

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
SILVIA SEIJAS, et al, : 04 Civ. 400 (TPG)  
 :  
 Plaintiffs, :  
 :  
 -against- :  
 :  
 THE REPUBLIC OF ARGENTINA, :  
 :  
 Defendant. :  
-----X

-----X  
SILVIA SEIJAS, et al, : 04 Civ. 401 (TPG)  
 :  
 Plaintiffs, :  
 :  
 -against- :  
 :  
 THE REPUBLIC OF ARGENTINA, :  
 :  
 Defendant. :  
-----X

-----X  
CESAR RAUL CASTRO, : 04 Civ. 506 (TPG)  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 THE REPUBLIC OF ARGENTINA, :  
 :  
 Defendant. :  
-----X

-----X  
HICKORY SECURITIES LTD., : 04 Civ. 936 (TPG)  
 :  
 Plaintiff, :  
 :  
 -against- :  
 :  
 THE REPUBLIC OF ARGENTINA, :  
 :  
 Defendant. :  
-----X

**MEMORANDUM OF LAW IN SUPPORT OF CO-LEAD  
COUNSEL'S MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT  
OF LITIGATION EXPENSES**

-----X  
ELIZABETH ANDREA AZZA, et al, . 04 Civ. 937 (TPG)  
Plaintiffs, :  
-against- :

THE REPUBLIC OF ARGENTINA, :  
Defendant. :

-----X  
ELIZABETH ANDREA AZZA, et al., : 04 Civ. 1085 (TPG)  
Plaintiffs, :  
-against- :

THE REPUBLIC OF ARGENTINA, :  
Defendant. :

-----X  
EDUARDO PURICELLI, x  
Plaintiff, : 04 Civ. 2117 (TPG)  
-against- :

THE REPUBLIC OF ARGENTINA, :  
Defendant. :

-----X  
RUBEN DANIEL CHORNY, X  
Plaintiff, : 04 Civ. 2118 (TPG)  
-against- :

THE REPUBLIC OF ARGENTINA, :  
Defendant. :

-----X

PROSKAUER ROSE LLP  
Eleven Times Square  
New York, NY 10036  
(212) 969-3000

LAW OFFICES OF SAUL ROFFE, ESQ.  
52 Homestead Circle  
Marlboro, NJ 07746  
(732) 616-1304

DIAZ REUS & TARG LLP  
100 S.E. 2<sup>nd</sup> Street  
Miami, FL 33131  
(305) 375-9220  
*Co-Lead Counsel for Plaintiff Classes*

**TABLE OF CONTENTS**

	<b>Page</b>
PRELIMINARY STATEMENT .....	1
A.    The Substantial Effort Co-Lead Counsel Made to Prosecute These Cases .....	3
B.    The Fees and Expenses for Which Class Counsel Have Not Been Paid .....	5
ARGUMENT .....	6
I.    THE COURT SHOULD APPROVE A FEE AWARD OF \$35.3 MILLION TO THE THREE CO-LEAD COUNSEL FIRMS .....	6
A.    The Relevant Legal Standards .....	6
B.    The Requested Fee of \$35.3 Million is Fair and Reasonable Under the Lodestar Method .....	7
C.    The Requested Fee of \$35.3 Million is Fair and Reasonable Under the Percentage Method.....	9
D.    The “Goldberger” Factors Confirm that the Requested Fee of \$35.3 Million is Fair and Reasonable .....	11
1.    The Risks of the Litigation Justify the Award .....	11
2.    The Amount and Quality of the Work, and the Magnitude and Complexity of the Cases, Justify an Award.....	12
3.    The Amount of Fees is Reasonable in Relation to the Size of the Settlement .....	13
4.    Public Policy Supports the Requested Fee Award.....	14
E.    The Requested Expenses of \$914,513 are Fair and Reasonable.....	14
CONCLUSION.....	15

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<i>Fogarazzo v. Lehman Bros. Inc.</i> , 2011 WL 671745 (S.D.N.Y. 2011).....	10
<i>Goldberger v. Integrated Resources, Inc.</i> , 209 F.3d 43 (2d Cir. 2000).....	6, 7, 11
<i>Grant Barfuss v. DGSE Companies, Inc., et al.</i> , No. 12 Civ. 3664 (N.D. Tex. Oct. 21, 2013) .....	10
<i>Hicks v. Stanley</i> , 2005 WL 2757792 (S.D.N.Y. Oct. 24, 2005).....	14
<i>In re Apac Teleservs., Inc. Sec. Litig.</i> , No. 97 Civ. 9145, slip op. (S.D.N.Y. June 29, 2001) .....	10
<i>In re Bankamerica Corp. Sec. Litig.</i> , 228 F. Supp. 2d 1061 (E.D. Mo. 2002).....	10
<i>In re Beacon Assocs. Litig.</i> , 2013 WL 2450960 (S.D.N.Y. 2013).....	10
<i>In re Corel Corp. Inc. Sec. Litig.</i> , 293 F.Supp.2d 484 (E.D.Pa.2003) .....	10
<i>In re E.W. Blanch Holdings, Inc. Sec. Litig.</i> , 2003 WL 23335319 (D. Minn. June 16, 2003).....	10
<i>In re Flag Telecom</i> , 2010 WL 4537550 .....	14
<i>In re Fuqi Int’l., Inc. Sec. Litig.</i> , 2016 WL 736649 (S.D.N.Y. 2016).....	10
<i>In re Giant Interactive Grp., Inc. Sec. Litig.</i> , 279 F.R.D. 151 (S.D.N.Y.2001) .....	10
<i>In re Green Tree Fin. Corp. Stock Litig.</i> , Nos. 97-2666 and 97-2679, slip. op. (D. Minn. Dec. 18, 2003) .....	10
<i>In re Heritage Bond Litig.</i> , 2005 WL 1594403 (C.D. Cal. June 10, 2005) .....	10

<i>In re Hi-Crush Partners L.P. Sec. Litig.</i> , 2014 WL 7323417 (S.D.N.Y. 2014).....	10
<i>In re Marsh &amp; McLennan Co. Sec. Litig.</i> , 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2016) .....	14
<i>In re Med. X-Ray Film Antitrust Litig.</i> , 1998 WL 661515 (E.D.N.Y. Aug. 7, 1998).....	14
<i>In re Pilgrim’s Pride Corp. Sec., Litig.</i> , No. 08 Civ. 419 (E.D. Tex. May 2, 2012) .....	10
<i>In re Telik, Inc. Sec. Litig.</i> , 576 F. Supp. 2d 570 (S.D.N.Y. 2008).....	9
<i>In re WorldCom, Inc. Sec. Litig.</i> , 388 F. Supp. 2d 319 (S.D.N.Y. 2005).....	2, 6, 7, 8
<i>In Van Der Moolen Holding N.V. Sec. Litig.</i> , No. 03 Civ. 8284, slip. op. (S.D.N.Y. Dec. 7, 2006)).....	10
<i>Khait v. Whirlpool Corp.</i> , 2010 WL 2025106 (E.D.N.Y. Jan. 20, 2010) .....	10
<i>Meredith Corp. v. SESAC, LLC</i> , 87 F. Supp. 3d 650, 667-68 (S.D.N.Y. 2015) .....	10
<i>Moloney v. Shelly’s Prime Steak, Stone Crab &amp; Oyster Bar</i> , 2009 WL 5851465 (S.D.N.Y. Mar. 31, 2009) .....	10
<i>Newman v. Caribiner Int’l Inc.</i> , No. 99 Civ. 2271 (S.D.N.Y. Oct. 25, 2001).....	10
<i>Savani v. UBS Prof’l Solutions, LLC</i> , 2014 WL 172503 (D.S.C. Jan. 15, 2014) .....	12
<i>Sykes v. Harris</i> , 2016 WL 3030156 (S.D.N.Y. May 24, 2016) .....	8, 11, 12
<i>Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.</i> , 396 F.3d 96 (2d Cir. 2005).....	7

Co-Lead Counsel to the eight certified Plaintiff Classes in the above-captioned class actions respectfully submit this memorandum of law in support of their motion for an award of fees and reimbursement of litigation expenses.

### **PRELIMINARY STATEMENT**

As detailed in the accompanying Motion for Final Approval of Class Settlements, the hard-fought litigation among these Plaintiff Classes and the Republic of Argentina (“Argentina”) is now on the cusp of conclusion by virtue of the class settlement. The class settlement is an extremely good outcome for the class members given that (i) Argentina steadfastly refused to pay or negotiate with “holdouts” for fifteen years, (b) even if judgments were in place, few assets have been found to collect on, (c) more than half the class bond series would have been excluded from Argentina’s “public offer” based on Argentina’s position concerning bonds “prescribed” allegedly by statutes of limitations, and (d) the majority of the claimants hold relatively modest amounts of bonds that never would have justified bringing their own lawsuits, let alone pursuing those actions for more than a decade.

The response to the long-awaited settlement has been tremendous and confirms it is a very fair and positive outcome for the classes. Claims have been filed for more than \$140 million in principal across the eight actions. That equates to a total settlement fund of roughly \$210 million.

These positive results—that will finally place actual cash in the hands of the class members—are the direct product of more than twelve years of litigation. As the Court has witnessed, and as detailed below, class counsel’s efforts in these eight cases have been tireless and have run the gamut from the initial pleadings to fact and expert discovery (including depositions) to multiple rounds of motions (including efforts to enforce class judgments) and no fewer than four appearances before the Second Circuit. And all of this work—thousands of

hours of time across two continents—has been done without compensation and without any guarantee of compensation. Likewise, class counsel’s firms have incurred nearly \$1 million in expenses—all of which has gone unpaid over the course of more than a decade.

In accordance with well-established law, Co-Lead Counsel now seek an award of approximately \$35.3 million in fees (or 33.3% of the settlement fund, whichever is less) and \$914,513 in expenses, plus interest. As detailed below, these amounts are well within the range of awards that courts in this Circuit and others have approved as reasonable compensation for class counsel’s efforts, the results achieved, and the risk they bore in prosecuting the cases for more than twelve years with no guarantee that they would ever be paid.<sup>1</sup>

An award of \$35.3 million is just a 3 times multiple of the underlying “lodestar” of \$11.7 million. That multiple at the extreme low end of the range of multipliers “between 3 and 4.5 [that] are common” in this Circuit. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005). *Infra*, I.B. And it is especially justified in this case given how long counsel has invested time and effort without pay—and without the time value of money—and the 100% risk counsel took in pursuing these cases for twelve years when Argentina showed no signs that it would ever pay or settle.

\$35.3 million also equates to roughly 17% of the \$210 million settlement fund, based on current claims. The award is therefore eminently reasonable from a “percentage” perspective. Awards equating to 30% or more are “routinely” approved in such pure contingency cases.

*Infra*, I.C.

---

<sup>1</sup> We understand that prior counsel, Guillermo Gleizer, intends to request an award of fees and expenses. Co-Lead Counsel Diaz Reus & Targ has attached certain records concerning Mr. Gleizer’s time, but cannot attest to their veracity. Declaration of Marta Colomar-Garcia, Exhibit C. We reserve the right to address any application by Mr. Gleizer in our reply or as the Court otherwise directs.



For all of these reasons, Co-Lead Counsel respectfully move for an award of \$35,387,938.50 in fees (or 33.3% of the settlement fund, whichever is less) and \$914,513.80 in reimbursement for expenses.

### **RELEVANT BACKGROUND**

#### **A. The Substantial Effort Co-Lead Counsel Made to Prosecute These Cases**

Like counsel, the Court has lived and breathed these eight cases since 2004. It is suffice to say the Argentina was a formidable defendant and that these class actions, in particular, proved to be especially “complex” because of the “continuous holder” requirement. *Seijas v. Rep. of Arg.*, 606 F.3d 53, 55-56 (2nd Cir. 2010). The docket in just the lead case, Seijas, 04-cv-400, runs to nearly fifty pages on ECF and encompasses more than 300 entries. Because the Court is intimately familiar with the substance and history of these eight cases, we will not burden the Court with a detailed recital of all that has gone into prosecuting them.

In summary Co-Lead Counsel’s work on these eight cases included:

- Identifying and meeting with potential class representatives in Argentina;
- Drafting the initial and amended Class Complaints in eight cases;
- Moving for and obtaining class certification in all eight cases over Argentina’s opposition (affirmed on appeal);
- Moving for and obtaining Temporary Restraining Order and Preliminary Injunctions over Argentina’s opposition (vacated as moot on appeal);
- Moving for Turn Over of property;
- Filings addressed to Argentina’s 2010 Exchange Offer;
- Obtaining Restraining and Garnishing Notices on multiple entities (later vacated);

- Propounding and responding to written discovery, including collecting and producing client documents;
- Subpoenaing third party discovery from institutions such as the Depository Trust Company;
- Preparing and defending fact witnesses in eleven depositions;
- Preparing multiple expert reports on continuous holder and damages issues;
- Preparing and defending expert witnesses in deposition;
- Twice moving for and obtaining summary judgment and judgments from this Court in all eight cases over Argentina's opposition (remanded on appeal for additional findings);
- Moving to accelerate the class bonds over Argentina's opposition (affirmed on appeal);
- Moving to modify the class definitions over Argentina's opposition (reversed on appeal as in excess of mandate);
- Briefing and argument before the Second Circuit in four separate appeals, three taken by Argentina;
- Preparing and disseminating class notice and administering opt out process;
- Preparing and disseminating Request for Proof of Claims and administering Proof of Claim process;
- Briefing and arguing before this Court on multiple occasions concerning extension of the *pari passu* injunctions to the eight classes and in opposition to Argentina's request to vacate the *pari passu* injunctions;
- Negotiating and drafting the Settlement Agreement and Motion for Preliminary Approval;

- Preparing Notice and Summary Notice of Settlement and working with administrator (Gilardi & Co.) to disseminate the notices of settlement;
- Detailed review of Settlement Claim Forms and supporting materials, including innumerable telephone conferences and emails with individual claimants and class action services.

Declaration of Jennifer R. Scullion in Support of Award of Fees and Expenses, ¶ 3.

**B. The Fees and Expenses for Which Class Counsel Have Not Been Paid**

As detailed in the accompanying declarations, the Co-Lead Counsel firms have invested more than 22,000 hours in prosecuting these eight cases across two continents for more than twelve years.<sup>2</sup> The combined lodestars of three Co-Lead Counsel firms is approximately \$11.8 million. The rates on which each firm's lodestar is calculated range from \$125-\$975/hour for lawyers, paralegals and other professionals. The average rate for the lawyers is approximately \$535/hour, including partner rates of \$650-975/hour.

The accompanying declarations also attest to costs and expenses invested by the Co-Lead Counsel firms to pay for expert witnesses, transcripts, publication and distribution of class notice, computerized research, court filings duplication of documents, local and international travel, and other incidental expenses typical of complex litigation. Those expenses, none of which have been reimbursed, total \$914,513.80.

---

<sup>2</sup> See Declaration of Jennifer R. Scullion in Support of Motion for an Award of Fees and Expenses (attesting to fees and expenses of Proskauer Rose LLP), Declaration of Marta Colomar-Garcia in Support of Award of Attorneys' Fees and Reimbursement of Counsel's Litigation Expenses (attesting to fees and expense of Diaz Reus & Targ LLP) and Declaration of Saul Roffe in Support of Award of Fees and Reimbursement of Counsel's (Litigation Expenses (attesting to fees and expenses of Sirota & Sirota and the Law Offices of Saul Roffe as successor in interest to Sirota & Sirota).

## ARGUMENT

### **I. THE COURT SHOULD APPROVE A FEE AWARD OF \$35.3 MILLION TO THE THREE CO-LEAD COUNSEL FIRMS**

#### **A. The Relevant Legal Standards**

Counsel representing classes of plaintiffs on a wholly contingent basis are entitled to a “reasonable fee—set by the court—to be taken from the fund” generated by the settlement agreement. *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000).

There are two methods to assess a reasonable fee: the lodestar method and the percentage method and. The lodestar method calculates fees by multiplying hours reasonably expended against the reasonable hourly rate for comparable services in the locale, with the resulting “lodestar” enhanced through “multipliers” to compensate for the length of time the lawyers worked unpaid and their risk in doing so. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355 (S.D.N.Y. 2005). Multipliers “between 3 and 4.5 are common.” *Id.* at 357. Under the percentage method, the fee award is simply a percentage of the fund created under the settlement. *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 122 (2nd Cir. 2005).

The trend in the Second Circuit is to combine both methods by evaluating the requested fee award as a percentage of the overall amount of the settlement and, as a “cross-check” considering how the requested fee award compares to the underlying “lodestar,” i.e., how many multiples of the “lodestar” does the fee award represent. *Wal-Mart Stores*, 396 F.3d at 121; *Goldberger*, 209 F.3d at 50; *WorldCom*, 388 F. Supp. 2d at 355.

Under either method, courts will compare the percentages and lodestar “multiples” to those awarded in similar cases, with the reasonableness of the awarded assessed based on the following six “*Goldberger*” factors:

1. The actual time and labor expended by counsel;

2. The magnitude of the case, as well as its complexity;
3. The risk of the litigation (assessed from the perspective of counsel at the outset of the case);
4. The quality of the representation;
5. The ratio of the requested fee to the settlement; and
6. Public policy considerations.

**B. The Requested Fee of \$35.3 Million is Fair and Reasonable Under the Lodestar Method**

The requested fee of \$35.3 million is fair and reasonable from the “lodestar” perspective. The combined lodestars of three Co-Lead Counsel firms is approximately \$11.8 million, representing 22,600 hours of lawyer and other professional time. Those hours are the result of the intensive effort required to develop and prosecute these eight class actions over the course of more than twelve years, including multiple fact and expert depositions, multiple rounds of judgments and motions to enforce the judgments, and four appeals before the Second Circuit.<sup>3</sup>

The rates on which each firm’s lodestar is calculated range from \$125-\$975/hour for lawyers, paralegals, and other professionals. The average rate for the lawyers is approximately \$535/hour, with the rates for partners topping out at \$650-975/hour. Those rates are themselves reasonable, as shown by comparison to the rates currently charged by lawyers at other New York City business litigation firms that have been involved in the Argentine Sovereign Bond litigations. Bankruptcy filings, for example, show the following rates charged by the following firms:

---

<sup>3</sup> The lodestars do not include time spent preparing this fee application, for which no recovery is sought.

- Cleary, Gottlieb, Steen & Hamilton LLP (which has represented the Republic of Argentina in the Argentine Sovereign Bond litigations): rates ranging from \$480 for associates to \$1,250/hour for partners;
- Cravath, Swaine & Moore LLP (which has represented the Republic of Argentina in the Argentine Sovereign Bond litigations): rates ranging from \$535 for associates to \$1,250/hour for partners, including \$1,230/hour for partner Michael Paskin who served as lead counsel for Argentina in these cases in early 2016; and
- Gibson, Dunn & Crutcher LLP (which has represented NML Capital in the Argentine Sovereign Bond litigations): rates ranging from \$480/hour for associates to \$1,295/hour for partners.

Scullion Decl., Exh. C (excerpts from fee petitions in bankruptcy proceedings).

A \$35.3 million fee award represents a multiplier of 3 of the \$11.8 million lodestar. Again, that multiplier falls comfortably within the range of lodestar multipliers that courts in this Circuit and elsewhere have found reasonable. *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d at 357 (explaining that multipliers “between 3 and 4.5 are common.”); *Sykes v. Harris*, 2016 WL 3030156, at \*16 (S.D.N.Y. May 24, 2016) (approving multiplier of 3.3 as “consistent with other cases in the Second Circuit); *Davis, v. J.P. Morgan Chase & Co.* 827 F. Supp. 2d 172, 185 (W.D.N.Y, 2011) (awarding a multiplier of 5.3 times the lodestar); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) (“In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court.”).

A multiplier of 3 is particularly fair in this case.

First, the multiplier is appropriate given the all too real risk that class counsel faced in these cases of never being able to recover for the classes. As this Court is well aware, until the

Macri administration came in in late 2015, every prior Argentine government had steadfastly refused to pay the “holdouts” anything, refused to negotiate, and refused to honor lawful judgments and orders of the U.S. courts. Even when judgments were obtained, few assets could be found to foreclose on or garnish under the F.S.I.A. E.g., *Seijas v. Rep. of Arg.*, 2011 WL 1327655 (S.D. N.Y. 2011) (vacating restraining orders and garnishment concerning Banco de la Nacion (Argentina); *Seijas v. Rep. of Arg.*, 2011 WL 1137942 (S.D.N.Y. 2011) (dismissing claims against BNA as alter ego of Argentina; *Seijas v. Rep. of Arg.*, 04-cv-400 (TPG); Dkt. No. 137 (denying motion for turn-over of property of Aerolineas Argentinas). Thus, unlike most securities fraud class actions that everyone knows will settle for some amount, class counsel here were completely exposed with absolutely no guarantee of recovery.

Second, a multiplier is needed here to compensate class counsel for the extreme length of time that they have toiled without compensation. Time is money. Simply paying class counsel now for the fees they earned in 2004, 2006, etc. (and at their historical rates) is not enough because it ignores the lost decade or more of the time value of those earned fees.

**C. The Requested Fee of \$35.3 Million is Fair and Reasonable Under the Percentage Method**

The Settlement Claims submitted for approval in this motion total more than \$140 million in principal. The Settlement Agreement provides for payment of 150% of principal, or \$210 million. The requested fee award of \$35.3 million is reasonable on its face because it equates to roughly 17% of that potential \$210 million settlement fund.

A fee award that equates to 17% of the settlement payout is well within the range of awards approved in this Circuit and elsewhere. E.g., *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, (S.D.N.Y. 2015) (award of 20.2% of fund was “well within the mainstream of fee awards approved for class counsel” in the Southern District of New York); *see also* 228 F. Supp.

2d 1061, \*1066 (E.D. Mo. 2002) (approving fee of \$58.8 million representing 18% of the settlement recovery for NationsBank Plaintiffs). Indeed, Courts in this Circuit “routinely award” fees that run to “**30% “or even a little more”** of class settlement funds. *In re Fuqi Int’l., Inc. Sec. Litig.*, 2016 WL 736649, at \*10 (S.D.N.Y. 2016) (emphasis added); *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at \*12 (S.D.N.Y. 2014); *In re Beacon Assocs. Litig.*, 2013 WL 2450960 at \*5 (S.D.N.Y. 2013).<sup>4</sup>

Importantly, even if the actual settlement payout winds up being lower than \$210 million—because the final tenders for payment do not equal the amounts claimed through the Settlement Claim Forms—class counsel already have committed to the classes that class counsel fees will never exceed one-third of the actual settlement payout. Scullion Preliminary Approval Decl., [Dist No. 310] Exh. C (Proposed Class Notice of Settlement) at 7 (“How will the lawyers be paid?”). Thus, the actual award here will be an amount that is the lower of \$35.3 million or

---

<sup>4</sup> See also, e.g., *City of Providence*, 2014 WL 1883494, at \*20 (33% of \$15 million settlement); *Fogarazzo v. Lehman Bros. Inc.*, 2011 WL 671745, \*4 (S.D.N.Y. 2011) (33.3% of \$6.75 million settlement); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165 (S.D.N.Y.2001) (33% of \$13 million settlement); *In Van Der Moolen Holding N.V. Sec. Litig.*, 03-cv-8284, Dkt. No. 45, Ex. 11 (33 1/3% of \$8 million settlement); *Maley*, 186 F.Supp.2d at 367-68 (33 1/3% of \$11.5 million settlement); *In re Apac Teleservs., Inc. Sec. Litig.*, 97 Civ. 9145, slip op. at 2 (S.D.N.Y. June 29, 2001) (Dkt. No. 54) (33 1/3% of \$21 million settlement); *Newman v. Caribiner Int’l Inc.*, No. 99 Civ. 2271 (S.D.N.Y. Oct. 25, 2001) (Dkt. No. 31), (33 1/3% of \$15 million settlement); *Moloney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at \*5 (S.D.N.Y. Mar. 31, 2009) (“Class Counsel’s request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.”); *Khait v. Whirlpool Corp.*, 2010 WL 2025106, at \*8 (E.D.N.Y. Jan. 20, 2010) (33% of \$9.25 million settlement). Courts in other jurisdictions also have found that fees of 33% are reasonable. See, e.g., *Grant Barfuss v. DGSE Companies, Inc., et al.*, No. 12 Civ. 3664 (N.D. Tex. Oct. 21, 2013) (Dkt. No. 59) (33% of \$1.7 million settlement); *In re Pilgrim’s Pride Corp. Sec., Litig.*, No. 08 Civ. 419 (E.D. Tex. May 2, 2012) (Docket # 85) (awarding 34% of \$1.5 million settlement); *In re Heritage Bond Litig.*, 2005 WL 1594403, at \*23 (C.D. Cal. June 10, 2005) (awarding 33 1/3% of \$27.278 million settlement); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 498 (E.D.Pa.2003) (1/3% of \$7 million settlement); *In re E.W. Blanch Holdings, Inc. Sec. Litig.*, 2003 WL 23335319, at \*3 (D. Minn. June 16, 2003) (33 1/3% of \$20 million settlement); *In re Green Tree Fin. Corp. Stock Litig.*, Nos. 97-2666 and 97-2679, slip. op. at 9 (D. Minn. Dec. 18, 2003) (Dkt. No. 140) (33 1/3% of \$12.45 million settlement).



33.3% of the total Settlement Amount paid by Argentina under the Settlement Agreement. As shown above, 33.3% (the maximum percentage that might apply here under Co-Lead Counsel's request) is a percentage that courts in this Circuit "routinely" approve and award as reasonable compensation in pure class contingency cases such as this.

**D. The "Goldberger" Factors Confirm that the Requested Fee of \$35.3 Million is Fair and Reasonable**

An analysis of the six *Goldberger* factors confirms that the requested fee of \$35.3 million is fair and reasonable.

**1. The Risks of the Litigation Justify the Award**

The risk to class counsel in this case more than justifies the requested award. The Second Circuit has made clear that the risk of success is "perhaps the foremost factor to be considered in determining" the reasonableness of an attorneys' fees request. *Goldberger*, 209 F.3d at 54; *see also Sykes*, 2016 WL 3030156, at \*16. The risk is measured at the outset of the case and not at the time of settlement. *Goldberger*, at 55. Here, the risk to class counsel was enormous.

This was not a standard securities fraud case in which settlements are common and often come early. Nor was this even a case in which the classes (and, therefore, class counsel) could hope to collect on judgments even if judgments were obtained. These were eight class actions certified under a "continuous holder" definition that presented substantial obstacles even to getting judgments (despite this Court's repeated orders granting judgments as best it could). Most importantly, even when judgments were obtained, Argentina simply refused to pay. As this Court observed time and again, until the Macri administration took office in late 2015, Argentina had no intention to voluntarily pay any portion of what it owed to any of the holdouts. *E.g., NML Capital, Ltd. v. Rep. of Arg.*, 2016 WL 715732, at \*1-3 (S.D.N.Y. 2016). Indeed, it passed legislation making it unlawful to deal with the holdouts (which, in part, led to the *pari*

*passu* injunctions). *Id.* Thus, at the outset of these cases, there was an all too real risk of zero recovery.

Class counsel's willingness to take on that enormous risk and to stand by these eight classes throughout the long, dark period that preceded the Macri administration weighs heavily in favor of the requested fee award. *See, e.g., Sykes*, 2016 WL 3030156, at \*16 (awarding fees 3.3 times the lodestar where class counsel spent thousands of hours litigating cases for seven years with a "high" risk of no recovery); *Savani v. UBS Prof'l Solutions, LLC*, 2014 WL 172503, at \*5 (D.S.C. Jan. 15, 2014) ("In complex and multi-year class action cases, the risks of the litigation are immense and the risk of receiving little or no recovery is a major factor in awarding attorney's fees. The risk of no recovery in complex cases of this sort is not merely hypothetical.)

## **2. The Amount and Quality of the Work, and the Magnitude and Complexity of the Cases, Justify an Award**

Counsel have expended substantial time and effort prosecuting these actions for twelve years. The three Co-Lead Counsel firms have collectively devoted more than 22,000 hours at an average rate of \$535/hour for lawyers. The amount and quality of the work required to litigate these cases cannot be understated. These were eight class actions with class members around the globe. Argentina employed a litigation-at-all-costs approach (to try to wear down the hold-outs) and retained one of the foremost sovereign debt restructuring firms in the world (Cleary, Gottlieb) to defend it. The case also presented a uniquely difficult and complex "continuous holder" class definition and similarly difficult and complex issues under the Foreign Sovereign Immunities Act (especially concerning enforcing judgments).

The formidable nature of these cases is perhaps most readily seen by the fact that Argentina sought four appeals to the Second Circuit (the first of which the Circuit declined to permit) from class certification and summary judgment orders that this Court granted after

lengthy briefing and factual development. In those multiple appeals, class counsel successfully defended this Court's original class certification order, successfully defended the right to obtain aggregate judgments (provided they are based on sufficient evidence), and successfully defended the right of the class representatives to accelerate the bonds on behalf of the certified classes. In doing so, class counsel ensured that the statute of limitations stopped running for class members in 2004. This was critical because it allowed holders of more than half of the class bonds were in a position to be able to negotiate for the settlement in 2016 when non-class holders of similar bonds were shut out by Argentina's position that it would not accept "prescribed" claims into the Public Offer settlement.

Even the settlement claim administration process has been time and labor intensive, requiring detailed review of individual claims and documentation, as well as numerous conferences with Argentina's counsel on a host of issues.

The amount and quality of class counsel's work on these large and complex cases weighs strongly in favor of the requested fee award.

### **3. The Amount of Fees is Reasonable in Relation to the Size of the Settlement**

"In determining whether the Fee Application is reasonable in relation to the settlement amount," court also compare how the ratio of the fees to the settlement compares with the ratios approved in other cases. *In re Marsh & McLennan Co. Sec. Litig.*, 2009 WL 5178546, at \*19 (S.D.N.Y. Dec. 23, 2016). As shown above, the fee award requested here is comfortably within the range of other awards, whether from the perspective of a lodestar multiple or percentage of settlement fund.

#### 4. Public Policy Supports the Requested Fee Award

Public policy strongly favors rewarding lawyers for filing, prosecuting, and settling class actions like these. *See, e.g., In re Flag Telecom*, 2010 WL 4537550, at \*29 (“the courts should award fees which will adequately compensate Lead Counsel for the value of their efforts, taking into account the enormous risks they undertook.”); *Hicks v. Stanley*, 2005 WL 2757792, at \*9 (S.D.N.Y. Oct. 24, 2005) (“To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.”); *see also In re Med. X-Ray Film Antitrust Litig.*, 1998 WL 661515, at \*8 (E.D.N.Y. Aug. 7, 1998) (“[A]n adequate award furthers the public policy of encouraging private lawsuits.”). Public policy particularly favors rewarding class counsel in these cases because (1) the vast majority of the class claims never would have been pursued individually, (2) the pursuit of these class actions along with the other “holdout” litigations is what eventually brought Argentina to the table to settle with its bondholders, and (3) but for the initiation of these eight class actions at great risk to class counsel in 2004, many of the holders in fact would have been shut out of Argentina’s eventual Public Offer based on allegedly holding “prescribed” claims.

#### E. The Requested Expenses of \$914,513 are Fair and Reasonable

Co-Lead Counsel also seek reimbursement for a total of \$914,513.80 in expenses, plus interest, incurred in prosecuting these cases over the past twelve years. These include expenses for expert witnesses, transcripts, publication and distribution of class notice, computerized research, court filings, duplication of documents, local and international travel, and other incidental expenses typical of complex litigation. Scullion Decl., ¶10. These are expenses that customarily would be charged to clients in non-contingency cases. It is well-settled that class counsel should be reimbursed for reasonable expenses incurred in connection with representation of the classes and that such reimbursement can be taken from the settlement fund prior to

distribution of net settlement funds to class members. *E.g., In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) (approving expenses of \$3 million; citing *TBK Partners, Ltd. v. Warshow*, 1977 WL 1047, at \*3 (S.D.N.Y. Oct. 5, 1977) (“[o]f course, [plaintiffs' counsel] are also entitled to reimbursement for their expenses.”); *Anwar v. Fairfield Greenwich Ltd.*, 2012 WL 1981505, at \*3 (S.D.N.Y. June 1, 2012) (“Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses;” citing *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir.1987)). Because the expenses have gone unreimbursed for years, an award of reasonable interest at a rate to be determined by the Court also is appropriate to compensate for the lost time value of the money.

### **CONCLUSION**

For all of the above reasons, Co-Lead Counsel respectfully request that the Court award Co-Lead Counsel attorneys’ fees of \$35,387,938.50 (or 33.3% of the settlement fund, whichever is less) and \$914,513.80, plus interest, in reimbursement for expenses

Dated: New York, New York  
October 3, 2016

By: /s/ Jennifer R. Scullion

Jennifer R. Scullion  
PROSKAUER ROSE LLP  
Eleven Times Square  
New York, NY 10036  
(212) 969-3000  
jscullion@proskauer.com

Saul Roffe  
Law Offices of Saul Roffe, Esq.  
52 Homestead Circle  
Marlboro, NJ 07746  
(732) 375-9220  
sroffe@gmail.com

Michael Diaz, Jr.  
Gary Davidson  
Marta Colomar-Garcia  
DIAZ REUS & TARG LLP  
100 S.E. 2<sup>nd</sup> Street, Suite 3400  
Miami, FL 33131  
(305) 375-9220  
[mdiaz@diazreus.com](mailto:mdiaz@diazreus.com)  
[gdavidson@diazreus.com](mailto:g davidson@diazreus.com)  
[mcolomar@diazreus.com](mailto:mcolomar@diazreus.com)  
*Co-Lead Counsel for Plaintiffs*