellmann's transactional databases and to facts that support Hellmann's affirmative defenses.

165. Hellmann served its responses and objections on August 12, 2015, and Plaintiffs continue to review them for appropriate follow-up.

Q. Plaintiffs' Seventh Set Of Requests For Production To Hellmann

166. On July 10, 2015, Plaintiffs served Hellmann with a seventh set of RFPs, comprising 4 requests seeking materials relating to named Plaintiffs, to codes or abbreviations used in Hellmann's transactional databases, and to facts that support Hellmann's affirmative defenses.

167. Hellmann served its responses and objections on August 12, 2015, and Plaintiffs continue to review them for appropriate follow-up.

XI. DEFENDANTS' DISCOVERY

A. Defendants' First Set Of RFPs On The Non-Japanese Claims

168. On October 30, 2013, Defendants served Plaintiffs with a first set of RFPs comprising 21 RFPs relating primarily to standing, corporate structure, document retention, offsets or reductions of the surcharges at issue, documents upon which the CTAC relied, and materials received through cooperation with settling Defendants or from the leniency applicant under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA").

169. Plaintiffs timely served responses and objections to these RFPs.

B. Defendants' First Set Of Interrogatories On The Non-Japanese Claims

170. On October 30, 2013, Defendants served Plaintiffs with a first set of interrogatories on the non-Japanese claims. This set comprised four interrogatories relating to

standing, identification of potential witnesses, attempts by Plaintiffs to reduce or offset the surcharges alleged, and facts provided by any settling Defendant or cooperating leniency applicant.

171. On January 22, 2014, Plaintiffs served responses and objections to these interrogatories. These responses included, in response to Interrogatory No. 4, a 144-page Exhibit A providing a summary of all facts provided by a settling Defendant or the cooperating leniency applicant, broken out by claim. Since serving that initial response, Plaintiffs have served two supplemental responses (on January 9, 2015 and July 1, 2015) including a total of 86 additional pages summarizing newly discovered responsive facts. Producing the initial Exhibit A and its later-served supplements, involved ongoing synthesis of documents reviewed, depositions taken, and interviews and proffers conducted.

C. Defendants' First Set Of RFPs On The Japanese Claims

172. On December 2, 2013, Defendants served Plaintiffs with a first set of RFPs regarding the Japanese Claims. This request comprised 18 RFPs primarily relating to standing, offsets sought or received, communications with Defendants, communications with any entity regarding surcharges of freight forwarding services, corporate structure, document retention, documents upon which the CTAC relied, and materials received through cooperation with settling Defendants or from the ACPERA leniency applicant.

173. On January 22, 2014, Plaintiffs served responses and objections to these RFPs.

D. Defendants' First Set Of Interrogatories On The Japanese Claims

174. On December 2, 2013, Defendants served Plaintiffs with a first set of Interrogatories on the severed Japanese Claims. This comprised 3 interrogatories relating primarily to standing, identification of potential witnesses, and offsets sought or obtained.

175. On January 22, 2014, Plaintiffs served responses and objections to these interrogatories.

E. Defendants' First Set Of Requests For Admission On The Japanese Claims

176. On December 2, 2013, Defendants served Plaintiffs with a first set of Requests for Admission ("RFAs") on the severed Japanese Claims. This set comprised 49 separate contention RFAs relating primarily to the duration of the conspiracies and Plaintiffs' standing.

177. On January 22, 2014, Plaintiffs served responses and objections to these RFAs.

F. Dachser Defendants' First Sets Of RFPs

178. On March 6, 2014, Dachser GmbH &Co. KG served Plaintiffs with its first set of RFPs, comprising 46 individual requests. The requests related primarily to materials supporting specific allegations in the CTAC, communications by Plaintiffs with the propounding party, and standing.

179. On March 6, 2014, Dachser Transport of America, Inc. served Plaintiffs with its first set of RFPs, comprising 46 individual requests.

180. Although Plaintiffs assembled information and prepared responses to these RFPs, no responses were ever served due to a mutually agreed-upon stay of discovery pending settlement.

G. DHL's Second Set Of RFPs To All Plaintiffs

181. On October 27, 2014, DHL served Plaintiffs with its second set of RFPs, comprising 10 requests relating primarily to Plaintiffs' process of selecting or procuring freight forwarding services.

182. Plaintiffs served DHL with responses and objections on December 1, 2014.

H. DHL's Second Set Of Interrogatories To All Plaintiffs

183. On March 6, 2015, DHL served Plaintiffs with its second set of interrogatories, comprising a single request seeking identification of Plaintiffs' potential trial witnesses.

184. Plaintiffs timely served their responses and objections on April 6, 2015. The substantive response consisted of a 6-page chart responding to each subpart of DHL's interrogatory. In response, DHL and Hellmann filed a motion to amend the discovery order, as discussed further below.

I. Hellmann's Discovery Requests To All Plaintiffs

1. Discovery Requests By Hellmann Worldwide Logistics, Inc.

185. On April 8, 2015, Hellmann Worldwide Logistics, Inc. served three sets of discovery on all Plaintiffs — (1) Interrogatories, comprising 5 requests; (2) RFAs, comprising 15 individual requests; and (3) RFPs, comprising 15 individual requests — each primarily seeking information about conspiratorial activities of that entity, as purportedly distinct from any other Hellmann entity.

186. Plaintiffs served objections and responses to these discovery requests on May 11, 2015.

2. Discovery Requests By Hellman Worldwide Logistics GmbH & Co. KG

187. On April 23, 2015, Hellman Worldwide Logistics GmbH & Co. KG served three sets of discovery on all Plaintiffs: (1) Interrogatories, comprising 5 requests primarily seeking information about the conspiratorial activities alleged, the Air Cargo litigation, and Plaintiffs' corporate grouping of the Hellmann Defendants; (2) RFAs, comprising 15 requests, seeking primarily to distinguish the conduct or liability of the propounding Hellmann entity from that of any other Hellmann entity; and (3) RFPs, comprising 20 requests, seeking primarily transactional

documents or documents specific to the conduct or liability of the propounding Hellmann entity as distinct from that of any other Hellmann entity.

188. Plaintiffs served their responses and objections to these requests on May 26, 2015.

3. Discovery Requests By Hellmann Worldwide Logistics, Ltd. Hong Kong

189. On April 23, 2015, Hellmann Worldwide Logistics, Ltd. Hong Kong served three sets of discovery on Plaintiffs: (1) Interrogatories, comprising 5 requests seeking information related primarily to Hellmann's timeliness defense, the duration of the conspiracies, the *Air Cargo* litigation, and the conduct or liability of the propounding Hellmann entity as distinct from that of any other Hellmann entity; (2) RFAs, comprising 15 requests that seek substantively equivalent information as the RFAs propounded by Hellman Worldwide Logistics GmbH & Co. KG, but with respect to Hellmann Worldwide Logistics, Ltd. Hong Kong; and (3) RFPs, comprising 17 requests that seek substantively equivalent information as the RFAs propounded by Hellman Worldwide Logistics GmbH & Co. KG, but with respect to Hellmann Worldwide Logistics, Ltd. Hong Kong.

190. Plaintiffs served their responses and objections to these requests on May 26, 2015.

191. Because each Hellmann entity propounded an interrogatory requesting that Plaintiffs identify each action undertaken by that Hellmann entity that gave rise to this litigation, Plaintiffs responded to each, in part, by referencing a forthcoming Exhibit A. Plaintiffs served Exhibit A, which summarized Hellmann's actions giving rise to this litigation, on June 18, 2015. Exhibit A comprised 36 pages providing a detailed description of Hellmann's corporate structure of interrelated entities and its involvement in the conspiracies. The parties continue to hold discovery conferences on Plaintiffs' responses.

J. DHL's Plaintiff-Specific Discovery Requests

192. On July 15, 2015, DHL served three sets of Plaintiff-specific discovery requests: (1) a third set of interrogatories on RBX, comprising a single interrogatory seeking the identity of the individual at RBX who reviewed and approved various filings in the case; (2) a third set of RFPs to Zeta; and (3) a third set of RFPs to RBX, both of which comprised a single RFP seeking documents relating to compensation agreements concerning this litigation.

193. Plaintiffs worked to compile responses to these Plaintiff-specific discovery requests during the lodestar period ending August 15, 2015, and ultimately served those responses and any objections on August 17, 2015.

K. Defendants' July 27, 2015 Contention Interrogatories To Plaintiffs

194. On July 27, 2015, Defendants served their next set of interrogatories on each Plaintiff individually. (Most were denominated as DHL's third set of interrogatories; due to the RBX-specific interrogatory DHL served two weeks before, the set directed to RBX was denominated as the fourth). This set of contention discovery comprised 8 requests relating primarily to the identification of surcharges paid, general liability issues, fraudulent concealment, cooperation provided by DHL, and the duration and extent of the conspiracies.

195. Plaintiffs worked to compile responses to these Plaintiff-specific discovery requests during the lodestar period ending August 15, 2015, and on August 31, 2015 Plaintiffs served fact-based and evidence-identifying responses totaling over 260 pages.

L. Garden City Group Subpoena

196. On June 16, 2015, Hellmann noticed two third-party subpoenas to a Rule 30(b)(6) witness of third party Garden City Group, LLC ("GCG"). GCG is the claims administrator in the *Air Cargo* litigation, and Hellmann's subpoenas sought to compel testimony relating primarily to *Air Cargo* case. One of the noticed depositions was to occur at GCG's office in New York, and

one was to occur at GCG's office in Ohio. Plaintiffs researched potential responses and issues relating to those subpoenas. Hellmann cancelled the subpoenas on June 19, 2015, but later served a substantially identical subpoena on GCG, noticing a deposition for GCG's New York office. ECF No. 1256.

XII. PLAINTIFFS' MOTIONS TO COMPEL

A. Plaintiffs' Motion To Compel The Japanese Defendants To Produce The Judgment-Sharing Agreement (Plaintiffs' Second Set Of RFPs)

197. On March 28, 2014, after discovery conferences yielded no resolution, Plaintiffs moved to compel the Japanese Defendants to produce their judgment-sharing agreement, in response to Plaintiffs' second set of RFPs. ECF No. 1008. Plaintiffs argued in a 4-page letter brief that the judgment sharing agreement was plainly relevant and furthermore was discoverable because its terms (which no Defendant would disclose) may violate public policy favoring settlement and may further perpetuate the conspiracy. Moreover, Plaintiffs argued, the judgment-sharing agreement was not protected by any claim of privilege.

198. The Japanese Defendants submitted a 6-page letter brief opposing Plaintiffs' motion to compel on April 11, 2014. ECF No. 1042. In it, they argued that the Court should not compel production of the judgment-sharing agreement because that agreement is proper, concerns litigation and defense strategy and so is protected by a joint-defense privilege, and is irrelevant to any claim or defense in this case.

199. On May 19, 2014, the parties jointly submitted a proposed agenda for the May 21, 2014 status conference before Judge Pohorelsky, in which they informed the Court that the parties had agreed to hold the motion to compel the judgment-sharing agreement in abeyance. ECF No. 1071-1 at 2. In its minute order following the status conference, the Court dismissed

the motion without prejudice to renew. ECF No. 1073. Plaintiffs and the Japanese Defendants subsequently settled.

B. Three Motions By Plaintiffs To Compel Production Of Transactional Data And Documents Produced To Government Regulators

200. The Court's Order On Discovery Plan directed Defendants to produce all documents they produced to any domestic or foreign governmental investigator related to investigations of anticompetitive conduct in the freight forwarding industry. ECF No. 977. The Court set a general deadline of December 31, 2013 for that production, but provided that Defendants who could not meet that date, specifically including the Kintetsu World Express ("KWE") Defendants, must meet and confer with Plaintiffs on a production deadline. *Id*. at 2.

201. The Order On Discovery Plan further directed Defendants to meet and confer with Plaintiffs about the production of transactional and cost data. *Id*.

1. Motion To Compel Kintetsu To Produce Government Documents And Transactional Data

202. During Plaintiffs' discovery conference with Kintetsu on these subjects, it became clear that two wholly owned subsidiaries produced transactional data relating to the CAF and PSS surcharges, and other documents, to government investigators. It also became clear that Kintetsu refused to produce those documents and data because they were held by a wholly owned subsidiary and not directly by a named Kintetsu Defendant.

203. On April 4, 2014, Plaintiffs filed a 4-page letter brief moving to compel Kintetsu to produce those materials. ECF No. 1034. Plaintiffs argued that, due to the relationship between Kintetsu and its wholly owned subsidiaries, the materials Plaintiffs sought were in the possession, custody, and control of Kintetsu, and Plaintiffs were entitled to discover them. In support, it included 10 attachments showing Kintetsu's control of its wholly owned subsidiaries.

204. Kintetsu filed a 7-page letter response opposing Plaintiffs' motion on April 17, 2014. ECF No. 1051. It denied that it had control over the documents Plaintiffs sought to compel, denied that both subsidiaries at issue in the motion were wholly owned by Kintetsu, and argued that Plaintiffs had not shown that such documents ordinarily flow freely between Kintetsu and its subsidiaries.

2. Plaintiffs' Motion To Compel Nippon Express To Produce Transactional Data And Documents Produced To Government Regulators

205. Because Nippon Express, like Kintetsu, refused to produce transactional data related to the CAF and PSS surcharges and materials provided to government regulators insofar as those materials were not held directly, but by a wholly owned subsidiary, Plaintiffs moved to compel production of those materials. ECF No. 1035. On April 4, 2014, Plaintiffs filed a 4-page letter in support of their motion, which made essentially the same arguments already described with respect to Kintetsu, and included 14 attachments showing Nippon Express's control of its wholly owned subsidiaries.

206. Nippon Express filed a 3-page letter response opposing Plaintiffs' motion on April 18, 2014. ECF No. 1056. It denied that it had control over the documents Plaintiffs sought to compel.

3. Plaintiffs' Motion To Compel Yusen To Produce Transactional Data And Documents Produced To Government Regulators

207. Because Yusen, like Kintetsu and Nippon Express, refused to produce transactional data related to the CAF surcharge and materials provided to government regulators insofar as those materials were not held directly, but by a wholly owned subsidiary, Plaintiffs moved to compel production of those materials. ECF No. 1036. On April 4, 2014, Plaintiffs filed a 4-page letter in support of their motion, and included 11 attachments showing Yusen's control of its wholly owned subsidiaries.

208. Yusen filed a 3-page letter response opposing Plaintiffs' motion on April 18, 2014. ECF No. 1054. Yusen denied that it had control over the documents Plaintiffs sought to compel, and argued that Plaintiffs had not made a showing to the contrary.

4. Resolution Of The Motions

209. On May 19, 2014, the parties jointly submitted a proposed agenda for the May 21, 2014 status conference before Judge Pohorelsky, in which they informed the Court that the parties had agreed to hold in abeyance the three motions to compel government documents and transactional data. ECF No. 1071-1 at 2. In its minute order following the status conference, the Court dismissed the motions without prejudice to renew. ECF No. 1073. Plaintiffs subsequently settled all claims against those three Defendants.

C. Two Motions By Plaintiffs To Compel Responses To Interrogatory Nos. 1 and 4

1. Plaintiffs' Motion To Compel Responses To Interrogatory No. 1

210. On April 4, 2014, Plaintiffs moved to compel responses to Interrogatory No. 1 from Geologistics, Hankyu Hanshin, Hellmann, MOL Logistics, Nippon Express, and Yamato. ECF No. 1037. Interrogatory No. 1 sought identification of individuals with pricing authority with respect to the surcharges at issue, or other forms of responsibility with respect to those surcharges. The Defendants from whom Plaintiffs sought to compel responses provided only partial responses, or no responses at all. Plaintiffs argued in their 3-page letter brief that the requested information was obviously relevant to Plaintiffs' prosecution of the case and should be produced.

211. Shortly after the motion was filed, Plaintiffs negotiated resolutions with, and withdrew the motion only as to, Yamato and Nippon Express. ECF Nos. 1041, 1043. Following additional discovery conferences conducted after Plaintiffs filed the motion, the dispute was

satisfactorily resolved, and the motion withdrawn, as to Hankyu Hanshin, MOL Logistics, and Geologistics. ECF Nos. 1050, 1062. Thus, Plaintiffs' motion proceeded only as to the Hellmann Defendants.

2. Plaintiffs' Motion To Compel Responses To Interrogatory No. 4

212. On April 4, 2014, Plaintiffs moved to compel responses to Interrogatory 4 from Geologistics, Hellmann, Kintetsu, "K" Line, MOL Logistics, Nippon Express, UPS, Yamato, and Yusen. ECF No. 1039. That interrogatory sought identifications of communications between the interrogatory respondent and any other provider of freight forwarding services during the relevant time period, including any meetings at which surcharges were discussed. The Defendants from which Plaintiffs sought to compel discovery provided evasive responses (such as by referring Plaintiffs to produced documents, but not identifying those documents in sufficient detail to allow Plaintiffs to locate them), or no responses at all. Plaintiffs argued that they were entitled to more fulsome responses because the information sought is not privileged and is of central importance in the case, and no response satisfied Rule 33(d)'s provision for responding to interrogatories by referring to specific documents.

213. Shortly after the motion was filed, Plaintiffs negotiated resolutions with, and withdrew the motion only as to, UPS and Nissin. ECF No. 1041. Following additional discovery conferences, the dispute was satisfactorily resolved, and the motion withdrawn, as to "K" Line, Kintetsu, MOL Logistics, Yamato, Yusen, and Geologistics. ECF Nos. 1044, 1050, 1062. Thus, this motion, too, proceeded only as to the Hellmann Defendants.

3. Hellmann's Opposition To Plaintiffs' Motions To Compel

214. On May 2, 2014, Hellmann filed a 3-page opposition to Plaintiffs' motion to compel responses to Interrogatory Nos. 1 and 4. ECF No. 1065. Hellmann argued, among other things, that Plaintiffs' motions were procedurally deficient and premature, that its own

supplemental discovery responses (served contemporaneously with its letter brief opposing Plaintiffs' motion to compel) had mooted the motions, and that the requests are overly broad and unduly burdensome.

4. Resolution Of The Dispute Through Post-Motion Discovery Conferences

215. On May 13, 2014, Plaintiffs informed the Court that, after further discovery conferences on the motions to compel responses to Interrogatory Nos. 1 and 4, the parties had resolved the dispute. Accordingly, Plaintiffs withdrew the motions as to Hellmann, the last Defendant from which relief was sought. ECF No. 1070.

D. Plaintiffs' Motion To Compel JAFA To Respond To Discovery Requests, And For Other Relief

216. On April 30, 2014, Plaintiffs filed a 4-page letter brief regarding its motion for various relief in light of JAFA's dilatory and recalcitrant conduct in discovery and other matters. ECF No. 1064. Specifically, Plaintiffs moved the Court to (1) find JAFA in contempt for refusing to produce its government-investigation documents (notwithstanding the Court's Order On Discovery Plan which required JAFA to produce precisely those documents) unless Plaintiffs first paid for translations to facilitate JAFA's counsel's review; (2) compel JAFA to produce the government-investigation documents immediately; (3) order JAFA to substantively respond to the pending discovery requests Plaintiffs served on JAFA on March 7, 2014, on which JAFA had neither made a substantive response nor sought a protective order; and (4) reject any forthcoming motion by JAFA to dismiss the CTAC as untimely. In support of the motion, Plaintiffs submitted a 3-page declaration describing JAFA's conduct in (or refusal to conduct) this litigation.

217. JAFA filed a 3-page letter brief opposing Plaintiffs' motion on May 7, 2013. ECF No. 1068. JAFA argued, among other things, that the documents Plaintiffs' motion sought were

specifically exempted from the government-investigation documents covered by the discovery order because they were seized by government regulators pursuant to a raid or warrant, and so the Court should not compel their production or order JAFA in contempt for not producing them. It further argued that it should be permitted to move to dismiss for lack of personal jurisdiction. Finally, JAFA represented that it was working to respond to Plaintiffs' pending discovery requests.

218. Magistrate Judge Pohorelsky heard argument on the motion at the May 21, 2014 status conference, and ordered JAFA to, by June 10, 2014, produce the government-investigation documents sought by Plaintiffs, provide complete written responses to Plaintiffs' pending interrogatories, and produce all documents requested by Plaintiffs' pending document requests. ECF No. 1073. JAFA was ordered not to withhold any information or document on the basis of privilege or objection, on the grounds that JAFA's failure to timely respond had waived all such claims or objections. Magistrate Judge Pohorelsky further cautioned JAFA that failure to comply with the order would result in a finding of civil contempt and the imposition of fines.

219. JAFA produced certain limited responsive materials by the Court-imposed deadline, but via the process of discovery conferences, Plaintiffs continued to pursue, and JAFA to produce, somewhat more fulsome responses throughout June 2014 and into July 2014.

E. Plaintiffs' Motion To Compel Hellmann To Produce Travel Logs And Expense Reports

220. On November 14, 2014, Plaintiffs filed a 3-page letter motion to compel Hellmann to respond to RFP No. 9 of Plaintiffs' Third Request For Production Of Documents. ECF No. 1113. That request sought trip and travel logs and expense reports by sales or marketing employees relating to meeting with competitors and trade associations. Plaintiffs

argued that these documents are highly relevant to Hellmann's involvement in meetings pursuant to which several conspiracies were agreed upon and implemented.

221. Hellmann filed a 2-page opposition to Plaintiffs' motion on November 24, 2014. ECF No. 1115. Hellmann took the position that the parties had resolved the issue in a discovery conference prior to Plaintiffs' filing of the motion, and that Hellmann agreed to produce responsive documents, and that Hellmann's delay in producing such materials was due solely to a failure to agree on what search terms to use or how to produce the documents, which process, according to Hellmann, was underway when Plaintiffs filed their motion. Hellmann asked the Court to strike Plaintiffs' motion.

222. Magistrate Judge Pohorelsky heard the motion at the December 16, 2014 status conference. ECF No. 1125. Because the parties reached an agreement at the hearing as to the issues raised, the motion was withdrawn. *Id*.

F. Plaintiffs' Motion To Compel Hellmann To Produce Pricing Documents

223. On December 5, 2014, Plaintiffs moved to compel Hellmann to respond to RFP No. 8 of Plaintiffs' third set of RFPs. ECF No. 1116. That request sought all documents relating to the net price paid to Hellmann for freight forwarding services from January 1, 1999 to January 3, 2013. Plaintiffs argued that this material was relevant to showing and modeling antitrust impact and damages. In discovery conferences, Plaintiffs sought confirmation that, if Hellmann refused to produce responsive documents, it would not make any argument in this case relating to Hellmann's own prices, costs, or profitability, but Hellmann did not respond to that request.

224. Hellmann filed its 2-page opposition to Plaintiffs' motion on December 12, 2014, arguing that Plaintiffs had failed to offer any explanation during the discovery conferences of how the documents requested were relevant. ECF No. 1118. Hellmann further argued that the

documents were in fact irrelevant because Plaintiffs' claims relate only to surcharges, and only over a much shorter period of time and that such a production would be unduly burdensome. Hellmann asked the Court to strike Plaintiffs' motion.

225. Magistrate Judge Pohorelsky heard argument on the motion at the December 16, 2014 status conference. ECF No. 1125. He granted the motion in part such that the information requested was deemed relevant, but Hellmann would be permitted to move for a protective order if the parties could not agree on the appropriate scope of production. Following discovery conferences, Hellmann agreed to produce a spreadsheet containing transactional data responsive to the request. ECF No. 1128.

G. Plaintiffs' Motion To Compel Hellmann Testimony Outside Germany

226. On February 13, 2014, Plaintiffs moved to compel Hellmann Worldwide Logistics GmbH & Co., KG to produce its sole corporate designee under Rule 30(b)(6) for deposition outside Germany. ECF No. 1139. Plaintiffs argued in their 3-page letter brief that taking the deposition in Germany, which applies burdensome procedural and substantive rules on depositions, would substantially prejudice Plaintiffs' ability to pursue discovery.

227. On February 23, 2015, Hellmann filed a 3-page opposition to Plaintiffs' motion. ECF No. 1148. Hellmann argued that Plaintiff had misrepresented the parties' pre-motion discussion of the issue, and that the case law generally and facts of this case in particular do not favor requiring German witness to travel outside Germany for depositions.

228. The Court granted Plaintiffs permission to file a reply, and on February 25, 2015, Plaintiffs did so. ECF No. 1152. Plaintiffs' 3-page letter pointed to specific instances, supported where appropriate by attached correspondence, refuting Hellmann's argument that Plaintiffs' motion had misrepresented the parties' discussions, and reiterated the severe substantive limitations on depositions taken in Germany.

229. On February 26, 2015, Hellmann filed its own surreply (styled as a request for permission to file a surreply) citing additional authority in support of its argument that any deposition should be taken in Germany. ECF No. 1153. Following the hearing conducted at the April 14, 2015 status conference, the Court denied the surreply request and took the motion under advisement. ECF No. 1171.

230. On April 17, 2015, Magistrate Judge Pohorelsky denied Plaintiffs' motion based on Hellmann's representations at the status conference that "no requirements of German law will prohibit or seriously impede the plaintiffs in conducting the deposition and obtaining testimony from [Hellmann's] designee." ECF No. 1173 at 2. But Magistrate Judge Pohorelsky cautioned Hellmann that if that proves not to be the case, the Court will impose costs on Hellmann, and order any other appropriate relief.

H. Plaintiffs' Motion To Compel DHL To Produce Calendars And Expense Reports

231. On April 6, 2015, Plaintiffs moved to compel DHL to respond to RFP Nos. 3(e), 9, and 13 from Plaintiffs' third request for production. Those RFPs seek, respectively, calendars and expense reports of DHL employees with pricing, sales, or marketing authority, and documents relating to trade association meetings sufficient to identify any DHL employees who attended those meetings. ECF No. 1165. Plaintiffs argued in their 4-page brief that such documents were plainly relevant to liability, regardless of whether DHL ever produced them to government regulators, and such documents are routinely subject to production in antitrust cases.

232. DHL filed its 4-page objection on April 13, 2015. ECF No. 1169. DHL argued that the requests at issue in Plaintiffs' motion were duplicative and cumulative of requests Plaintiffs served, and DHL responded to, over a year ago, and that the cost of producing the information now would be unreasonably high. DHL further argued that production of the

requested documents would "implicate privacy interests" and might violate privacy laws of other jurisdictions.

233. Magistrate Judge Pohorelsky heard argument on the motion at the April 14, 2015 status conference and granted Plaintiffs' motion in part, ordering DHL to produce calendar entries and expense reports for the period of January 1, 2001 until one year after October 2007. ECF No. 1171. The transcript of that hearing reflects that Plaintiffs would be permitted to renew their request as to a longer time period if the documents DHL produced suggested that the relevance of later documents might outweigh the cost of producing them.

I. Plaintiffs' Motion To Compel Hellmann To Produce ESI

234. On August 11, 2015, Plaintiffs moved to compel Hellmann to produce ESI in the format described by Plaintiffs' document requests. ECF No. 1263. Hellmann previously produced ESI that did not comply with Plaintiffs' requested format, and which employed a format that required manual separation of a large number of documents and that contained no metadata, extracted text, or load files. To review the ESI as Hellmann produced it would require Plaintiffs to undertake extremely costly and burdensome manual review of several thousand pages of electronic documents before depositions of related Hellmann witnesses in less than three weeks. Furthermore, Hellmann never served any objection to the technical specifications for ESI production contained in the instructions for Plaintiffs' RFPs.

235. Hellmann filed its response to Plaintiffs' motion on August 18, 2015, ECF No. 1268, and at the August 25, 2015 status conference, Magistrate Judge Pohorelsky denied the motion, ECF No. 1272. Plaintiffs do not include in their lodestar calculation any work performed in connection with this motion after August 15, 2015.

XIII. DEFENDANTS' DISCOVERY MOTION

236. On August 4, 2015, DHL and Hellmann moved to amend the December 2013 discovery plan. ECF No. 1258. Plaintiffs had previously identified potential trial witnesses, in response to a DHL interrogatory. Notwithstanding that interrogatory response, the identification of specific individuals with knowledge of the conspiracies, and presumably Defendants' own extensive investigations of the case, a month before the close of discovery Defendants had noticed no depositions whatsoever, apart from those of the named Plaintiffs. Rather than seeking to depose any specifically identified potential witnesses during the ordinary course of fact discovery, Defendants sought to modify the discovery plan to provide an eleventh hour "back door" for deposing any not-previously-deposed individual on whose testimony Plaintiffs later sought to rely at summary judgment or trial.

237. Plaintiffs submitted their response on August 11, 2015, opposing Defendants' proposed modification as unworkable and unnecessary, and unsupported by any showing of good cause. ECF No. 1260. Plaintiffs further argued that, given the nature of the case, their list of potential witnesses is reasonable, and Defendants' proposal would give them an unfair strategic advantage over Plaintiffs.

238. At the August 25, 2015 status conference, Magistrate Judge Pohorelsky denied Defendants' motion. ECF No. 1272. Plaintiffs do not include in their lodestar calculation any work performed in connection with this motion after August 15, 2015.

XIV. OTHER MOTIONS

A. Post- CTAC R&R Motion To Dismiss Filed By New Hellmann Entities

239. On October 21, 2013, while the objections on the CTAC R&R were pending but before the Court issued an order on those objections, two newly served Hellmann entities — Hellmann Worldwide Logistics GmbH & Co. KG and Hellmann Worldwide Logistics Limited

Hong Kong — filed a 25-page brief in support of their motion to dismiss the CTAC. ECF No. 914. Their brief raised arguments largely identical to those raised in the previously filed briefs by affiliated Hellmann entities and by other Defendants. The only newly raised argument was whether the claims in the CTAC were time-barred and whether they "related back" to the filing of the FACAC in July 2009, when Hellman Worldwide Logistics, Inc. was originally named as a Defendant. The Court construed the filing as a request for a pre-motion conference and referred it to Magistrate Judge Pohorelsky.

240. On November 4, 2013, Plaintiffs filed a 5-page letter opposing the request for a pre-motion conference. ECF No. 926. Plaintiffs argued that, to the extent the motion would raise issues identical to those already pending or decided in connection with other motions by other Defendants, the new Hellmann entities should simply join the pending objections to the CTAC R&R. Plaintiffs further argued that the only newly raised argument was futile, because the CTAC relates back to the original complaint, and the new Hellmann entities were on notice of the claims.

241. Magistrate Judge Pohorelsky granted the request for a pre-motion conference and heard argument at the November 7, 2013 status conference. Following that status conference, he set a briefing schedule on the motion. ECF No. 936.

242. On November 12, 2013, Plaintiffs filed a 14-page memorandum opposing the new Hellmann entities' motion. ECF No. 937. Plaintiffs argued that the claims against those entities were plausibly alleged, and that the claims against those entities were not time barred, both under the relation-back doctrine and under the Court's prior ruling that Plaintiffs had sufficiently pleaded fraudulent concealment, thereby tolling the statute of limitations.

243. The new Hellmann entities filed their 11-page reply brief on December 7, 2013. ECF No. 971. The reply argued primarily that relation back was not available.

244. Between the conclusion of briefing on the motion, in December 2013, and March 2015, Plaintiffs and Hellmann filed a combined total of 5 supplemental authority letters. ECF Nos. 1001, 1150, 1151, 1156, 1157. The last of those, a supplemental-authority letter Hellmann filed on March 6, 2015, also requested permission to submit further briefing. ECF No. 1157. On March 17, 2015, Plaintiffs filed a 3-page letter opposing as unnecessary Hellmann's request to re-open briefing on the motion to dismiss. ECF No. 1159. Hellmann responded on March 18, 2015 by filing a 4-page letter arguing that supplemental briefing was appropriate. ECF No. 1160. Each of these submissions also included argument and citation to authority.

245. Following the April 14, 2015 status conference, Magistrate Judge Pohorelsky set a schedule for further briefing on Hellmann's motion to dismiss. ECF No. 1171. Those briefs would supplant all supplemental submissions filed by the parties since the first round of briefing concluded in December 2013. *Id*.

246. Plaintiffs filed their 11-page supplemental brief opposing Hellmann's motion on April 22, 2015, arguing that they were entitled to the benefit of Rule 15(c)'s relation-back doctrine. ECF No. 1180. In support, Plaintiffs submitted excerpts from depositions of two Hellmann employees regarding the interrelation of the Hellmann Defendants.

247. Hellmann filed its 10-page supplemental brief in support of its motion on May 1, 2015. ECF No. 1191.

248. Magistrate Judge Pohorelsky issued an R&R ("Hellmann R&R") on the motion on June 24, 2015, recommending that the motion be granted, based solely on timeliness. ECF No. 1236.

1. Objections to the Hellmann R&R Filed But Not Yet Decided

249. Plaintiffs timely filed objections to that R&R. ECF No. 1243. Hellmann filed its response to Plaintiffs' objections on July 22, 2015. ECF No. 1247.

250. Hellmann also filed conditional objections to preserve its rights for appeal with respect to the R&R's conclusions that Plaintiffs' corporate groupings were appropriate and that that the CTAC plausibly alleged claims against Hellmann. ECF No. 1244. On July 23, 2015, Plaintiffs filed their response to Hellmann's conditional objections. ECF No. 1248.

251. As of the time this joint declaration is filed, no ruling on the Hellmann R&R has been made.

B. JAFA's Late-Filed Motion To Dismiss The CTAC For Lack Of Personal Jurisdiction

252. On May 7, 2014, the same day it filed its opposition to Plaintiffs' motion to compel and for contempt, JAFA requested a pre-motion conference on a forthcoming motion to dismiss for lack of personal jurisdiction and staying discovery pending resolution of that motion. ECF No. 1067.

253. On May 12, 2014, the Court determined that a pre-motion conference was unnecessary and entered a briefing schedule on JAFA's motion.

254. JAFA filed its 13-page brief in support of its motion on June 2, 2014. ECF No. 1074. It argued that personal jurisdiction did not exist over JAFA under either New York law or Rule 4(k)(2), and that the CTAC did not satisfy Rule 8 because Plaintiffs had not named JAFA in any of the claims asserted.

255. Plaintiffs filed their 25-page opposition to JAFA's motion on June 23, 2014. ECF No. 1076. Plaintiffs argued that (1) the motion to dismiss should be denied as untimely due to JAFA's four-year delay; (2) New York's long-arm statute provided personal jurisdiction over

JAFA both because it joined its co-conspirators actions and distribution systems within New York, and because JAFA knowingly played a role in its members' violations of New York's statute forbidding restraints of trade; (3) exercising personal jurisdiction over JAFA comports with due process; (4) to the extent any doubt about personal jurisdiction exists, Plaintiffs should be granted jurisdictional discovery; and (5) based on specific allegations in the CTAC, Plaintiffs plainly and plausibly allege specific claims against JAFA.

256. JAFA filed its 11-page reply brief and 2-page declaration in further support of its motion to dismiss on July 7, 2014. ECF No. 1087. JAFA reiterated its previous arguments, and further argued that its motion was timely because JAFA did not participate in the case until filing its answer in April 2014, and it filed its motion to dismiss soon thereafter.

257. This Court heard argument on JAFA's motion to dismiss on July 11, 2014. ECF No. 1091.

258. On August 13, 2014, after the Court heard argument but before it rendered a decision, JAFA withdrew its motion to dismiss. ECF No. 1095. The Court therefore found the motion to be moot. JAFA and Plaintiffs subsequently settled.

C. <u>Plaintiffs' Second Motion For Contempt Against JAFA</u>

259. On June 24, 2014, Plaintiffs moved the Court to find JAFA in contempt and to impose appropriate sanctions for JAFA's failure to comply with its discovery obligations imposed by the Court's December 17, 2013 discovery order and its May 21, 2014 minute order on Plaintiffs' first motion for contempt as to JAFA. ECF No. 1078. In its 4-page letter brief in support of its motion, Plaintiffs argued that JAFA had continued to object to, and refused to produce responses to, certain discovery requests, notwithstanding the Court's May 2014 order that JAFA had waived all objections and must make fulsome productions of responsive materials. Thus, Plaintiffs argued, sanctions were appropriate under Rule 37. Plaintiffs also

filed a 2-page narrative declaration attaching five exhibits describing JAFA's ongoing discovery failures.

260. JAFA filed a 3-page response the following day, describing its discovery responses to date, and arguing that those responses "represent[] significant cooperation in complying with" the Court's orders and that JAFA "fully understands that it has a continuing obligation" to produce responsive material. ECF No. 1079 at 2. JAFA argued that under those circumstances, sanctions were not appropriate. In support of its argument, JAFA submitted five exhibits relating to its discovery responses to date.

261. On August 13, 2014, Plaintiffs withdrew the motion. ECF No. 1100. JAFA and Plaintiffs subsequently settled.

D. DHL's Motion For Judgment On The Pleadings Pursuant To Rule 12(c)

262. On February 11, 2015, DHL filed a request for a pre-motion conference on a motion for judgment on the pleadings, pursuant to Rule 12(c), as to Plaintiffs' claims related to purchases made after October 2007, when DHL sought amnesty from the U.S. Department of Justice. ECF No. 1135. DHL argued it was implausible that it participated in any conspiracies after that time, both as a legal and factual matter. DHL argued that the CTAC alleged no facts suggesting that DHL continued to participate in the conspiracies after October 2007.

263. On February 18, 2015, Plaintiffs submitted a 4-page letter opposing DHL's request. ECF No. 1145. Plaintiffs argued that, as this Court previously ruled, the CTAC plausibly alleges each of the conspiracies at issue, and also that they plausibly allege those conspiracies continued after October 2007. Furthermore, Plaintiffs argued, DHL could not show withdrawal as a matter of law because withdrawal is an affirmative defense on which DHL bears the burden of proof. Not only would it be premature to find that DHL could carry that burden on

a motion to dismiss and before producing relevant discovery, Plaintiffs argued, but DHL chose not to plead that defense.

264. DHL filed its Rule 12(c) motion on April 24, 2015. ECF No. 1182. In support, it filed a 20-page brief arguing that as a legal and factual matter, given the factual allegations in the Complaint, the Court must necessarily conclude that DHL did not participate in any conspiracy after it entered the leniency program. ECF No. 1183.

265. Plaintiffs filed their 17-page memorandum opposing DHL's motion on May 15, 2015. ECF No. 1196. Plaintiffs identified specific allegations in the CTAC, and reasonable inferences to be drawn therefore, that plausibly allege DHL's ongoing participation in and benefits from the conspiracies after October 2007, and further argued that DHL's argument misunderstood the applicable law regarding withdrawal from a conspiracy. Finally, Plaintiffs argued that if the Court were inclined to grant the motion, it should wait until DHL had produced certain post-October 2007 discovery materials, in accordance with the Court's order on motions to compel brought by Plaintiffs.

266. DHL filed its 10-page reply brief on May 27, 2015. ECF No 1211.

267. The Court heard argument on the motion on June 30, 2015. ECF No. 1241. On August 19, 2015, the Court granted DHL's motion. ECF No. 1269.

E. Hellmann's Motion For An Order To Show Cause

268. Hellmann Worldwide Logistics filed a motion for an order to show cause why one of Plaintiffs' counsel should not be sanctioned for the unauthorized practice of law. Although that attorney is licensed to practice in other jurisdictions, where he is admitted in good standing, he is not admitted to practice in the Eastern District of New York, and he did not timely file for admission to this Court *pro hac vice*. ECF No. 1207. Hellmann asked the Court to strike certain depositions noticed by the attorney. ECF No. 1207-1 at 5. Plaintiffs opposed that motion, and

the Court later denied it and granted the attorney's *pro hac vice* motion *nunc pro tunc*. ECF No. 1240.

269. Although Class Counsel believe Hellmann's motion was vexatious and was filed primarily in an attempt to gain strategic advantage in this litigation, Class Counsel acknowledge their underlying error in failing to earlier apply for admission *pro hac vice* for this attorney. Accordingly, Class Counsel have excluded from this petition all time spent and expenses incurred in responding to Hellmann's motion regarding sanctions.

XV. OTHER PROCEEDINGS

A. Attorney Proffers And Related Work

270. Plaintiffs have conducted numerous attorney proffers and related follow-up communications with counsel for settling Defendants, as provided by those Defendants' settlement agreements, and with counsel for DHL, the leniency applicant. This work assisted Plaintiffs in efficiently identifying and securing witnesses for interview or deposition, understanding each Defendant's corporate structure and transactional data, and identifying and obtaining relevant documents, among other things.

B. Depositions Conducted By Plaintiffs

271. Through August 15, 2015, Plaintiffs have prepared for and conducted 50 depositions. These depositions took place in Brussels, London, Hong Kong, Miami, Washington, D.C., and New York. To prepare for the depositions, Co-Lead Counsel reviewed the voluminous work product of the ongoing document review and the extensive cooperation obtained from various settling Defendants. In addition, counsel executed targeted searches with respect to each witness across the Defendants' productions and reviewed additional documents.

272. In addition to those more typical forms of deposition preparation, circumstances have required Plaintiffs in 4 instances to apply to this Court for a Letter of Request For

International Judicial Assistance To Compel Testimony as a precondition of obtaining depositions of former-employee witnesses located abroad.[31] ECF Nos. 1131, 1133, 1154, and 1197.

C. Depositions Defended By Plaintiffs

273. Plaintiffs also prepared and defended depositions of 9 named Plaintiffs' Rule 30(b)(6) designees. Those depositions were all conducted in New York. To prepare, counsel reviewed documents and transactional data and met with the witnesses, typically in their own places of business in various locations around the country.

D. Interviews

274. Plaintiffs have prepared for and conducted 43 witness interviews. Those interviews took place in various locations around the work, including Germany, Singapore, Japan, Florida, Washington, D.C., New York, and remotely by video conference. To prepare for later-conducted interviews, where such information was available, counsel reviewed work product generated through the document-review process, and performed targeted searches of Defendants' document productions and the transactional data and documents produced by all parties.

E. Court Appearances

275. From inception through August 15, 2015, Co-Lead Counsel made 14 appearances before Magistrate Judge Pohorelsky and 4 appearances before Judge Gleeson regarding various motions and discovery issues, as shown below:

[31] One of those witnesses voluntarily agreed to testify after Plaintiffs filed their request, ECF No. 1136, and Plaintiffs withdrew a second request for purposes of efficiency, ECF No. 1215. The remaining two such requests granted by the Court remain pending with British authorities.

Date	**Description**	**Presiding**
06/02/09	Pre-Motion Conference Hearing regarding appointment of lead counsel, motion to amend the complaint, and schedule for same.	Magistrate Judge Pohorelsky
09/10/09	Status Conference Hearing regarding appointment of a process server for service on foreign Defendants, schedule for motion practice due to the addition of new Defendants, and coordination of motions to dismiss.	Magistrate Judge Pohorelsky
09/15/10	Oral Argument Hearing regarding motions to dismiss.	Magistrate Judge Pohorelsky
11/30/11	Motion Hearing regarding disclosure of customer contact information.	Magistrate Judge Pohorelsky
08/17/12	Oral Argument Hearing regarding motions regarding the proposed settlement with Schenker Defendants and Intervenors' motion regarding the Schenker settlement opt-out provision / penalty.	Judge Gleeson
12/19/12	Status Conference and Motion Hearing regarding motion to amend to add named plaintiffs, schedule for responding to the third amended complaint, commencing discovery, and the scope of discovery.	Magistrate Judge Pohorelsky
03/07/13	Status Conference Hearing regarding proposed briefing schedule, proposal regarding page limitations, modifications to third amended complaint regarding typographical revisions, type and scope of discovery to focus on materials previously produced to governmental entities.	Magistrate Judge Pohorelsky
06/13/13	Oral Argument Hearing regarding motions to dismiss.	Magistrate Judge Pohorelsky
08/09/13	Fairness Hearing regarding final approval of the first 10 settlements, the plan of allocation, and fee petition motion.	Judge Gleeson
11/07/13	Status Conference Hearing regarding pre-motion conference on Hellmann motion, proposed discovery plan, consolidation of discovery as to the severed Japanese Claims, motion to stay discovery and schedule for responses to same, time period for discovery and document preservation, foreign privacy law issues, number of interrogatories, depositions, and deposition locations.	Magistrate Judge Pohorelsky

Date	**Description**	**Presiding**
03/25/14	Status Conference Hearing regarding status of answers to the corrected third amended complaint, motions for protective order, status of production of documents produced to governmental entities, status of production of transactional and cost data and conferences regarding same, time frame for transactional data to be produced, due date for same, production of English translations, status of Plaintiffs' document productions, and production of Defendants' judgement sharing agreement.	Magistrate Judge Pohorelsky
05/21/14	Status Conference and Motion Hearing regarding status of Plaintiffs' document and data productions, status of Defendants' transactional data productions, status of general discovery requests and responses, status of motions to compel, motion to compel JAFA document production, and participation of JAFA.	Magistrate Judge Pohorelsky
07/11/14	Hearing regarding JAFA motion to dismiss for lack of personal jurisdiction.	Judge Gleeson
12/16/14	Status Conference Hearing regarding three motions: 1) regarding monies DHL recovered as part of its opt out in the *Air Cargo* case for information as to damages and amounts recovered, 2) regarding two Hellmann motions – regarding complete production of expense reports and net price information that Hellmann received from its customers the base rate for a given transaction, and report on the status of settlements.	Magistrate Judge Pohorelsky
02/17/15	Status Conference Hearing regarding status of settlements, DHL Defendants' Rule 12(c) motion, status of request for Letters Rogatory regarding former DHL employees, status of discovery and depositions, location of a Hellmann deposition, production of post-2007, post-raid discovery, DHL request for pre-motion conference to dismiss claims after 10/11/07, and production of DHL ocean data.	Magistrate Judge Pohorelsky
04/14/15	Scheduling Conference and Status Conference Hearing regarding two motions one Hellmann motion to dismiss and the motion to depose Hellmann Germany outside of Germany, briefing schedule for same, two motions to compel DHL one for post-2007 discovery and one for calendars and expense report documents, and DHL's motion to dismiss the post-2007 claims, and DHL's Rule 12(c) motion.	Magistrate Judge Pohorelsky

Date	Description	Presiding
06/30/15	Oral Argument Status Conference Hearing regarding status of discovery: additional DHL discovery production of expense reports, calendar entries and post-raid October 2007 through October 2008 materials, and ocean shipping transaction data, and Hellmann document production and depositions, privilege log issues, open issues regarding Plaintiffs' document productions, motion regarding M. Rayle admission and impact on depositions,[32] and availability to all parties of documents filed under seal.	Magistrate Judge Pohorelsky
08/04/15	Telephone Conference Hearing regarding China Chamber of International Commerce regarding proposal to file an aggregated claim on behalf of all Chinese class members that cannot or will not file their claims directly.	Judge Gleeson

F. Stipulation With DHL Regarding Document Authentication

276. In an effort to streamline aspects of discovery and trial, on March 25, 2015, Plaintiffs reached a stipulation with DHL regarding the authentication of documents and the designation of authenticated documents as business records. Plaintiffs sought to reach a similar stipulation with the Hellmann Defendants, but they have declined to respond to Plaintiffs' efforts.

G. Stipulation To Dismiss Certain Named Plaintiffs

277. On May 26, 2015, Plaintiffs, DHL, and Hellmann filed a stipulation dismissing four named Plaintiffs as Class representatives. ECF No. 1209.

[32] Plaintiffs' fee petition discounts the time at this hearing to account for the portion of the hearing related to Hellmann's motion for sanctions against one of Plaintiffs' attorneys. ECF No. 1207; *see* ¶¶ 268-69 in the text above. Plaintiffs seek no fees for any work related to that motion.

XVI. THE SECOND ROUND SETTLEMENTS

278. Plaintiffs reached each of the Second Round Settlements after arms-length negotiations with skilled opposing counsel. By the time the parties reached these agreements, Plaintiffs had been litigating the case for five and sometimes six years, and had the cumulative benefits of information obtained from other settling Defendants pursuant to their cooperation obligations, and also some limited cooperation from the ACPERA leniency applicant. Plaintiffs demanded and received revenue data and other information about settling Defendants' operations to assist in assessing potential settlements. Each settlement required numerous meetings with opposing counsel, both to reach an agreement in principle and to finalize the precise terms of each settlement agreement.[33]

A. SDV Settlement

279. On July 30, 2013, Plaintiffs entered into a Settlement Agreement with SDV. Under the Agreement, SDV has paid a total of $1,955,573.19, which includes notice costs. SDV further has agreed to pay 75% of all future *Air Cargo* litigation proceeds and to provide certain cooperation to Plaintiffs as they prosecute this action. SDV has no rights to reversion if Class members request exclusion or opt out of the Class.

280. Negotiations with SDV began in June 2010 and continued on an off until the parties reached an agreement. To reach a final Settlement Agreement, the parties had to resolve many disputed terms of settlement, requiring multiple conferences among counsel.

[33] The efforts made to reach these settlements have been described and attested to in more detail in Plaintiffs' motions for preliminary approval of each settlement, cited in the text in this declaration, and in Plaintiffs' upcoming motion for final approval of the Second Round settlements. This declaration provides an overview and summary of those settlements.

281. On September 4, 2013, Plaintiffs moved to preliminarily approve the settlement with SDV and conditionally certify a settlement class. ECF No. 870. The Court entered an order granting preliminary approval to the SDV settlement on October 7, 2013. ECF No. 894.

B. Panalpina Settlement

282. In March 2014, Plaintiffs entered into a Settlement Agreement with Panalpina. Under that agreement, Panalpina has paid $39,158,425.45, which includes notice costs. In addition, Panalpina has agreed to pay 100% of any future *Air Cargo* proceeds and to provide certain cooperation to Plaintiffs as they prosecute this action. Panalpina has no rights to reversion if Class members request exclusion or opt out of the Class.

283. Settlement negotiations with Panalpina began in June 2010 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an experienced third-party mediator who assisted the parties in bridging significant differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

284. On June 27, 2014, Plaintiffs moved to preliminarily approve the settlement with Panalpina and conditionally certify a settlement class. ECF No. 1081. The Court entered an order granting preliminary approval to the Panalpina settlement on August 22, 2014. ECF No. 1102.

C. Geodis Settlement

285. On May 5, 2014, Plaintiffs entered into a Settlement Agreement with Geodis. Under that agreement, Geodis must pay $3,000,000,[34] which includes notice costs. In addition,

[34] As described above, the final $1 million installment has not yet been paid, but because the final installment is for an amount certain and must necessarily be paid before any payments to

Geodis has agreed to provide certain cooperation to Plaintiffs as they prosecute this action. Geodis has no rights to reversion if Class members request exclusion or opt out of the Class.

286. Settlement negotiations with Geodis began in 2011 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an experienced third-party mediator who assisted the parties in bridging significant differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

287. On June 27, 2014, Plaintiffs moved to preliminarily approve the settlement with Geodis and conditionally certify a settlement class. ECF No. 1081. The Court entered an order granting preliminary approval to the Geodis settlement on August 22, 2014. ECF No. 1102.

D. Jet Speed Settlement

288. On May 8, 2014, Plaintiffs entered into a Settlement Agreement with Jet Speed. Under that agreement, Jet Speed must pay $750,000,[35] which includes notice costs. In addition, Jet Speed has agreed to pay 100% of all future proceeds from the *Air Cargo* litigation and to provide certain cooperation to Plaintiffs as they prosecute this action, as described in Plaintiffs' preliminary approval brief, ECF No. 1082 at 8. Jet Speed has no rights to reversion if Class members request exclusion or opt out of the Class.

289. Settlement negotiations with Jet Speed began in December 2012 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an experienced third-party mediator who assisted the parties in bridging significant

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Class members could be paid, Class Counsel include the entire Geodis recovery in their fee-request calculation.

[35] As described above, the final $250,000 installment has not yet been paid, but because the final installment is for an amount and date certain (which date will occur before any payments to Class members realistically could be paid), Class Counsel include the entire Jet Speed recovery in their fee-request calculation.

differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

290. On June 27, 2014, Plaintiffs moved to preliminarily approve the settlement with Jet Speed and conditionally certify a settlement class. ECF No. 1081. The Court entered an order granting preliminary approval to the Jet Speed settlement on August 22, 2014. ECF No. 1102.

E. DSV Settlement

291. In April 2014, Plaintiffs entered into a Settlement Agreement with DSV. Under that agreement, DSV has paid $1,500,000, which includes notice costs. In addition, DSV has agreed to pay 100% of all future proceeds from the *Air Cargo* litigation and to provide certain cooperation to Plaintiffs as they prosecute this action, as described in Plaintiffs' preliminary approval brief, ECF No. 1082 at 8-9. DSV has no rights to reversion if Class members request exclusion or opt out of the Class.

292. Settlement negotiations with DSV began in December 2013 and continued on and off until an agreement was reached. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

293. On June 27, 2014, Plaintiffs moved to preliminarily approve the settlement with DSV and conditionally certify a settlement class. ECF No. 1081. The Court entered an order granting preliminary approval to the DSV settlement on August 22, 2014. ECF No. 1102.

F. Toll Settlement

294. On July 17, 2014, Plaintiffs entered into a Settlement Agreement with Toll. Under that agreement, Toll has paid $900,000, which includes notice costs. In addition, Toll has agreed to pay 100% of all future proceeds from the *Air Cargo* litigation and to provide certain cooperation to Plaintiffs as they prosecute this action, as described in Plaintiffs' preliminary

approval brief, ECF No. 1097 at 7. Toll has no rights to reversion if Class members request exclusion or opt out of the Class.

295. Settlement negotiations with Toll began in October 2012 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an experienced third-party mediator who assisted the parties in bridging significant differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

296. On August 13, 2014, Plaintiffs moved to preliminarily approve the settlement with Toll and conditionally certify a settlement class. ECF No. 1096. The Court entered an order granting preliminary approval to the Toll settlement on August 22, 2014. ECF No. 1103.

G. Agility Settlement

297. In October 2014, Plaintiffs entered into a Settlement Agreement with Agility. Under that agreement, Agility must make a series of fixed payments totaling $16,000,000,[36] and must pay 100% of all past Air Cargo proceeds, for a total certain of $17,859,499.23. In addition, Agility will pay 100% of all future *Air Cargo* proceeds. Agility's payments include notice costs. In addition, Agility has agreed to provide certain cooperation to Plaintiffs as they prosecute this action. Agility has no rights to reversion if Class members request exclusion or opt out of the Class.

298. Settlement negotiations with Agility began in early 2013 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an

[36] As described above, the final $5 million portion of that $16 million is not due until final approval or January 2016, whichever is later. But because the final portion is for an amount certain and will likely be paid before any payments to Class members could be paid, Class Counsel include the entire $16 million total, along with Agility's Air Cargo proceeds received to date, in this fee-request calculation.

experienced third-party mediator who assisted the parties in bridging significant differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

299. On December 15, 2014, Plaintiffs moved to preliminarily approve the settlement with Agility and conditionally certify a settlement class. ECF No. 1119. The Court entered an order granting preliminary approval to the Agility settlement on December 18, 2014. ECF No. 1124.

H. UPS Settlement

300. On October 24, 2014, Plaintiffs entered into a Settlement Agreement with UPS. Under that agreement, UPS will pay 100% of all future Air Cargo proceeds, in an amount not to exceed $25 million. If UPS's future Air Cargo proceeds total less than $25 million, UPS has agreed to pay the difference, provided that it need not pay a difference totaling more than $7 million. Based on its prior recoveries in the *Air Cargo* litigation, Co-Lead Counsel estimate that UPS will receive more than $18 million from that litigation. Co-Lead Counsel therefore anticipate that the Class will receive the full $25 million from the UPS settlement.[37] This amount includes notice costs. In addition, UPS has agreed to provide certain cooperation to Plaintiffs as they prosecute this action, as described in Plaintiffs' preliminary approval brief, ECF No. 1120 at 7-8. UPS has no rights to reversion if Class members request exclusion or opt out of the Class.

[37] As described above, because the date and exact amount of UPS's payment are presently unknown, Class Counsel do not include any portion of UPS's settlement payment in this fee-request calculation; information about the UPS settlement is included here exclusively for the purpose of fully describing the Second Round Settlements and the benefit they represent for the Class.

301. Settlement negotiations with UPS began in early 2013 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an experienced third-party mediator who assisted the parties in bridging significant differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

302. On December 15, 2014, Plaintiffs moved to preliminarily approve the settlement with UPS and conditionally certify a settlement class. ECF No. 1120. The Court entered an order granting preliminary approval to the UPS settlement on December 18, 2014. ECF No. 1124.

I. Dachser Settlement

303. On January 2, 2015, Plaintiffs entered into a Settlement Agreement with Dachser. Under that agreement, Dachser has paid $2,500,000, plus 100% of all future *Air Cargo* proceeds. Dachser's payments include notice costs. In addition, Dachser has agreed to provide certain cooperation to Plaintiffs as they prosecute this action. Dachser has no rights to reversion if Class members request exclusion or opt out of the Class.

304. Settlement negotiations with Dachser began in late 2013 and continued on and off until an agreement was reached. Settlement ultimately was achieved with the assistance of an experienced third-party mediator who assisted the parties in bridging significant differences. Negotiating the final terms of the Settlement Agreement required multiple conferences among counsel.

305. On February 13, 2015, Plaintiffs moved to preliminarily approve the settlement with Dachser and conditionally certify a settlement class. ECF No. 1140. The Court entered an order granting preliminary approval to the Dachser settlement on February 20, 2015. ECF No. 1147.

J. Settlement of the Japanese Claims

306. Plaintiffs have settled the Japanese Claims in their entirety. These settlements encompass two separate settlement agreements: the first, reflecting a partial settlement with DHL that pertains only to the Japanese Claims (Claims 2, 4, 7, and 11 of the CTAC) but which permits the other claims alleged against DHL in the CTAC to proceed; and the second, fully resolving the claims alleged against the Japanese Defendants.

1. Partial Settlement With DHL

307. In October 2015, Plaintiffs entered into a Settlement Agreement with DHL. Under that agreement, DHL has paid $5,000,000, which includes notice costs. DHL has no rights to reversion if Class members request exclusion or opt out of the Class.

308. Settlement negotiations with DHL began in Spring 2012 and continued on and off until an agreement was reached.

309. On April 22, 2015, Plaintiffs moved to preliminarily approve the partial settlement with DHL and conditionally certify a settlement class. ECF No. 1175. The Court entered an order granting preliminary approval to the partial DHL settlement on April 27, 2015. ECF No. 1189.

2. Settlement With The Japanese Defendants

310. On April 8, 2015, Plaintiffs entered into a Settlement Agreement with the Japanese Defendants. Under that agreement, the Japanese Defendants have paid $100 million, which includes notice costs. In addition, the Japanese Defendants have agreed to provide transactional data on the Japanese Claims. Furthermore, because the settlement resolves *all* claims against Kintetsu, Nippon Express, and Yusen, and not merely the Japanese Claims, those three Defendants have agreed to provide certain cooperation regarding the continued prosecution of the non-Japanese Claims against the non-settling Defendants. In particular, those three

defendants have agreed to produce transaction data on the non-Japanese Claims in which they have been named, documents produced to governmental entities, proffers, depositions, written declarations, and trial testimony. The total settlement payment made collectively from the Japanese Defendants may be reduced, *pro rata,* by no more than $10,000,000 based on any opt-outs filed.[38]

311. Settlement negotiations with the Japanese Defendants began in Spring 2012 and continued sporadically from that time forward, at both in-person meetings and via remote communications. Negotiations became more intense in late 2013 and culminated with a two-day mediation in July 2014 with a third-party mediator, which DHL also attended. At that mediation, the Japanese Defendants' economic expert made a presentation concerning damages and class certification, and Plaintiffs likewise relied on their own team of economic experts concerning the various settlement proposals and damages methodologies. An agreement in principal was reached on the second day of mediation, but the settlement agreement was not finalized until almost a year later, in April 2015, due to the number of parties involved, the vigorous and hard-fought negotiations, and the complexities necessarily entailed by the judgment-sharing agreement among the Japanese Defendants and the particular terms of settlement, such as the *pro rata* opt-out reduction. Negotiating the final terms of the Settlement Agreement required many conferences among counsel.

312. On April 22, 2015, Plaintiffs moved to preliminarily approve the settlement with the Japanese Defendants and conditionally certify a settlement class. ECF No. 1175. The Court

[38] As described above, because the eventual total number and identity of opt-outs is not yet known, and thus the extent to which the Japanese Defendants may recover a portion of their payment cannot presently be determined, Class Counsel seek fees only as to the $90,000,000 of the Available Settlement Fund, and not on the maximum potential $10,000,000 reduction.

entered an order granting preliminary approval to the settlement with the Japanese Defendants on April 27, 2015. ECF No. 1189.

K. Class Notice And Fairness Hearing On The Second Round Settlements

313. On May 21, 2015, Plaintiffs moved to approve a Class notice program for each of the above-listed settlements (collectively the "Second Round Settlements"). ECF No. 1201.

314. On May 29, 2015, this Court entered an order authorizing dissemination of class notice and scheduling a hearing for final approval of the Second Round Settlements, to be held November 2, 2015. ECF No. 1216. Among other things, that order authorized Plaintiffs to disseminate notice to the Settlement Class of the proposed Second Round Settlements, the fairness hearing, and related matters. Plaintiffs requested, and the Court approved, a ministerial change to the class notice program, providing notice to Class members of a date certain for the claims filing deadline. ECF Nos. 1223, 1229. Notice to the Class has been provided pursuant to the order on Class notice, as amended. The deadline to object to or opt out of any or all of the Second Round Settlements is September 18, 2015. ECF No. 1229.

315. The Court further directed that Class Counsel post any fee petition, and any supporting papers, to the settlement website within 24 hours of filing with the Court. ECF No. 1229. Class Counsel will comply with this requirement.

XVII. WORK RELATING TO CLAIMS ADMINISTRATION

316. Co-Lead Counsel is working closely with the Claims Administrator to address Class Member questions, including questions about the claims-filing process and the settlements. Some of those have risen to the attention of the Court. *E.g.*, ECF No. 1252 (request by the China Chamber of International Commerce to file an aggregated claim in this case); ECF No. 1252 (letter from U.S. Department of Veterans Affairs regarding Class member status). Beyond those, Co-Lead Counsel have spent many hours working with Class members and the Claims

Administrator to facilitate the submission and handling of claims to the settlement funds. To the greatest extent possible, Co-Lead Counsel have continued to work with the Claims Administrator and settling Defendants to obtain customer data that may be useful to Class members in filing claims. Co-Lead Counsel has sought and obtained extensions of the claims deadline when such extensions were in the interest of the Class.

317. Going forward, Co-Lead Counsel will continue to aggressively litigate this case against non-settling Defendants on the Class's behalf, including pursuing discovery and handling all other necessary motion and litigation practice. With respect to the settlements, Co-Lead Counsel will move for final approval of the Second Round Settlements in due course,[39] and will supervise all aspects of settlement and claims administration, and supervise the final distribution of settlement proceeds to qualified Class members.

XVIII. INTERIM ATTORNEYS' FEES AND EXPENSES

A. Process of Compilation

318. For the purposes of providing a lodestar cross-check for this interim fee and expense application, 14 law firms — the 4 Co-Lead firms and 10 others — are submitting lodestar information and expenses for the period of inception through August 15, 2015.

319. After excluding time which was previously submitted as part of the lodestar cross-check for the first interim fee petition, Co-Lead Counsel have carefully managed the allowable time to be included in the lodestar cross-check for this interim application. In an effort to control Class Counsel's lodestar, Co-Lead Counsel devised a protocol for reporting time and expenses of all Class Counsel on a monthly basis. Pursuant to that protocol, all Class Counsel including Co-Lead Counsel have been instructed not to submit time for certain categories of work, including

[39] The Court has scheduled a Fairness Hearing on the Second Round Settlements for November 2, 2015.

work not requested by Co-Lead Counsel, duplicative work, reading and reviewing, preparing time and expense reports, routine clerical tasks, or for work related to any client not retained. Additionally, the protocol required that each firm submit, via email, all litigation-related expenses incurred by the firm for the month. Finally, time spent reviewing documents has been capped at $400 per hour.

320. After Co-Lead Counsel received time submissions from Plaintiffs' Counsel, Co-Lead Counsel ensured that time and expenses had been submitted in accordance with the protocol, and only for work to be included in this fee petition, by thoroughly vetting each firm's submission, including a line-by-line review of their time entries. If any non-compensable time was submitted by Plaintiffs' Counsel, Co-Lead Counsel ensured that such entries were excluded.

B. Attorneys' Fees

321. In the notices sent to Class members following preliminary approval of the Second Round Settlements, Co-Lead Counsel advised the Class that, as compensation for their time and the risk in prosecuting this case on a wholly contingent fee basis, they would ask the Court for an award of attorneys' fees to be deducted from the Settlement Fund in an amount not to exceed 33% of the Settlement Fund, as well as reimbursement for their expenses actually incurred in the prosecution of the litigation. *See* ECF No. 1204-6 at 12. Co-Lead Counsel are requesting interim attorneys' fees of 25% of the Total Available Settlement Fund, for a total second interim fee award of $42,246,681.08, as well as reimbursement of interim expenses totaling $4,046,323.05.

322. The available portion of each settlement from which Class Counsel are requesting interim attorneys' fees of 25% is as follows:

	Settlement	Settlement Fund (Paid)	Less Maximum Opt-Out Or Escrow Amount	Available Portion Of Settlement Fund	Explanation
Second Round Settlements	SDV Settlement	$1,955,573.19	NA	$1,955,573.19	
	Panalpina	$39,158,425.45	NA	$39,158,425.45	
	Geodis	$3,000,000.00	NA	$3,000,000.00	Geodis has paid $2 million, with the remaining $1 million due upon the Court's final approval of the settlement
	Jet Speed	$750,000.00	NA	$750,000.00	Jet Speed has paid $500,000, with the remaining $250,000 due in May 2016
	DSV	$1,500,000.00	NA	$1,500,000.00	
	Toll	$900,000.00	NA	$900,000.00	
	Agility	$17,859,499.23	NA	$17,859,499.23	Agility has paid $12,859,499.23, with the remaining $5 million due in January 2016 or following the Court's final approval of the settlement
	UPS	$0	NA	$0	First UPS payment not due until next round of *Air Cargo* distributions are made
	Dachser	$2,500,000.00	NA	$2,500,000.00	
	Japanese Defendants	$100,000,000.00	$10,000,000.00	$90,000,000.00	

	DHL (partial settlement)	$5,000,000.00	NA	$5,000,000.00	
	Subtotal			***$162,623,497.87***	
		Additional Settlement Fund (Paid)	**Less MFN Escrow Amount**	**Available Portion of Settlement Fund**	**Explanation**
Subsequent Payments Made In First Round Settlements Following The Time Period Covered By the Court's First Fee Award	Schenker	$0	NA	$0	
	Vantec	$766,818.22	-$4,863,216.77	-$4,096,398.55	
	EGL	$1,425,149.75	NA	$1,425,149.75	
	Expeditors	$8,705,150.84	NA	$8,705,150.84	
	Nishi-Nippon	$0.00	-$9,865,918.75	-$9,865,918.75	Hit payment cap under settlement agreement
	UAC	$7,022.30	NA	$7,022.30	
	K+N	$5,428,666.10	NA	$5,428,666.10	
	Morrison	$1,742,155.80	NA	$1,742,155.80	
	UTi	$3,017,398.97	NA	$3,017,398.97	
	ABX	$0.00	NA	$0.00	
	Subtotal			***$6,363,226.46***	
Total Available Settlement Fund				**$168,986,724.33**	

324. Attached to this Joint Declaration are 14 declarations of Counsel (**Exhibits A-N**), including Co-Lead Counsel (Exhibits A-D), who are seeking interim attorneys' fees and unreimbursed expenses. As set forth above, we have itemized for this lodestar cross-check only

work not previously covered by the first interim fee award regarding the First Round Settlements. These declarations attest to the substantial work performed (*i.e.*, lodestar), and the amount of unreimbursed expenses incurred by each law firm during that time. Each declaration includes two exhibits. One details the hours and value of the applicable time spent by personnel at the firm and included in the lodestar cross-check. The other details the nature and amount of unreimbursed expenses.

C. Lodestar Cross-Check Calculation

325. The first interim award of attorneys' fees and expenses used as a lodestar cross-check attorneys' work time only to the extent that such time related directly to the First Round Settlements. The lodestar cross-check for the first interim award was based on 33,060.04 hours in professional time, yielding a lodestar of $13,796,633.27 at Class Counsel's then-current hourly rates. ECF No. 875 at ¶ 16. From the inception of this case through August 15, 2015, and excluding attorney time to the extent that it was encompassed by the first interim fee award, Class Counsel have performed another 120,722.14 hours of professional time, for a total of 153,782.18 hours since inception. At Class Counsel's current hourly rates, this additional time represents a value of $56,073,218.32. Thus, the total attorney time from the inception of this case through August 15, 2015 represents an aggregate lodestar of $69,869,851.59.

326. Annexed hereto as **Exhibit O** is a chart summarizing the individual declarations of counsel showing lodestar cross-check amounts not included in the lodestar cross-check for the first interim fee petition.

D. Unreimbursed Expenses[40]

1. Deferred Billings

327. Co-Lead Counsel entered into deferred billing agreements with three competitively priced vendors that have performed work necessary to the prosecution of this case. These vendors, which provided deposition transcription, claims administration, and document-hosting services, respectively, agreed not to seek payment for all or part of their services from Class Counsel on an ongoing (*e.g.*, monthly) basis, to allow Co-Lead Counsel the opportunity to recover those expenses as part of a fee petition. Class Counsel now seek reimbursement of $1,102,078.12 in unreimbursed deferred billings.

328. These deferred billings are summarized at **Exhibit P** hereto, and include three components: (1) deferred billings from U.S. Legal Support, for deposition transcription services, totaling $148,667.26; (2) deferred billings from Epiq Systems, Inc., for claims administration work totaling $859,360.86;[41] and (3) deferred billings from Shepherd Data Services, Inc., for data hosting totaling $94,050.00.

[40] In addition to the expenses described here and for which Class Counsel now seek reimbursement, payments totaling $5,142,299.00 have been made from the settlement escrow accounts for Second Round Settlement class notice as directed by the Court, related expenses regarding preliminary or final approval, and related bank fees. In addition, invoices related to notice for the Second Round Settlements totaling $494,000.00 are outstanding and in the process of review. To the extent appropriate, they will be paid from the settlement escrow accounts within 30 days. These payments were, or will be, made pursuant to language in each of the Settling Defendant's Settlement Agreements reserving a specific amount of such Settling Defendant's payment that may be used for payment of notice and related costs (and which would be non-refundable to the Settling Defendant in the event the settlement was not finally approved), and have already been authorized by the Court. While these payments are not included in the requested reimbursement in this petition, and have already been paid or have been authorized by the Court to be paid from those escrow accounts, we describe those expenditures here to fully describe all litigation-related expenses incurred in this case.

[41] This amount represents deferred billings through July 2015. Any billings from Epiq for August 1, 2015 or later were not available at the time of the filing of this Joint Declaration and

2. Class Counsel's Recorded Expenses

329. Class Counsel also request reimbursement of $2,944,244.93 in unreimbursed costs and expenses paid by those firms. This total is based on monthly expense reports submitted to Co-Lead Counsel and records reflecting disbursements from the Litigation Fund. The total unreimbursed expenses described in this Joint Declaration include expenses incurred separately by all Class Counsel as well as expenses incurred by the Litigation Fund, described below.

330. **Exhibit Q** hereto summarizes the expenses reported as having been incurred by all Class Counsel and paid by those firms, separately from those expenses that were paid out of the Litigation Fund. Class Counsel have itemized their costs separately in their requests for reimbursement accompanying this motion (*see* Exhibits A-N), and have thereby attested to the reasonableness and accuracy thereof. Each firm requesting reimbursement of expenses has averred that the expenses are reflected in the books and records maintained by the firm. These expenses include, for example, the costs for photocopying, computer research, postage and courier expenses, telephone and fax costs, and travel and accommodations.

331. All the expenses sought by this petition were reasonable and necessary to prosecute this litigation and to obtain the substantial settlements here, and all were made for the direct benefit of the Settlement Class and the putative litigation Class.

3. Class Counsel's Common Cost Litigation Fund

332. On behalf of all Class Counsel, Co-Lead Counsel established, monitored, and administered a Common Cost Litigation Fund ("Litigation Fund") from which to pay litigation costs incurred for the case overall in its prosecution. The Litigation Fund is used as a source to

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are not included in this reimbursement request; Class Counsel will seek reimbursement of such expenses at an appropriate later time.

pay ongoing litigation expenses on behalf of the Class in this matter. The Litigation Fund initially was funded and is replenished, as required, from assessment payments from Class Counsel. The total received in Litigation Fund assessments through August 27, 2015 is $1,787,500.00.

333. The expenditures paid from the Litigation Fund are in addition to expenses incurred by each Class Counsel, which are described above and summarized in Exhibit Q. As noted above, the Litigation Fund is funded by assessments paid by Class Counsel. As part of our petition to the Court for reimbursement of litigation-related expenses, we have included Class Counsel's assessments paid to the Litigation Fund. Therefore, to avoid double-counting, we are not including in our expense reimbursement petition any of the Litigation Fund's expenditures, which are described below and in **Exhibit R**. Nevertheless, we are describing the Litigation Fund's expenditures here to fully describe all litigation-related expenses incurred in this case and to attest to their accuracy and necessity.[42]

334. All expenses paid from the Litigation Fund have been reasonably incurred and necessary to the prosecution of this case. The recorded costs and expenses incurred by Class Counsel since the inception of this case and paid by the Litigation Fund are itemized in Exhibit R attached hereto.

335. Of the expenses incurred in this case and paid from the Litigation Fund, Class Counsel spent $776,866.24 for expert consultants and $3,914.00 for industry consultants and investigators. These consulting and investigation fees were necessary for, inter alia,

[42] This Joint Declaration describes the expenditures paid from the Litigation Fund through August 27, 2015. Therefore Class Counsel also seek reimbursement for contributions to the Litigation Fund through that date, although this fee petition otherwise seeks reimbursement for expenses only through August 15, 2015.

investigation of the case, to confirm and bolster the allegations in the complaints, to guide discovery efforts, and for settlement evaluation.

336. Class Counsel incurred $622,932.16 in expenses for electronic data management that were paid from the Litigation Fund. These services were necessary to enable Class Counsel to house, review, and code documents produced through discovery and cooperation.

337. Class counsel incurred $45,669.70 in expenses for service of process, including international service of process on foreign Defendants that were paid from the Litigation Fund.

338. Class Counsel incurred $79,000.00 in mediation expenses that were paid from the Litigation Fund. The mediator's work was necessary to facilitate the majority of the Second Round Settlements.

339. Class Counsel incurred $727.58 in court reporter fees for hearing transcripts that were paid from the Litigation Fund. Those transcripts were necessary for briefing and strategic development of the case.

340. Class Counsel incurred $36,656.69 in document services, including copying, processing, translating, etc., that were paid from the Litigation Fund. Those services were necessary for conducting research and discovery.

341. As of August 27, 2015, the Litigation Fund had a balance remaining of $221,733.63. Those funds will be retained for payment of on-going expenses related to the litigation including claims administration. Co-Lead Counsel will inform the Court in a subsequent petition, or sooner if the Court wishes, as to how such amounts are being spent, whether additional expenses were incurred, and the proper treatment of any amounts that remain in the Litigation Fund at the end of the litigation.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 3, 2015
Minneapolis, MN

s/ W. Joseph Bruckner
W. Joseph Bruckner
LOCKRIDGE GRINDAL NAUEN P.L.L.P.

Dated: September 3, 2015
New York, New York

s/ Christopher Lovell
Christopher Lovell
LOVELL STEWART HALEBIAN JACOBSON LLP

Dated: September 3, 2015
Minneapolis, Minnesota

s/ Daniel E. Gustafson
Daniel E. Gustafson
GUSTAFSON GLUEK PLLC

Dated: September 3, 2015
Burlingame, California

s/ Steven N. Williams
Steven N. Williams
COTCHETT, PITRE & MCCARTHY, LLP