UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SILVIA SEIJAS, et al,	:	04 Civ. 400 (TPG)
Plaintiffs,	:	
-against-	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
SILVIA SEIJAS, et al,	:	04 Civ. 401 (TPG)
Plaintiffs,	:	
-against-	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
CESAR RAUL CASTRO,	:	04 Civ. 506 (TPG)
Plaintiff,	:	
-against-	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
HICKORY SECURITIES LTD.,	:	04 Civ. 936 (TPG)
Plaintiff,	:	
-against-	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

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

ELIZABETH ANDREA AZZA, et al,	Plaintiffs,	04 Civ. 937 (TPG)
-against-		
THE REPUBLIC OF ARGENTINA,	Defendant.	
ELIZABETH ANDREA AZZA, et al.,	Plaintiffs,	04 Civ. 1085 (TPG)
-against-		
THE REPUBLIC OF ARGENTINA,	Defendant.	
EDUARDO PURICELLI,	Plaintiff,	04 Civ. 2117 (TPG)
-against-		
THE REPUBLIC OF ARGENTINA,	Defendant.	
RUBEN DANIEL CHORNY,	Plaintiff,	04 Civ. 2118 (TPG)
-against-		
THE REPUBLIC OF ARGENTINA,	Defendant.	

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. 2nd Street
Miami, FL 33131
(305) 375-9220
Co-Lead Counsel for Plaintiff Classes

Co-Lead Counsel in the above-captioned class actions respectfully submit this brief reply in further support of their motion for an award of fees and reimbursement of litigation expenses and in response to certain objections from class members and to filings by Guillermo Gleizer.

ARGUMENT

I. THE COURT SHOULD APPROVE A FEE AWARD OF 33% OF THE SETTLEMENT FUND, AFTER REIMBURSEMENT OF COSTS

In our moving papers, Co-Lead Counsel sought an award of the lesser of $35.3 million in fees **or** 33.3% of the settlement fund. At this time, and given that the current settlement fund is just over $22 million ($14.7 million in claims paying at 150% of face value), Co-Lead Counsel simply seek an award of $7,043,691, 33.3% of the settlement fund after costs of $914,513 (which are addressed in Section II below). An award of $7 million in fees represents a 40% discount off Co-Lead Counsel's total lodestar of $11.8 million.[1]

As laid out in the moving papers, it is well-established that class counsel are entitled to an award of reasonable costs and fees from a "common fund" created by a class settlement agreement. Such awards are, in fact, necessary to incentivize lawyers to file class actions in the first place and to zealously advocate for the classes for long periods when counsel are not being paid at all. Because of the inherent risk in taking a class action purely on a contingency basis, courts "routinely" award not only costs, but an additional 33% of the settlement fund to compensate class counsel for their work. Pltfs. Mem. of Law re Mtn. for Fees and Costs at 9-10.

The moving papers established the reasonableness both of the amount of time invested in these eight class actions for more than twelve years, as well as the reasonableness of the rates on

[1] Co-Lead Counsel would hold the fee award in escrow while any issues concerning any claims for BNYM account holders are resolved (so that fees and costs may be apportioned appropriately among any such claims and any current claims). If any such additional claims warrant, Co-Lead Counsel may seek recovery of their full, combined lodestar of $11.8 million, with a multiple, but still capped at 33% after costs.

which counsel's "lodestars" are based (rates far below those charged by its opposing counsel and by counsel for other bondholders, such as NML). *Id.* at 7-11. As this Court witnessed, class counsel in these eight cases had a formidable foe—a sovereign nation—whose strategy was to hire one of the world's leading sovereign debt law firms (Cleary, Gottlieb) to fight every possible issue as long and as hard as it could (within ethical limits). Counsel for Argentina disputed everything from the most basic ministerial issues, such as whether and how bonds that were undeniably in default could be "accelerated," to the fundamental question of who is included in the eight classes, on which there was round after round of litigation and discovery and appeals. All of this required a team of class counsel to research the relevant facts and law (including in Argentina), draft and file countless briefs, letters to the Court, and other papers, defend depositions, and litigate and argue motions and appeals before this Court and the Second Circuit.

Argentina's hope in adopting its scorched-earth strategy was that these classes (and other bondholders) would simply give up. But these classes did not give up. Among other things, these eight classes were among the only bondholders (other than NML) who repeatedly sought to levy on assets from which bondholders actually might be paid. *E.g.*, Dkt. Nos. 42-46, 129-131.[2] And the classes in these cases fought four appeals before the Second Circuit, including three taken by Argentina after this Court agreed with and ruled for the class plaintiffs.

In short, these were not easy or routine cases and class counsel had to invest substantial time and resources to litigate them on behalf of eight classes over twelve years across two continents and through four appeals. The fees sought—at a discount of 40% off lodestar and with no multiplier for risk—are eminently reasonable under these circumstances.

[2] All references are to the docket in *Seijas v. Argentina*, 04-cv-400, unless otherwise noted.

Respectfully, the handful of objections to the request for fees ignore the exceptionally difficult and hard-fought nature of these eight cases. Moreover, arguments such as Mr. Scardino's (Scullion Reply Decl., Exh. C) that "Argentina inevitably had to pay" (and, therefore, the class actions were not useful) do not comport with reality.

As this Court knows all too well, Argentina did not "have to pay" and, for years, refused to pay and made every effort to evade the Court's *pari passu* orders. Most importantly, even after the Macri administration came in and, eventually, offered the "public offer," bondholders outside the class actions that hold the same bonds as Mr. Scardino are not being paid. Mr. Scardino holds bonds that matured in 2008 (Scardino Objection, page 1). Argentina has taken the position that such bonds are subject to a six-year statute of limitations and are "prescribed claims" that are not eligible for the "public offer" settlement. *E.g.*, *ARAG-A Ltd. v. Rep. of Argentina*, 2016 WL 2772644 (S.D.N.Y. 2016) (Argentina Reply Mem. of Law) at Section E. The class actions, however, avoid the "prescription" bar because the statute of limitations for all class members was tolled when the class complaints were filed in 2004. *E.g.*, *Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 351 (1983) (confirming that filing of class action tolls statute of limitations for all putative class members). Indeed, more than half the class bonds would be barred from the "public offer" (under Argentina's view) but for the class tolling of the statute of limitations. Thus, the class settlements were, in fact, better than Mr. Scardino and others could have achieved on their own as a result of the risk taken and efforts made by class counsel invested in these cases for the last twelve years since the cases were filed in 2004.

II. THE COURT SHOULD APPROVE AN AWARD OF $914,513.80 IN COSTS AND EXPENSES

Co-Lead Counsel also have requested reimbursement for their reasonable costs and expenses of $914,513.80. As previously detailed, these include expenses for expert fees (Prof.

Michael Adler and Dr. Scott Hakala), transcripts, Westlaw/LEXIS research, travel, and other ordinary litigation expenses. The magnitude of the expenses is particularly reasonable considering the length of the case (twelve years) and the work involved in litigating it (numerous fact depositions, two expert reports and expert depositions, four appeals, and many motions and other court filings and appearances). It cannot be forgotten, for example, that class counsel had to litigate many difficult and legally complex issues that, among other things, required substantial legal research. These included litigating the propriety of "aggregate" damages awards (which we prevailed on before this Court and the Second Circuit), litigating the propriety of class damage estimates (which this Court agreed with, but which the Second Circuit did not), litigating the propriety of modifying the class definition to include all bond holders (which, again, this Court agreed with, although the Second Circuit did not), and litigating questions of which entities can be attached as "alter egos" of a sovereign nation, such as Argentina. Pltfs. Mem. of Law re Mtn. for Fees and Costs at 3-5.

III. THE COURT SHOULD NOT DETERMINE WHETHER MR. GLEIZER IS ENTITLED TO ANY ALLOCATION OF ANY AWARD OF FEES AND SHOULD NOT INCLUDE MR. GLEIZER'S UNSUPPORTED TIME STATEMENTS

Co-Lead Counsel agrees with Mr. Gleizer that this Court should not decide whether any allocation is owed to him. It is undisputed that, in 2010, this Court confirmed that Mr. Gleizer was no longer class counsel. His claim, if any, is based on purported agreements with other law firms. Claims based on those agreements are not part of these lawsuits (and may not even be within federal subject matter jurisdiction at all).

Co-Lead Counsel do object, however, to including any of Mr. Gleizer's "lodestar" in any fee award. Mr. Gleizer admits in his October 3, 2016 declaration that he did not maintain contemporaneous time records. *See* Gleizer Decl., 10/3/16, ¶ 39 ("I typically did not keep or retain daily time records."). His submission and request for a lodestar of $5.2 million is based

wholly on "estimates" that he has created in 2016 for time allegedly worked six to thirteen years ago (2003-2010). It is well-established that no fees can be awarded without cotemporaneous time records and that after-the-fact recreations (or creations) cannot support a fee award. *E.g.*, *Scott v. City of New York*, 626 F.3d 130, 133 (2d Cir.2010) ("[C]ontemporaneous time records are a prerequisite for attorney's fees in this Circuit.") (quoting *New York State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1147 (2d Cir. 1983); *Kottwitz v. Colvin*, 114 F. Supp.3d 145, 147 (S.D.N.Y. 2015) (denying award of fees where counsel conceded he failed to maintain contemporaneous time records).

CONCLUSION

For all of the above reasons, Co-Lead Counsel respectfully request that the Court award Co-Lead Counsel $914,513.80 in costs and expenses and attorneys' fees of 33.3% of the net settlement fund after costs and expenses.

Dated: New York, New York
November 1, 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. 2nd Street, Suite 3400
Miami, FL 33131
(305) 375-9220
mdiaz@diazreus.com
gdavidson@diazreus.com
mcolomar@diazreus.com
Co-Lead Counsel for Plaintiffs