

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GREGORY BOUTCHARD and SYNOVA ASSET
MANAGEMENT, LLC, individually and on behalf
of and all others similarly situated,

Plaintiffs,

v.

KAMALDEEP GANDHI, YUCHUN MAO a/k/a
BRUCE MAO, KRISHNA MOHAN, TOWER
RESEARCH CAPITAL LLC, and JOHN DOE Nos.
1-5,

Defendants.

Case No. 1:18-cv-7041 (JJT)

Hon. John J. Tharp, Jr.

**TOWER RESEARCH CAPITAL LLC'S OBJECTION
TO SAHAM SABAH GLOBAL LTD.'S UNTIMELY REQUEST
TO BE EXCLUDED FROM THE PROPOSED CLASS ACTION SETTLEMENT**

Defendant Tower Research Capital LLC (“Tower”) respectfully submits this objection to the untimely exclusion request of Saham Sabah Global Ltd. (“SSG”).

The Court approved and the settlement administrator implemented a carefully designed plan to disseminate notice of the proposed settlement of this action by mail, publication in a dozen newspapers and financial industry websites, e-newsletters, a press release, and a dedicated website. ECF No. 138 (Decl. of Steven J. Straub) ¶ 3. The settlement administrator set up a phone number so that any class member could call with questions. *Id.* ¶ 20. Class members were informed that they could ask to be excluded from the settlement class by “submit[ting] a written request by June 10, 2021.” *Id.* Ex. A at 2. The long form notice and the disclosure that appears on the settlement website both state clearly that class members may not exclude themselves from the settlement class by email and that any exclusion request “must be mailed or delivered such that it is received by June 10, 2021.” *Id.* Ex. A at 9, Ex. E at 4.

On June 24, 2021, two weeks after the June 10 deadline, SSG sent an email to the settlement administrator containing a request to be excluded from the settlement class. ECF No. 147-1 at ¶¶ 5-6. SSG’s email attached a letter from its chief executive officer and a resolution of its board of directors, both dated June 9, 2021, stating its wish to be excluded. *Id.* Ex. A. SSG did not dispute that it had received timely notice of the settlement, and SSG acknowledged that it was required to mail (not email) any exclusion request to the address provided. *Id.* SSG contended, however, that it was unable to effect a mailing to the proper address because the courier it engaged did not provide service to a P.O. box and the only courier service that provided such service was “on hold” due to the COVID-19 pandemic. *Id.*

SSG’s deficient and untimely exclusion request should be rejected. “Underlying the notice provisions of Rule 23 of the Federal Rules of Civil Procedure are notions of certainty and

finality.” *In re Brand Name Prescription Drugs Antitrust Litig.*, 1996 WL 238933, at *3 (N.D. Ill. May 7, 1996). As Judge Easterbrook recently explained in affirming a district court’s decision to reject an untimely exclusion request, a court that has specified in detail how class members should opt out need not “accept some different means.” *In re Navistar MaxxForce Engines Mktg., Sales Practices, & Prods. Liab. Litig.*, 990 F.3d 1048, 1052 (7th Cir. 2021). Rather, clear rules about class membership foster efficient supervision of a large class action settlement like this one. Indeed, in the words of Judge Easterbrook, “[f]ollowing mechanical rules is the only sure way to handle suits with thousands of class members.” *Id.* at 1053.

To be sure, a district court has discretion to accept an untimely opt out “when the delay is excusable.” *In re Navistar*, 990 F.3d at 1051. SSG, however, has offered no reasonable excuse for its failure to submit an opt out request that is timely or proper. SSG contends that it was unable to identify a courier service capable of delivery to a P.O. box in the United States, but it does not explain why it could not simply have used the mail to transmit its request. SSG also has not explained why it waited until June 9 to execute a letter, in Malaysia, that was due to be delivered in Wisconsin the next day (a delay that may help explain why SSG found it necessary to use a courier service). Finally, SSG has not explained why, nearly six weeks after the June 10 opt-out deadline, it *still* has not submitted a written request for exclusion from the settlement class, instead relying on an email that acknowledges its own failure to comply with the requirements clearly set forth in the settlement notices this Court approved.

Because SSG offers no reasonable explanation for its own failure of diligence, and because Tower will be prejudiced if SSG is permitted to exclude itself from the settlement and potentially pursue separate putative claims against Tower that otherwise would be barred, the

Court should not accept SSG's untimely request. Having failed to "do what [it was] told," SSG should "bear the consequences of inaction." *In re Navistar*, 990 F.3d at 1053.

Dated: New York, New York
July 23, 2021

/s/ Jamie Dycus _____

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