UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HENRY H. BRECHER, Individually And On Behalf Of All Others Similarly Situated,	.	No. 06 CV 15297 (TPG)
Plaintiff,	.	
v.	.	
REPUBLIC OF ARGENTINA,	.	
Defendant.	.	

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S APPLICATION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND PAYMENT OF SERVICE AWARD TO PLAINTIFF HENRY H. BRECHER

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I. INTRODUCTION

After nearly 10 years, this litigation is finally nearing its conclusion, thankfully, a successful conclusion. The Settlement achieved by Class Counsel requires Argentina to pay holders of Republic of Argentina European Medium Term Note Bonds, with a coupon rate of 9.25%, a maturity date of July 20, 2004, and with ISIN XS0113833510 (the Bond) 150% of their outstanding principal, minus any fees and expenses awarded by the Court as a result of this motion. As further detailed below, Class Counsel believes this represents a class recovery of *approximately 65% of their damages*. This is an excellent result, especially considering that those who participated in Argentina's 2005 and 2010 Exchange Offers, received only about 30 cents on the dollar,[1] and, Argentina's former President vowed that Argentina would never pay plaintiff and the class more than it paid to those who participated in the Exchange Offers.[2]

For its efforts, Class Counsel seek an attorneys' fees award ranging from 25% to 33% of the total funds paid by Argentina pursuant to the Settlement, depending on, as further explained below at pp. 4-6, the ultimate Settlement amount. Regardless of the ultimate Settlement amount, the fee sought by Class Counsel fits comfortably within the percentages routinely awarded by courts in this Circuit and elsewhere. Class Counsel also seeks reimbursement of $37,540.40 in expenses that Class Counsel reasonably incurred in prosecuting this case. To date, Class Counsel has not been paid any fees, or had any of its expenses reimbursed, in connection with its prosecution of this case.

And finally, Class Counsel requests that the Court award the named plaintiff, Henry H. Brecher, a $5,000 service award. Mr. Brecher has vigorously pursued this case since its inception nearly 10 years ago. Mr. Brecher, has been actively involved, producing documents, reviewing

[1] October 3, 2016 Declaration of Steve W. Berman, at Ex. 9 being filed concurrently (hereafter "Berman Decl.").

[2] *Id.* at Ex. 8.

pleadings, and was deposed by Argentina, among other activities. Collectively, during the pendency of this litigation, Mr. Brecher estimates he has spent well over 100 hours of his time in connection with this litigation. The $5,000 service award is on the low end of those routinely awarded in this Circuit, and respectfully, should be approved.

II. THE WORK UNDERTAKEN BY CLASS COUNSEL

This was no ordinary litigation. It involved extraordinary risk. It required Class Counsel to go toe to toe against a sovereign nation and its well-heeled defense counsel. Further, as the Court is all too aware, during the administration of former President Kirchner, Argentina had proudly and repeatedly claimed that it would never settle with the "vultures." Putting aside the fact that Mr. Brecher and the class he sought to represent were those who purchased prior to the inception of this litigation and held throughout, and therefore, were no "vultures," this attitude by Argentina's highest ranking official, made for an extremely difficult litigation dynamic. To make matters worse, Argentina had virtually no assets outside of Argentina that could have been seized to satisfy any judgment, in many ways, making it judgment proof. Given these variables, Argentina could have continued this litigation, and avoided paying any judgment, indefinitely.

In addition to these dynamics, Class Counsel faced the possibility that, at the end of this case, it would be left with literally no class. The class here involved "continuous holders" which meant that class members would be required to hold their Bonds, and refrain from liquidating them, during the entire pendency of this litigation, no matter how long it lasted (and every indication was it would and did last a long time). Thus, even though Argentina offered to exchange performing Bonds for the non-performing Bonds in 2010, an offer which almost 92% of all bondholders accepted, class members would have to forego the opportunity to monetize their Bonds in favor of seeking greater compensation at some indeterminate time in the future. Indeed, Argentina essentially

conceded in these proceedings that it sought to maintain the continuous holder class, in part, because it likely would result in an "inordinately small or zero-value 'aggregate' judgment because of the extensive trading that had occurred and continues to occur."[3] Consequently, Class Counsel's risk in taking such a case on a contingency basis was significantly higher than in most class actions.

In the face of all these risks, Class Counsel labored on, accepting even greater risk with each turn of events. As detailed in the accompanying Declaration of Steve W. Berman, Class Counsel has undertaken a significant amount of work in this matter on behalf of the plaintiff and the Class, skillfully navigating these turbid waters. Beginning with the initiation of the case, Class Counsel was required to investigate the multitude of litigations already underway to determine whether any of those actions involved the Bonds.[4] Once that was determined, Class Counsel then had to understand the extent to which plaintiff could even sue a sovereign nation, and if so, where such suit could be initiated.[5] Ultimately, based on the offering documents relating to the Bonds, Class Counsel determined that Argentina waived any sovereign immunity defense, and also agreed to subject itself to suit in New York.[6]

Following the initiation of this litigation, Class Counsel began class certification proceedings, obtained class certification, and then summary judgment against Argentina with respect to liability, and finally, successfully concluded a settlement. In fact, the Settlement was the first settlement Argentina reached in any of the class actions and likely "broke the ice," catalyzing additional class action settlements. And, importantly, throughout the pendency of this litigation, the statute of

[3] March 16, 2015 Brief of the Defendant-Appellant The Republic of Argentina at p. 9 in *Brecher v. Republic of Argentina*, 14-4385 (2d Cir.) (Dkt. No. 35).

[4] Berman Decl., ¶ 17.

[5] *Id.*

[6] *Id.*

limitations on the claims of the plaintiff and the class continued to be tolled pursuant to the *American Pipe* doctrine.[7]

Some may seek to diminish Class Counsel's achievements by arguing that the value of the results achieved must be reduced by the fact that Argentina has also extended a settlement offer to all bondholders of 150% of principal, and by developments in other cases which also put pressure on Argentina to settle. While both of these considerations are true, that kind of Monday morning quarterbacking is not the appropriate measure of the value Class Counsel delivered in this case. The risk Class Counsel took in this case must be evaluated at the time this litigation was commenced. And, at that time, as explained above, the risk of non-recovery was very high. So high, in fact, that other than Class Counsel, no other counsel came forward to represent this Class. Second, while there surely are developments outside of this class action which made it more likely that Argentina would settle, one cannot now "unscramble the egg" to determine the precise impact each had on settlement. At the end of the day, no one else stepped up to represent this Class, and in the absence of this case, Argentina did not need to settle with this Class, whose statutes of limitations would have run long ago in any jurisdiction (that we know of). Thus, Class Counsel should not be penalized simply because of the existence of other variables which made settlement more likely.

III. STATUS OF CLAIMS PROCESS AND EXPLANATION OF RANGE OF FEES SOUGHT

A. The General Status of the Claims Process

The Settlement is a "claims made" settlement. In other words, Argentina has not agreed to pay a specific dollar amount in settlement. Instead, it agreed to pay 150% of the outstanding principal of class members who submit a claim form. Therefore, it must be determined how many valid claims there are. Under the Settlement, Argentina and Class Counsel agreed that Class Counsel

[7] *American Pipe & Const. Corp. v. Utah*, 94 S. Ct. 756 (1974)

may seek attorneys' fees and reimbursement of expenses from the Settlement funds, and that Argentina would not oppose Class Counsel's request.[8]

To date, potential members of the Class have filed approximately 76 claims with the claims administrator. The Settlement requires that Class Counsel provide Argentina with copies of the filed claim forms along with any back-up documentation submitted with such claim forms.[9] Following receipt of that documentation, Argentina has 21 days to provide Class Counsel with any good-faith objections that it has with respect to the claim forms.[10]

Pursuant to the Preliminary Approval Order, the claims deadline was September 1, 2016. Following September 1, 2016, additional claim submissions continued to slowly roll in. Beginning Friday, September 16, once the claims documents had been properly processed by the claims administrator, Class Counsel began providing Argentina with copies of the claims documents. Argentina remains in the process of reviewing such documents in order to determine whether it has good-faith objections to the claim forms.

Of the approximately 76 claims, some were duplicates, and some were facially invalid (because for example they clearly purchased a bond not in this Class). Class Counsel and Argentina jointly agree these claims should be excluded. That leaves approximately 59 remaining claims, representing approximately $35,778,331.71 in principal claimed. A significant amount of the total claims come from a single claimant who is claiming $31,271,000 in claimed principal. This claimant, a large international financial institution, submitted electronic data purporting to substantiate their claim, but it appears that it sold their Bonds in June of this year, and therefore, its claim would be

[8] May 23, 2016 Settlement Agreement, ¶ 34 (attached as Ex. 1 to the May 23, 2016 Declaration of Jason A. Zweig (Dkt. No. 108-1)).

[9] *Id.* at ¶ 25.

[10] *Id.*

invalid.[11] Removing this claim, if all of the remaining claims are ultimately determined to be valid, these claims would yield a total settlement of $3,716,981.[12]

Thus, at this time, the precise settlement numbers from which to calculate the attorneys' fees sought from the Settlement remain in flux which is why, in this application, Class Counsel has merely identified a range of fees that they are seeking. If all of the current claims were deemed to be valid, and the Settlement was $3.7 million, Class Counsel respectfully requests the Court award it a 33% fee. Such a fee is on the low end of those fees routinely awarded in this Circuit on a settlement of this size. Class Counsel's requested fee percentage may decrease as the total settlement goes down (or as claims are deemed to be invalid) so as not to unduly burden the claimant pool with payment of fees. However, Class Counsel's requested fee will never exceed 33%. By the time of plaintiff's reply (November 1), Class Counsel hopes that the negotiations concerning the validity of the claims has concluded. Assuming they have, Class Counsel will update the claims figures, and the specific fee request.

B. Description of the Remaining Claims

Currently, there are about 42 claims of the approximately 76 that were submitted, over which the parties have not yet reached agreement as to their validity. The disagreements over their validity, generally relate to two issues: 1) the extent to which the documentation submitted by class members establishes their class bona fides; and 2) claims submitted after the formal September 1 deadline. The parties continue to work to try and resolve their disagreements over the claim forms, and await additional documentation requests from many of the class members. The parties will

[11] Class Counsel reserves their right to seek an appropriate fee from Goldman Sachs for receiving the benefits of Class Counsel's work, without paying for it. *See generally In re Linerboard Antitrust Litig.*, 292 F. Supp. 2d 644, 653 (E.D. Pa. 2003); *In re Zyprexa Prods. Liab. Litig.*, 594 F.3d 113 (2d Cir. 2010) (Kaplan, J. concurring); *Smiley v. Sincoff*, 958 F.2d 498 (2d Cir. 1992).

[12] This figure is arrived at by multiplying the total amount of claims by 150%, or $2,477,987.35 by 1.5.

continue to negotiate in good faith in an effort to resolve as many of the disputes as possible in the coming weeks. However, the Settlement Agreement contemplates that where there are disagreements, the Court will be the arbiter of such disagreements.[13]

1. Issues over documentation of the claims.

Some claimants have not yet provided account statements or other documents to confirm that they (or their families) held the relevant bonds as of the date that the class action was filed in December 2006. Class Counsel is aware that the Court may not rule until November 10, 2016 on this or other requests to allow supplemental proof or late claims to be submitted by October 21, 2016. Class Counsel therefore intends to continue to seek such additional proof and to confer with counsel for Argentina in an attempt to resolve as many outstanding claim issues as possible prior to the November 10 Fairness Hearing. Class Counsel strongly believes additional time should be permitted (through at least November 1, 2016) to allow the individual claimants, almost all of which are located in Italy, to try to find additional documentation, which is not an easy task since the documents concern transactions prior to December 2006. Alternatively, if there is evidence that the claimant has made diligent efforts to search for or obtain the documents, Class Counsel submits that the Court either should order that the claim be included in the Settlement based on the attestations under oath that the claimant has signed already and emails explaining the circumstances under which the bonds were acquired or set a deadline for the claimant to submit an affidavit to the same effect.

Argentina also has indicated that claimants also must provide documents showing that they currently hold the bonds for settlement. While most claimants have done so, a few have yet to submit such documentation of current holdings, perhaps due to language barriers or logistical difficulties. The Settlement Agreement does not require documentation of current holdings and,

[13] Dkt. No. 108-1, at ¶ 24 ("Upon agreement of the Settling Parties or Order of the Court with respect to the identity of and outstanding principal amounts held by Class Members . . . .").

instead, allows for an "attestation" that the "Class Member has held its Bonds continuously during the Class Period, and that it still holds such Bonds today."[14] The attestation referenced in Paragraph 24 is included in the settlement claim form that each claimant (or authorized representative) has signed "under penalty of perjury under the laws of the United States" in accordance with 28 U.S.C. § 1746.

The reason for using such attestations is that, as a practical matter, proof of current holdings is form over substance. Any settling class member will have to actually tender the Bonds to get paid in the end anyway.[15] ("Class Members shall also be required to transfer their Bonds to the Escrow Agent at least seven days prior to the Payment Date.") Moreover, fraud is extremely unlikely. The claims at issue are modest (generally less than $30,000) and are submitted by individuals that have sworn under oath that they have continuously held the bonds to today. To commit fraud, these individuals (primarily in Italy) would have to find replacement bonds (no easy task), buy the bonds, and then tender the replacement bonds into the settlement for payment. There is no actual basis in the record to expect such nefarious actions.

If Argentina insists on documentation, and the Court agrees, Plaintiffs respectfully suggest that the best way to deal with these claimants is to treat their claims as provisionally valid, but require submission of an account statement showing holdings as of May 23, 2016 or later as a pre-condition of payment, along with actual tender of the Bonds "seven days prior to the Payment Date," as provided under the Settlement Agreement.

Finally, it should be said that Class Counsel understands that Argentina believes additional documentation is required for the claims. Class Counsel respectfully submits however, that

[14] *Id.*

[15] *Id.* at ¶ 22.

technicalities should not rule the day. After so many years, the goal should be to get class members paid, even if means allowing them a few weeks (through the reply deadline of November 1, 2016) to get more documents or to otherwise prove up the claims that they have submitted.

2. Claims submitted after the September 1 deadline.

Approximately 17 of the 76 claims, were received after the September 1, 2016 deadline, including from claimants that initially sought to respond to Argentina's public settlement offer to all bondholders including members of the Class here and were referred to Class Counsel under Paragraph 31 of the Settlement Agreement. It is not unusual for there to be late claims admitted in settlement administration.[16] There is no straight faced argument that can be made here, that allowing these claims would result in prejudice to anybody, including Argentina, since, if these claims were not allowed, those claimants could not take advantage of Argentina's public settlement offer. In fact, prejudice would result to the Class if these claims were not allowed, since that would mean a smaller amount of settlement would be required to fund any attorneys' fees awarded by the Court. Finally, given that almost all of the claims come from overseas and from many people who do not even appear to speak English, the equities warrant additional time for these persons to seek consultations and submit their claim forms, even if past the September 1 deadline. And, because no deadline has yet been set for payment, there is no prejudice to Argentina in allowing late filed claims. Plaintiffs respectfully suggest that the Court permit these claims, and any others that may be received on or before the November 1, 2016 reply deadline.

[16] *E.g., In re Crazy Eddie Sec. Litig.*, 906 F. Supp. 840, 845 (E.D.N.Y. 1995) (noting "there is an implicit recognition that late claims should ordinarily be considered in the administration of a settlement" (citing Manual for Complex Litigation, Third, § 30.47 (Federal Judicial Center 1995)).

IV. ARGUMENT

A. Class Counsel is Entitled to a Fee Award Under Well-Established Law

The U.S. Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."[17] The purpose of the common fund doctrine is to fairly and adequately compensate counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf.[18] Courts have also recognized that awards of reasonable attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature.[19]

B. The Second Circuit Prefers the Percentage of Fund Method in Calculating A Fee

In the Second Circuit, fees in common fund cases may be awarded under either the lodestar or percentage of the fund methods, but, "[t]he trend in this Circuit is toward the percentage method."[20] There are several reasons underlying this preference. As Chief Judge McMahon has held, the "percentage method 'directly aligns the interests of the class and its counsel' because it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund out of which payments to the class can be made.'"[21] In addition, the percentage method "is also closely aligned with market practices because 'it mimics the compensation system actually used by individual

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[17] *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999); *Azogue v. 16 for 8 Hospitality LLC*, 2016 WL 4411422, at *6 (S.D.N.Y. Aug. 19, 2016) (J. Griesa).

[18] *See Goldberger*, 209 F.3d at 47; *In re Veeco Instruments Inc. Secs. Litig.*, 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007).

[19] *See, e.g.*, *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002).

[20] *Wal-Mart Stores Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121-22 (2d Cir. 2005); *Azogue*, 2016 WL 4411422, at *6 (Griesa, J.).

[21] *Johnson v. Brennan*, 2011 WL 4357376, at *14 (S.D.N.Y. Sept. 16, 2011) (J. McMahon).

clients to compensate their attorneys.'"[22] And finally, the percentage method preserves judicial resources because it relieves courts of the "cumbersome, enervating, and often surrealistic process of evaluating fee petitions."[23] Not only does the Second Circuit prefer a percentage of fund method, but the percentage of fund method is also largely favored by most, if not all, of the other federal circuits.[24]

Although Second Circuit courts have expressed a preference for the percentage method, courts may also apply a "lodestar cross-check."[25] A court uses the lodestar cross-check to determine whether, under the percentage approach, the fee is consistent with an award that would result under a lodestar multiplier approach.[26]

C. Class Counsel's Request for Fees and Expenses is Supported by Each *Goldberger* Factor

Whether this Court examines Class Counsel's fee request by measuring it as a percentage-of-the fund or under the lodestar method, the Second Circuit requires that the fees awarded must be "reasonable" and "based on scrutiny of the unique circumstances of each case."[27] A reviewing court should consider the following six factors set forth in *Goldberger* in evaluating what constitutes a reasonable fee: (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of the representation measured by the result;

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[22] *Id.*

[23] *Id.* at *15 ("The 'primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenzer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits.'").

[24] *See*, *e.g.*, *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal. 5th 480 (2016) (contains thorough discussion of history of percentage of fund method and lodestar method in various federal circuits and concludes the percentage of fund method is the predominant metric to judge attorneys' fees awards in common fund cases).

[25] *Johnson v. Brennan*, 2011 WL 4357376, at *20.

[26] *Anwar v. Fairfield Greenwich, Ltd.*, 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) (J. Marrero).

[27] *Goldberger*, 209 F.3d at 47, 53.

(5) the requested fee in relation to the settlement; and (6) public policy considerations.[28] We address these factors in order.

1. The time and labor expended by Class Counsel support the requested fee.

Class Counsel devoted significant time and labor to this case during its existence, time and labor which could have been dedicated to other matters. As detailed in Exhibit 1 to the accompanying Berman Declaration, Hagens Berman devoted over 2,700 hours to this case, resulting in total historical lodestar, through July 31, 2016, of $1,051,710. If the Court were to use current rates to calculate Class Counsel's lodestar, something the Court is well within its right to do given the length of time this case has been pending,[29] Class Counsel's lodestar is $1,246,590.70.[30] Hagens Berman has undertaken an audit of this time spent to ensure that all time billed to this case was reasonably necessary to effectuate the strategy and work in this case.

2. The magnitude and complexity of the litigation supports the requested fee.

The underlying claim here is relatively straightforward. Argentina promised to pay class members on the sovereign debt that it issued. Argentina breached that promise by defaulting on that debt. Plaintiff and class members were damaged as a result. However, at that point, the straightforward aspect of this case ends, and the almost unprecedented complexity this case presents begins.

The defendant here is a sovereign nation which possesses significant, almost unlimited, political and financial resources to fund this litigation. No one seriously disputes that, if Argentina wanted to, it could have funded its defense indefinitely going forward. And while plaintiff surely

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[28] *Id.* at 50.

[29] *De Curtis v. Upward Bound Int'l*, 2015 WL 5254767, at *3 (S.D.N.Y. Aug. 28, 2015) (court may use current rates when case has been pending for significant time and citing cases).

[30] Berman Decl., Ex. 2.

could have obtained a judgment against Argentina for some amount that judgment would likely represent a pyrrhic victory, since the judgment would essentially be uncollectible. Argentina appears to have almost no assets outside of Argentina, making it difficult, if not impossible, to satisfy any judgment. Indeed, many plaintiffs in other cases had spent years trying to seize assets of Argentina in order to satisfy their judgments and ultimately came up short. In addition, the former Argentine President vowed to never settle *any* of the defaulted bonds cases which would include this one, for anything above what those in the Exchange Offers received.[31] During the course of this litigation, Argentina also passed a law (Lock Law) which essentially barred payment to plaintiff and the Class here, something unheard of. Thus, these variables presented an almost unprecedented complexity in this case.

3. The risks entailed in the litigation support the requested fee.

This Court has described this factor, as "perhaps the foremost factor to be considered in determining the award of appropriate attorney's fees."[32] Class Counsel undertook significant risk when they filed this litigation, more than in an ordinary case. Further, another important consideration is that Class Counsel undertook this case on a contingent basis.[33] Here, at the time this case began, the chances of non-recovery were significant. Other attorneys apparently believed the risk was so high, that this was the only class action filed with respect to the Bonds. Given all of the developments which occurred during the pendency of the litigation, the risk of non-payment only increased. This factor strongly supports the requested fee.

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[31] https://www.ft.com/content/830ed41e-d475-11e4-8be8-00144feab7de (visited September 26, 2016).

[32] *In re Tremont Secs. Law, State Law & Ins. Litig.*, 2015 WL 5333494, at *10 (S.D.N.Y. Sept. 14, 2015) (J. Griesa).

[33] *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001).

4. The quality of representation measured by the outstanding result supports the requested fee.

a. The results for class members are outstanding.

The results achieved by Class Counsel in this case are exceptional. Those who participated in the 2005 and 2010 Exchange Offers were reported to have received only about 30 cents on the dollar. Here the Class is receiving $1.50, or, about 65% of their damages. This amount was achieved notwithstanding that Argentina vowed to never pay any more than it paid those who exchanged their bonds in the two Exchange Offers. Even taking into account the time value of money, this settlement dwarfs what those who exchanged their bonds received.

b. Quality of Class Counsel.

Hagens Berman has a long-standing record of representing plaintiffs in complex cases with an enviable success rate. Hagens Berman is a 70 lawyer firm, with offices in Seattle, Boston, Chicago, Colorado Springs, Los Angeles, New York, Phoenix, San Francisco, San Diego, and Washington, D.C. Since its founding in 1993, Hagens Berman has represented plaintiffs in a broad spectrum of complex, multi-party antitrust cases. Courts throughout the United States have recognized the firm for its ability and experience in handling major complex litigation.[34] In particular, Hagens Berman (and its managing partner Steve Berman) has been selected by federal judges, *sua sponte*, to lead some of the largest and most complex class actions in history. Recently, one of the Court's colleagues, Judge Furman, *sua sponte* selected Steve Berman as one of three temporary co-lead counsel in one of the largest multidistrict litigations in the country – *In re General Motors LLC Ignition Switch Litig.*[35]

[34] Berman Decl., Ex. 6 (firm résumé).

[35] No. 1:14-MD-2543 (S.D.N.Y.) (Judge Furman).

Further, in *In re Toyota Motor Corp. Unintended Acceleration Mktg. Sales Practices and Prods. Liab. Litig.*,[36] Judge James Selna of the Central District of California *sua sponte* appointed Steve Berman class counsel. The case settled in 2013 for $1.6 billion – then the largest settlement ever against an automotive company (the recently announced Volkswagen diesel emission settlement, in which Steve Berman is also a member of the court-appointed Executive Committee, will be larger if it is approved). That distinguished federal judges would entrust these massive litigations to Steve Berman and Hagens Berman is a highly reliable endorsement of the firm's ability and reputation. Most recently, the Court's colleague, Judge Engelmayer, appointed Hagens Berman as one of three firms to support the two co-lead counsel in *In re Interest Rate Swaps Antitrust Litig.*[37] In appointing Hagens Berman, Judge Engelmayer observed, "[w]hile all of the firms that submitted leadership applications have extensive experience and demonstrated success in this area, the Court's assessment is that [Hagens Berman (and 2 other appointees)] are particularly well-suited to this assignment. Each has a stellar track record and a reputation in the District for diligent, effective, and professional representation."[38]

Hagens Berman and Steve Berman have been appointed as class counsel in other significant and complex class actions following a competitive application process in which many firms were vying for a lead counsel position. For example, in *In re Electronic Books Antitrust Litig.*,[39] Judge Cote appointed Hagens Berman from a large number of lead counsel applicants.

Hagens Berman's skills and reputation are bolstered by the results achieved in this litigation.

[36] No. 8:10-ML-2151 (C.D. Cal.) (Judge Selna).

[37] No. 16-MD-2704 (S.D.N.Y.).

[38] *In re Interest Rate Swaps Antitrust Litig.*, No. 16-MD-2704 (S.D.N.Y.) (Judge Engelmayer) at Dkt. No. 99, p. 9. A copy of this order is attached to the Berman Decl. at Ex. 10.

[39] No. 1:11-MD-2293 (S.D.N.Y.) (Judge Cote).

c. Quality of Defendant's Counsel.

The quality and zealousness of defense counsel similarly weighs in favor of the requested fee award.[40] There is no serious dispute that Argentina's counsel here, Cleary Gottlieb, is one of the most well-respected defense firms in the United States.

5. Public policy considerations support the requested fee.

Only a small number of firms have the expertise, resources, and inclination to lead the prosecution of cases such as this one, as the overwhelming majority of firms with the expertise and resources lack the inclination due to their defense orientation. And the number of those plaintiffs' firms who have proven their willingness and ability to carry such a case through trial is even smaller yet.[41] Undertaking a representation on a fully contingent basis is a risk and effort that deserves to be compensated appropriately.[42]

D. The Requested Fee Is Within the Range Routinely Awarded by This Court

1. The percentage fee requested is below that routinely awarded for a settlement of this size.

Assuming all of the remaining claims are deemed valid, and the Settlement amounts to $3.7 million, Class Counsel requests a fee of 33% of the settlement funds. "In this Circuit, Courts routinely award attorneys' fees that run 30% and even a little more of the amount of the common

[40] *See In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 174 (S.D.N.Y. 2007) (""The quality of opposing counsel is also important in evaluating the quality of Class Counsels' work.""); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998) (awarding counsel 14 percent of $1 billion settlement where defendants' counsel included "the nation's biggest and best defense firms operating on a seemingly unlimited budget over a period of four years").

[41] *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("[i]n order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives").

[42] *In re WorldCom, Inc. Sec. Litig.*, 2004 WL 2591402, at *20 (S.D.N.Y. Nov. 12, 2004).

fund."[43] "Courts in other federal jurisdictions similarly have determined that a fee award of 33% or more is reasonable and should be awarded."[44] Here, the requested fee of 33% is "'consistent with the norms of class litigation in this circuit.'"[45]

2. The requested fee is also reasonable under the lodestar cross-check.

Assuming all remaining claims are valid, Class Counsel's requested fee of $1.2 million (or 33%), would represent a tiny multiplier of just over one (1.14) when considering Class Counsel's lodestar on a historic basis. When considering Class Counsel's lodestar on a current basis, the multiplier would be one, or slightly lower than one.

Courts "regularly" award lodestar multipliers of up to eight times the lodestar, and in some cases, even a higher multiplier.[46] In *New England Carpenters Health v. First Databank, Inc.*,[47] class counsel sought a fee of 24% of a $350,000,000 settlement fund, representing a multiplier of 10.05. Ultimately, the Court awarded a 20% fee representing an 8.3 multiplier.[48] In *Stop & Shop Supermarket Co. v. Smithkline Beecham Corp.*,[49] class counsel obtained a $100 million settlement, and requested a 30% fee. The Court ultimately awarded a 20% fee, which represented a multiplier of 15.3.[50]

Here, the 1.14 multiplier requested by Class Counsel is reasonable given that the level of risk associated with litigation . . . which is 'perhaps the foremost factor' to be considered in assessing the

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[43] *In re Hi-Crush Partners L.P. Secs. Litig.*, 2014 WL 7323417, at *12 (S.D.N.Y. Dec. 19, 2014).

[44] *Id.* at *13 (citing cases).

[45] *Azogue*, 2016 WL 4411422, at *6.

[46] *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) (citing cases awarding multipliers of almost nine). *See also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, Appendix (9th Cir. 2002) (in awarding multiplier of 3.65, Ninth Circuit compiles list of cases awarding multipliers as high as 19).

[47] 2009 WL 2408560 (D. Mass. Aug. 3, 2009), *aff'd*, 582 F.3d 30 (1st Cir. 2009).

[48] *Id.* at *2.

[49] 2005 WL 1213926 (E.D. Pa. May 19, 2005).

[50] *Id.* at *17.

propriety of a multiplier." Class Counsel faced significant, almost unprecedented risk, in prosecuting this case. That no other firm filed a case with respect to the Bonds, is telling. Additionally, Class Counsel faced the very significant possibility that any judgment it obtained would be uncollectible. Further, given the Class definition at issue in this case (*i.e.* continuous holder), Class Counsel faced the risk that all of its Class may decide they did not want to wait any longer for a recovery, and sell their Bonds in the secondary market. Or, exchange their Bonds for performing debt in the 2010 Exchange Offer. Despite these extremely long odds of success, Class Counsel labored on, took on additional risk by continuing the case when confronted with these obstacles, and obtained an exceptional recovery for the Class.

3. Class Counsel's hourly rates are also reasonable.

Class Counsel's billable rates, which are materially lower than prevailing rates in New York, also support the requested fee. The proposed hourly rate of compensation for paralegals is $80 to $265; the one associate assigned to the case was billed at $275; and partners fall within a range of $350 to $800.[51] These rates are consistent with other awards in this District. One source commonly used by Courts in this Circuit is the National Law Journal Survey to determine the fairness of fee rates.[52] A recent National Law Journal survey for 2014 shows that the national median partner billing rate stands at $775, and the national average for associate billing rates is $370.[53] Not surprisingly, as of 2014, partner and associate billing rates in New York were even higher, with the large firms

[51] Berman Decl., Ex. 1.

[52] *See, e.g.*, *Williamsburg Fair Hous. Comm. v. N.Y. City Hous. Auth.*, 2005 WL 73146, at *12 (S.D.N.Y. Mar. 31, 2005) (observing that "a recent billing survey made by the National Law Journal shows that senior partners in New York City charge as much as $ 750 per hour and junior partners charge as much as $ 490 per hour").

[53] Berman Decl., Ex. 7 (2014 National Law Journal Survey).

average partner billing rate of over $900, and average associate billings rate in the $500's per hour.[54] By contrast, Hagens Berman's average rates of those attorneys who have worked on this case, fall well below the average rates of comparable level New York attorneys.

E. Class Counsel's Fee and Expense Request Was Disclosed in the Notice Disseminated to Members of the Class

The Court's May 27, 2016 order preliminary approving this Settlement provided, among other things, that notice be sent apprising class members of their rights with respect to the Settlement. That notice was disseminated on July 1, 2016 in accordance with the Court's order.[55] In that notice, Class Counsel disclosed that, "Class Counsel will ask the Court to approve payment of attorneys' fees in an amount not to exceed one-third of the settlement amount. Class Counsel will also seek reimbursement of reasonably incurred costs and expenses."[56] Thus, the fee request was fully disclosed to the Class.

F. Class Counsel's Expenses Are Reasonable

Class Counsel requests reimbursement for $37,540.40 in expenses for which it has not yet been reimbursed.[57] Class Counsel maintained substantial incentives to control out-of-pocket expenses in this case due to the high risk it would not be reimbursed and the near certainty that many years would pass before Class Counsel could recoup the expenses.

[54] http://www.nationallawjournal.com/id=1202636785489/Billing-Rates-Across-the-Country (visited September 27, 2016). *See also Brennan v. N.Y. Law Sch.*, 2012 WL 4177736, at *4 (S.D.N.Y. Aug. 15, 2012) (Courts "should generally use 'the hourly rates employed in the district in which the reviewing court sits' in calculating the presumptively reasonable fee.").

[55] September 27, 2016 Declaration of Michael Jacoby (Dkt. No. 123) ("Jacoby Decl.").

[56] Jacoby Decl., Ex. A, at p. 7.

[57] Berman Decl., ¶ 74 and Ex. 3.

Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.[58] All of the expenses for which Class Counsel requests reimbursement here are of the type normally incurred in a complex action (computer research, experts and consultants, photocopies, depositions and court transcripts, and travel expenses) and are appropriate for reimbursement here.[59]

G. The Court Should Award the Named Plaintiff, Henry H. Brecher, a $5,000 Service Award

An incentive award may be given to compensate named plaintiffs for their efforts expended in connection with a lawsuit.[60] Courts in this Circuit have made service awards to named plaintiffs that range from $5,000 to as much as $50,000.[61] Given the work performed by Mr. Brecher in this case, as well as the range of service awards in this Circuit, the requested $5,000 service award is eminently reasonable. That $5,000 would be requested on Mr. Brecher's behalf, was fully disclosed in the Notice disseminated to all class members.[62]

During the entire course of this litigation, Mr. Brecher vigorously pursued the litigation and has furthered the interests of the Class while doing so.[63] At the outset, Mr. Brecher interviewed

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[58] *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012). *See also In re Towers Fin. Corp. Noteholders Litig.*, 1996 U.S. Dist. LEXIS 2311, at *6 (S.D.N.Y. Jan. 17, 1996) ("[r]egardless of what happens in the balance of the litigation, counsel's efforts have benefitted the class, and there is no reason that part of counsel's expenses should not be reimbursed now").

[59] *Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11.

[60] *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 354 (S.D.N.Y. 2014).

[61] *See id.* (awarding $5,000 each to 6 named plaintiffs); *Johnson v. Brennan*, 2011 WL 4357376, at *21 (awarding $10,000 each to 4 named plaintiffs); *Anwar*, 2012 WL 1981505, at *3-4 (awarding $25,000 each to three named plaintiffs); *Bd. Of Trs. Of AFTRA Ret. Fund v. JP Morgan Chase Bank, N.A.*, 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (awarding $50,000 to each of 3 named plaintiffs).

[62] Jacoby Decl., Ex. A, at p. 6 ("Class Counsel will also seek a Named Plaintiff service award of $5,000 for the plaintiff's efforts in service to the class.").

[63] *See generally* Berman Decl., ¶¶ 59-65.

several firms ultimately settling on current Class Counsel.[64] Mr. Brecher joined two organizations representing the interests of bondholders affected by the default, in order to learn as much as possible about the legal landscape with respect to the defaulted debt, and to help ensure who would be informed of all developments in connection with the litigation.[65] During the course of the litigation, Mr. Brecher reviewed and responded to discovery, including the initial drafting of responses to certain discovery. Mr. Brecher, who lives in Columbus, Ohio, traveled to New York, for his deposition. For that deposition, Mr. Brecher stayed in a hotel at his own expense.[66] And throughout, Mr. Brecher communicated frequently with Class Counsel to apprise them of developments he learned, and to receive reports about the current status of the litigation.

Mr. Brecher has able represented the Class and respectfully, should be awarded a $5,000 service award.

V. CONCLUSION

Class Counsel respectfully requests that the Court grant its application for attorneys' fees, request for reimbursement of litigation expenses and for the payment of a $5,000 service award to Henry H. Brecher.

[64] *Id.* at ¶ 60.

[65] *Id.*

[66] *Id.* at ¶ 52.

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Respectfully submitted,

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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on October 3, 2016, which will send notification of such filing to the e-mail addresses registered.

/s/ Steve W. Berman
Steve W. Berman