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*NOT ADMITTED TO THE NEW YORK BAR

September 3, 2015

By Hand

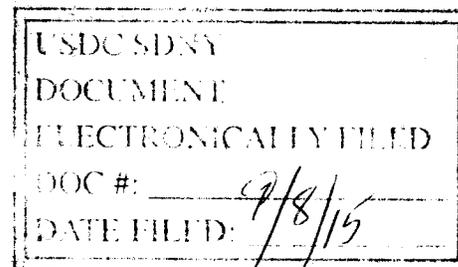
The Honorable Victor Marrero
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Anwar, et al. v. Fairfield Greenwich Limited, et al.,
No. 09-cv-118 (S.D.N.Y.) (VM) (FM)

Dear Judge Marrero:

We represent Citco in the above-referenced action. As requested by the Court, we are submitting this letter in response to the August 21, 2015 letter submitted by the New Greenwich Litigation Trustee, LLC, as Successor Trustee of the Greenwich Sentry and Greenwich Sentry Partners Litigation Trust (the "Trustee"), concerning certain objections raised by the Trustee to the proposed settlement between the *Anwar* plaintiffs and Citco. We have read the letter submitted by plaintiffs in response to the Trustee's letter and join it in full. We wish to briefly make two additional points.

First, we agree with plaintiffs that the Trustee lacks standing to object to the proposed settlement. *See Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 244 (2d Cir. 2007). We respectfully submit that the Second Circuit's decision in *Bhatia v. Piedrahita*, 756 F.3d 211 (2d Cir.



2014)—which arises from this action—is squarely on point. There, the Second Circuit held that PwC and Citco did not have standing to object to a provision in the Fairfield Defendants’ settlement that PwC and Citco contended would deny them the ability to raise “defenses against the settling plaintiffs in other fora[.]” *Id.* at 218. The court reasoned that “a settlement which does not prevent the later assertion of a non-settling party’s claims (although it may spawn additional litigation to vindicate such claims), does not cause the non-settling party ‘formal’ legal prejudice.” *Id.* at 219. The court explained that because nothing in the Fairfield Defendants’ settlement precluded PwC and Citco “from asserting . . . in other litigation any claims or defenses that may be available to them,” PwC and Citco could not establish formal legal prejudice and thus lacked standing to object. *Id.* at 218-19. So too here. As plaintiffs’ letter explains, the challenged provision in Paragraph 19 of the proposed settlement neither determines Citco’s offset rights nor precludes the Trustee from making any arguments in opposition to those rights in other proceedings. As such, that provision in no way “formally strips” the Trustee of any claim or defense. *Id.* at 218 (emphasis omitted). Like PwC and Citco in *Bhatia*, the Trustee thus has no standing to assert its objections.¹

Second, any suggestion by the Trustee that the class notice is somehow deficient because it does not reflect information concerning Citco’s offset rights is unavailing. The class notice fully complies with Rule 23(e)(2), which requires only that a class notice be reasonable. *See* Fed. R. Civ. P. 23(e)(2). As the Second Circuit has explained, “[t]here are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 438 (2d Cir. 2007) (internal quotation marks and citation omitted). The class notice here does just that. Indeed, the class notice is materially indistinguishable from the class notice used for the Fairfield Defendants’ settlement. The Second Circuit upheld that notice against a challenge by parties represented by the same counsel representing the Trustee. *See Lomeli v. Sec. & Inv. Co. Bahrain*, 546 F. App’x 37, 41 (2d Cir. 2013). Any challenge by the Trustee to the class notice here should likewise fail.

Respectfully,


Andrew Gordon

¹ The Trustee cites *National Super Spuds, Inc. v. New York Mercantile Exchange*, 660 F.2d 9 (2d Cir. 1981), but does not explain why. In that case, the Second Circuit reversed an order approving a class action settlement that released claims based on both liquidated and unliquidated contracts on the ground that the named plaintiffs, who were parties to liquidated contracts but not any unliquidated contracts, could not adequately represent class members who had claims based on unliquidated contracts. The adequacy of the named plaintiffs’ representation of the class is not at issue in this action. *National Super Spuds* thus has no application here.

The Honorable Victor Marrero

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cc: (via email)

Robert A. Wallner
David A. Barrett
Stuart H. Singer
Victor E. Stewart
Robert C. Finkel
Sarah L. Cave
Timothy A. Duffy

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by	
<u><i>Atco Defendants</i></u>	
SO ORDERED.	
<u><i>9-8-15</i></u>	<u><i>[Signature]</i></u>
DATE	VICTOR MARRERO, U.S.D.J.