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BEFORE THE
FEDERAL MARITIME COMMISSION

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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

PETRA PET, INC. (a/k/a PETRAPPORT)

Complainant,

v.

Docket No. 11-14

PANDA LOGISTICS LIMITED; PANDA
LOGISTICS CO., LTD. (f/k/a PANDA INT'L
TRANSPORTATION CO., LTD.); and RDM
SOLUTIONS, INC.

Respondents.

**PANDA LOGISTICS LIMITED AND PANDA LOGISTICS CO., LTD.'S
(f/k/a PANDA INT'L TRANSPORTATION CO., LTD.)
PROPOSED FINDINGS OF FACT**

1. Panda Logistics is a corporation organized and existing pursuant to the laws of Hong Kong with its principal place of business at 51F, Block B, Profit Ind. Bldg., Kwai Chung, N.T., Hong Kong. See Declaration of Betty Sun ("Sun Dec."), Overseas Manager, Panda Global at ¶ 2. A copy of the Sun Dec. is attached as Panda Appendix 1.

2. Panda Int'l is a corporation organized and existing pursuant to the laws of the Republic of China with its principal place of business at 5F, No. 209, Sec. 3, Civic Blvd., Taipei, Taiwan 10492. *Id.* at ¶ 4.

3. Panda Logistics and Panda Int'l ("Panda") are non vessel operating common carriers (NVOCCs) licensed by the Federal Maritime Commission, which provide ocean transportation services. *Id.* at ¶ 5.

4. Petra Pet, Inc. ("Petra") is in the business of purchasing pet treats from vendors in China and importing those goods into the United States. See Petra Complaint at ¶ 8; Petra Appendix 2.

5. As NVOCCs Panda Logistics and Panda Int'l transported goods under their bills of lading. Panda Logistics and Panda Int'l's bills of lading have terms and conditions that obligate shippers and consignees to pay for freight and charges. *See* Terms and Conditions at Panda Appendix 2a and 2b.

6. In 2003 or thereabouts, Mario Ruiz, who was working for Amber Worldwide Logistics at that time, contacted Panda on behalf of Petra. Sun Dec. at ¶ 5. He identified Petra as his client and requested that Panda quote rates for Petra's shipments. *Id.*

7. Subsequently, Mr. Ruiz left Amber Worldwide Logistics and formed Worldport Logistics, which company's name was later changed to RDM. *Id.* at ¶ 8. In correspondence dated August 30, 2005, Mr. Ruiz reported that he anticipated that Worldport would be able to provide Panda "with all of the services expected f[rom] a Freight forwarder. . . ." *Id.*; *see also* Petra Appendix 4.

8. At Worldport Logistics, and subsequently at RDM, Mr. Ruiz sought rates from Panda and acted as an agent for Petra. Sun Dec. at ¶ 11.

9. Mr. Ruiz has arranged for international freight and transportation services on behalf of Petra while working at Amber Worldwide Logistics, and subsequently at Worldport Logistics and then at RDM. *Id.*

10. At Worldport Logistics, and subsequently at RDM, Mr. Ruiz took other actions consistent with someone acting as an agent on behalf of shipper, such as complaining that Panda's transportation time to LAX was too slow. Sun Dec. at ¶ 13; Petra Appendix at 3.

11. Mr. Ruiz has provided such services for Petra for almost a decade. Sun Dec. at ¶ 12.

12. Panda has transported shipments on behalf of Petra pursuant to instructions from RDM Solutions, Inc. (“RDM”). *Id.* at ¶ 14.

13. Panda had no relationship with Mr. Ruiz prior to his contacting Panda on behalf of Petra. *Id.* at ¶ 7.

14. No one from Panda has ever met Mr. Ruiz. *Id.* at ¶ 8.

15. Over an extended period of time, Petra provided instructions to RDM as to how to handle Petra Shipments. *Id.* at ¶ 15.

16. Panda was instructed to bill RDM for transportation services it provided to Petra. *Id.* at ¶ 16.

17. It is not unusual for Panda to be instructed to bill third parties, such as forwarders and brokers, for transportation services it provides to shippers. *Id.* at ¶ 17. This is frequently done as a matter of convenience for the shipper who may not want to handle the logistics involved in arranging and paying directly for the transportation at issue. *Id.*

18. In agreeing to bill a third party for transportation services provided, Panda may, as it did here, indicate on its bills of lading the third party under Freight Amount or Freight Collect. *Id.* at ¶ 18.

19. In agreeing to bill a third party for transportation services provided, Panda does not release the consignee or shipper from its obligation to pay for transportation charges. *Id.* at ¶ 19.

20. Panda never released Petra from its obligation to pay for the transportation services it provided to Petra. *Id.* at ¶ 20.

21. Petra received and accepted the goods transported by Panda Logistics. *Id.* at ¶ 21; *see also*, Petra Complaint at ¶¶ 8, 11, 32.

22. Although Mr. Ruiz represented that RDM is an FMC licensed NVOCC, RDM has never operated in that capacity in any transportation handled by Panda. *Id.* at ¶ 22.

23. RDM has never acted as a co-loader on transportation handled by Panda and to Panda's knowledge has never issued a bill of lading on shipments handled by Panda. *Id.* at ¶ 23.

24. Bills of lading issued by Panda acting in its capacity as an NVOCC for Petra state "freight collect." *Id.* at ¶ 24; *see* Panda bills of lading at Petra Appendix 1, 13, 19, and 21.

25. Beijing Jaguar was a Panda affiliate in Beijing, China that also provided transportation services to the United States issuing Panda Int'l bills of lading for these services as authorized by Panda Int'l. *Id.* at ¶ 25. In February of 2007, Beijing Jaguar was re-named Panda Global (Beijing) Co. Ltd. *Id.*

26. Beijing Jaguar provided transportation services for Petra in which RDM acted on Petra's behalf. *Id.* at ¶ 26.

27. In or around August of 2006, Beijing Jaguar provided transportation services on behalf of Petra. *Id.* at ¶ 27. RDM failed to make timely payments on behalf of Petra for such services and as a result, Beijing Jaguar refused to release bills of lading in its possession and held cargo until it was paid freight and related charges. *Id.*; *see also* August 22, 2006 email from shipper to Patty De Avila, the Office Manager of Petra, Panda Appendix 3.

28. On that same date, Mario Ruiz wrote to Betty Sun at Panda, referencing the email that it had received from his "client," Petra, and requesting that Panda notify RDM if it was holding cargo due to nonpayment, rather than notifying RDM's client, Petra. Sun Dec. at ¶ 28; *see also* August 22, 2006 email correspondence from Mario Ruiz to Betty Sun, attached as Panda Appendix 3. In that correspondence, RDM also informed Panda (and Beijing Jaguar) that it was

sending payment to cover Petra's transportation costs in order to obtain the release of the cargo. Sun Dec. at ¶ 29; *see also* Panda Appendix 3.

29. RDM made the promised payment on behalf of Petra and the cargo was released. *See* Sun Dec. at ¶ 30.

30. On March 4, 2008, Panda quoted rates to RDM. *See* email attached as Panda Appendix 4. In that correspondence, Panda requested that if RDM had other quantities of goods it wanted moved, it should check with Panda before offering rates to RDM's clients. "If you have other commodities, please check with us before you offer to your client."

31. It is not unusual that a party in RDM's capacity would not want the NVOCC to disclose to the shipper the rates the NVOCC is charging for fear that its customer might deal directly with the NVOCC. Sun Dec. at ¶ 32.

32. On July 26, 2010, Betty Sun, the Overseas Manager of Panda, sent an email to Patty De Avila, Petra's Office Manager, regarding overdue freight invoices. Sun Dec. at ¶ 33; *see also* July 26, 2010 email attached as Petra Appendix 28. Ms. Sun references the fact that Panda has moved large quantities of shipments for Petra and that in doing so, Panda was required to pay the air freight as of the invoice date and had to advance payments to the shipping lines in order to get original bills of lading (B/Ls). *Id.* at ¶ 33; *see also* correspondence at Petra Appendix 28. Ms. Sun then wrote that because Petra is a VIP client, Panda had agreed with RDM for payment terms more favorable than those afforded its other clients. *Id.*

33. In that same correspondence, Panda informed Petra that overdue freight invoices had not been paid and that payment terms would no longer be advanced. Sun Dec. at ¶ 34.

34. When confronted with the fact, in July of 2010, that Petra was not making payments to Panda, Patty De Avila of Petra instructed RDM to pay Panda. *See* Petra Appendix 28.

35. In response to that correspondence, Petra did not inform Panda that it had paid RDM and that RDM was Panda's agent. *Sun Dec. at ¶35.* Instead, Petra sent a strongly worded message to RDM that it needed to pay Panda. *See* Petra Appendix 28 ("PLEASE NEED A REPLY TO THEM WITH A PAYMENT")

36. When RDM assured Petra that the matter would be taken care of, *see* Petra Appendix 28, Petra continued to make payments to RDM for delivery to Panda. *See, e.g.* Petra Appendix No. 23 showing a check dated October 4, 2010, from Petra to RDM -- three months after being told by Panda that its invoices had not been paid.

37. It was only in December of 2010, after Panda refused to release goods in its possession until after it was paid for transportation services provided and after RDM disappeared, that Petra for the first time asserted that RDM was Panda's agent and that payment by Petra to RDM satisfied its obligations to Panda. *Sun Dec. at ¶ 36.* Petra had never previously made such assertion, even in 2006 when Petra had previously made payments to RDM and RDM failed to timely forward such payments to Beijing Jaguar or Panda. *Id.*

38. Panda has never held out RDM as an agent of Panda. *Id.* at ¶ 37.

39. RDM has never acted as an agent for Panda. *Id.* at ¶ 38.

Respectfully submitted,

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DATED: June 15, 2012

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressees at the addresses stated by overnight delivery and/or via email transmission, this 15th day of June 2012:

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