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.	:	

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

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

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

Plaintiffs in the above-captioned class actions respectfully submit this memorandum of law in support of their motion for final approval of the class settlement agreed to with the Republic of Argentina ("Argentina").

PRELIMINARY STATEMENT

After nearly twelve years of hard-fought litigation, including four appeals to the Second Circuit, the class representatives agreed in May 2016 to a settlement under which Argentina will, at long last, pay the full amount of the principal of the class bonds, plus 50%. [Dkt. Nos. 308-310].[1] This Court granted preliminary approval of the settlement on May 27, 2016. [Dkt. 319].

The response to the long-awaited settlement has been tremendous claims have been filed totaling more than $140 million in principal across the eight actions. See Declaration of Jennifer Scullion in Support of Final Approval of Settlement ("Scullion Settlement Decl."), Exh. A. The class members clearly desire this settlement. Therefore, Plaintiffs now move for final, formal approval of the settlement.

The class settlement here readily meets the standard under Rule 23 because it is "fair, reasonable, and adequate."

First, the terms of the class settlement parallel the Public Offer Argentina has offered to non-class members. This Court and the Second Circuit deemed that Public Offer to be sufficient evidence of Argentina's good faith to warrant vacating the *pari passu* injunctions.

Second, the class settlement is, in fact, better than the Public Offer. Argentina has taken the position that non-class members can be excluded from its Public Offer on statute of limitations grounds. Here, by contrast, all class members can take advantage of the 150% offer

[1] All docket citations are to the docket in the lead case, Seijas v. Rep. of Arg., 04-cv-400.

because the class actions were filed in 2004, eliminating any statute of limitations issues for the class members.

Third, the settlement equates, in most instances, to about 38-50% of what the bondholders were owed, including interest. On its face, that is eminently fair and far in excess of the percentage of possible recovery that has been approved as fair, reasonable, and adequate in other class settlements.

Fourth, a settlement recovery of 38-50% of the maximum possible damages is all the more reasonable where, as here, actual recovery on judgments was theoretical, at best. Argentina ignored judgments for years and kept assets out of the U.S. Plaintiffs' efforts to enforce against accounts and other assets in the U.S. failed under applicable law and the Foreign Sovereign Immunities Act would have been a formidable obstacle to enforcement going forward. Moreover, once the *pari passu* injunctions were eliminated, the practical leverage against Argentina was lost. All of this makes actual settlement recovery based on 150% of principal all the more reasonable.

The settlement also is procedurally fair. While Plaintiffs certainly desired more substantive negotiations on the economics, the fact is that the settlement was the product of arms'-length negotiations. Since the settlement agreement was reached, notice of the settlement has been distributed widely through press releases, mailings and electronic distribution to and through financial institutions (including DTC and Euroclear), individual communications to class members that previously identified themselves, and on a publicly available website that includes the full settlement agreement and relevant case documents. *See* Declaration of Michael Jacoby,

Finally, as provided under the Settlement Agreement, [Dkt. 310, Exh. A] Co-Lead Counsel and counsel for Argentina have conferred with respect to the validity of the claims

submitted. As discussed below, certain disputes remain between the parties as to whether certain claims have been adequately established, including more than $129 million worth of claims that have been submitted by Bank of New York Mellon as authorized agent for its account holders.

The Settlement Agreement contemplates that, in the absence of agreement by the parties on the total valid claims to participate in the settlement, the Court will determine claim validity. (Settlement Agreement, Paras. 25 & 53.) If the Court agrees with Argentina that the disputed claims require additional documentation or other proof of eligibility, Plaintiffs submit that the Court should allow such additional proof to be submitted on or before October 21, 2016, the date for objections to the settlement. (The Settlement Agreement did not set a deadline for the submission of such documents. The only deadline was that set by the Court in its May 27, 2016 Order.) This will allow ample time for Argentina to review any additional supporting documents prior to the November 1, 2016 reply date. Likewise, Plaintiffs request that the Court permit a handful of claims that were filed after the September 1, 2016 deadline, and any that may yet be filed before October 21, 2016. This will balance the interests in allowing eligible class members to be paid and avoiding forfeiture under the classwide release.[2]

RELEVANT BACKGROUND

Plaintiffs' Motion for Preliminary Approval of Settlement [Dkt. Nos. 308-310] sets forth the relevant background concerning these cases, the settlement negotiations, and the terms of the Settlement Agreement. To avoid unnecessarily burdening the Court, Plaintiffs incorporate those motion papers by reference here in full. Briefly, the relevant background is as follows.

[2] Some late claims have come in, for example, because the claimant first sought to settle directly with Argentina under the Public Offer, but was then referred to class counsel when it appeared that they were class members subject to the Class Settlement Agreement. Scullion Settlement Decl., ¶ 7.

A. The Litigations

Plaintiffs filed these eight actions between January and March, 2004 on behalf of the individual class representatives and all holders of the same bonds held by those class representatives. The Court certified eight classes of "continuous holders" of the class bonds in 2005. [Dkt. No.5][3]

Notice of Pendency of the Class Actions was published and otherwise disseminated in 2007 and the deadline to opt-out was in 2008. [Dkt. Nos.84 and 87][4] The Plaintiff Classes twice obtained judgments, which were later vacated by the Second Circuit. [Dkt. Nos. 88, 176, 208, 212.] The Plaintiff Classes also sought multiple injunctions, orders of attachment, and turnover of certain assets, each of which ultimately was denied or vacated either by this Court or by the Second Circuit. [E.g., Dkt. Nos. 96, 142, 162-165, 167-169.]

As the lengthy dockets in these cases demonstrates, these eight cases were vigorously litigated on the above and many other issues and included both fact and expert depositions, as well as multiple rounds of written discovery and numerous hearings before this Court and arguments before the Second Circuit.

In 2016, the Plaintiff Classes, along with bondholders in many other similar cases, opposed Argentina's request to vacate *pari passu* injunctions on the grounds that Argentina had not negotiated with the Plaintiff Classes and was not offering all bondholders the same terms of

---

[3] The Court later modified the class definition to include all "holders," but the Second Circuit vacated that decision. [Dkt. No. 258]

[4] The Court has not yet decided whether to permit additional opt-outs. For the reasons set forth in the supplemental briefing on the Motion for Preliminary Approval [Dkt. Nos. 315 and 318], the Plaintiffs respectfully submit that (1) no additional opt-out process is needed or appropriate and (2) if the Court permits additional opt-outs at this time, it should do so only on the requested terms and conditions to protect the class members against after-the-fact free riding by new opt outs that may seek to "settle around" the classes and avoid bearing their fair share of fees and costs.

settlement. *NML v. Argentina*, 08-cv-6978, Dkt. 883 & 884 (Plaintiff Classes Mtn. to Intervene); *Aurelius Capital Master, Ltd. v. Rep. of Arg.*, 16-628 (2d Cir.), Dkt. No. 500 (Amicus Brief of Bondholder Classes). The Court rejected the oppositions to vacatur and lifted the *pari passu* injunctions to allow the settlements. *NML Capital, Ltd. v. Rep. of Arg.*, 2016 WL 836773, * 8-*9 (S.D.N.Y. Mar. 2, 2016). The Second Circuit affirmed the Court's rulings. *Aurelius Capital Master, Ltd. v. Rep. of Arg.*, 644 Fed. App'x 98, 107 (2d Cir. 2016).

B. The Settlement

Thereafter, the Plaintiff Classes and Argentina reached a Settlement Agreement on May 23, 2016. The Settlement Agreement provides, among other things, that class members that tender qualifying bonds will be paid 150% of the principal amount of those bonds, less attorneys' fees and costs as awarded by the Court. Settlement Agreement, [Dkt. No. 310 Exh. A, ¶ 20, 29].

The Court granted Preliminary Approval of the class settlement on May 27, 2016 and approved a plan and forms of notice of the settlement. [Dkt. No. 319].

Thereafter, Co-Lead Counsel retained Gilardi & Co. to serve as the administrator charged with distribution of notice and the collection and organization of claims filed by class members. Gilardi & Co. distributed the Summary Notice and Notice in accordance with the Court's order, which included publication of the Summary Notice and distribution of the Notice to DTC and Euroclear (which, in turn, gave notice to their member institutions), as well as direct distribution to institutions and brokerage firms known to Gilardi & Co. Declaration of Michael Jacoby, ¶¶ 4-12. Co-Lead Counsel also distributed notice to individual bond holders and class action services that had identified themselves during the course of the litigation, including through the Proof of Claim process that the Court ordered in early 2016. Scullion Settlement Decl., ¶ 3.

C. The Settlement Claims

As of the date of this filing, claims have been submitted by or on behalf of class members for a total of more than $140 million in principal in bond interests. Scullion Settlement Decl. Ex. A. Many claims have come in from individual bondholders in South America, Europe, and Japan, as well as in the United States. Others have been filed by Bank of New York Mellon as the authorized representative of numerous institutional account holders, such as pension funds, trusts, and other financial institutions. At this time, only two objections have been filed to the settlement. Scullion Settlement Decl., Exs. B, C. Plaintiffs address those objections below and will address any further objections in their Reply.

Class Counsel has worked diligently and cooperatively with counsel for Argentina to review the claims that have been submitted. Scullion Settlement Decl., ¶ 10. A few practical issues have made that process more difficult than anticipated.

First, although all notices specified the September 1, 2016 deadline for claim submission, many claims were submitted only in the last few days of the claim period. Others were timely post-marked on or before September 1, 2016, but actually arrived later, including from Europe. A relatively small number of claims were submitted after the September 1, 2016 deadline, including from class members who received notice by mail that arrived only after the September 1 deadline or who initially sought to settle directly with Argentina through the Public Offer and were then referred to Class Counsel as required by the Settlement Agreement. Settlement Agreement, ¶31.

Second, some claims were submitted without documentation to prove when the claimant acquired the bonds. Because a bondholder can be a class member only if they acquired bonds on or before the relevant "start date" in 2004, Co-Lead has individually contacted these claimants and/or their representatives to ask for proof of timely acquisition. Many claimants have

responded with documents. These have been sent to counsel for Argentina. A few others lack documents from twelve years ago, but have explained their circumstances in emails or other correspondence. Co-Lead Counsel have forwarded the emails and correspondence to counsel for Argentina. Other claimants have not yet responded or are still trying to secure documentation. Scullion Settlement Decl., ¶ 12.

Third, similarly, some claimants have not provided documents to demonstrate that they still hold the relevant bonds. Class counsel have urged them to do so. However, in most instances, the claimant has signed the attestation clause in the Settlement Claim Form attesting, under oath, to their continuous holding of the bonds. Scullion Settlement Declaration, ¶ 13.

Fourth, Bank of New York Mellon ("BNYM") submitted claims as the authorized representation of dozens of its account holders. BNYM executed a global Settlement Claim Form, including the attestation clause, and provided a spreadsheet identifying the account holders and their transactions during the class period and their current holdings. Scullion Settlement Decl, ¶ 14. BNYM initially fixed its submission on August 31, 2016. In response to questions from Class Counsel, BNYM determined that the first spreadsheet contained certain errors stemming from the way the date was extracted from records and reported. BNYM provided a revised spreadsheet on September 30, 2016 and executed a new declaration on October 3, 2016 in support. *Id.* Argentina, however, has objected to the BNYM claims (on behalf of the BNYM account holders) and insists on individual claim forms from the account holders themselves. While Plaintiffs do not believe individual claim forms are needed, Class Counsel is endeavoring to obtain such forms, through BNYM, as a condition of payment or these claims, which total in excess of $129 million in principle and clearly should not be forfeit due to a logistical or timing difficulty. Scullion Settlement Decl., ¶ 15.

Fifth, Argentina also has raised an objection to certain claims that are made for the Argentina Floating Rate L+0.8125 Notes, due March 29, 2005 (the "2005 Floating Rate Bond"). Specifically, Argentina has taken the position that, to the extent that a claimant's account records identify interests in the bond under CUSIP # PO4981CF4 or ISIN # XS0043120236, rather than under ISIN # XS0043120582 (the identifying number used in these proceedings, the interests are not eligible for the settlement. As discussed below, however, the CUSIP and ISIN numbers are irrelevant because all interests in the 2005 Floating Rate Bond are fungible regardless of the particular CUSIP or ISIN number any institution happens to record under. Class Counsel have sent counsel for Argentina documents illustrating that the identification numbers are fungible. Scullion Settlement Decl., Exhs. D and E.

ARGUMENT

Because these are class actions, Rule 23(e) requires review and approval by the Court for the settlement to be effective. A general policy favors settlement of class actions. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 116 (2d Cir. 2005) ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'"); *see also In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) ("[P]ublic policy favors settlement, especially in the case of class actions."). A settlement should be approved if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). The Court is to consider "both the settlement's terms and the negotiating process leading to settlement." *Wal-Mart Stores,* 396 F.3d at 116; *see also Wright v. Stern*, 553 F. Supp. 2d 337, 343 (S.D.N.Y. 2008) (same); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 165 (S.D.N.Y. 2007) (same).

A. The Settlement Is Substantively Fair

Although a court should not "rubber stamp" a proposed settlement, "it must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974); *see also In re McDonnell Douglas Equip. Leasing Sec. Litig.*, 838 F. Supp. 729, 739 (S.D.N.Y. 1993) (noting in settlement context a court "need 'not decide the merits of the case or resolve unsettled legal questions'").

Typically, a court will review nine factors in deciding whether to approve a proposed class settlement of a class action (the complexity and risks in the case, the possibility of getting a better settlement or of a better judgment, etc.). *Grinnell*, 495 F.2d at 463 (listing nine factors). "[N]ot every factor must weigh in favor of settlement," however, and the court ultimately looks to the "totality" of the circumstances. *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004); *see also In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 2007 WL 4526593, at *10.

Here, the Court's assessment of the settlement is especially straightforward because the core economic term of the class settlement—the payment of 150% of principal amount—precisely parallels the terms on which Argentina is settling its non-class claims under its Public Offer. This Court and the Second Circuit both deemed Argentina's willingness to settle under the Public Offer to be sufficient evidence of "good faith" to warrant vacating the *pari passu* injunctions that had brought Argentina to the negotiating table. Indeed, both this Court and the Second Circuit rejected the arguments (from Plaintiffs and others) to keep the *pari passu* injunctions in place so that Argentina would be incentivized to agree to even better, equal terms with all the "holdouts." *NML Capital, Ltd. v. Rep. of Arg.*, 2016 WL 836773, * 8-*9 (S.D.N.Y.

Mar. 2, 2016). *Aurelius Capital Master, Ltd. v. Rep. of Arg.*, 644 Fed. App'x 98, 107 (2d Cir. 2016).

Moreover, the class settlement offers a distinct, and substantial, advantage over the non-class Public Offer. As the Court is aware, Argentina has taken the position that the Public Offer is not available to investors that hold bonds that allegedly are "prescribed" by the applicable statute of limitations (which, Argentina contends, is six years in New York). *Arag-A-Ltd v. Rep. of Arg.*, 2016 WL 1451586, at *8 (S.D.N.Y. Apr. 12, 2016). Under Argentina's view, more than half the class bond series (five of eight) would not be eligible for the Public Offer because those series matured between 2003 and 2008 (more than six years before the Public Offer was made). But class members holding those bonds series are eligible for the class settlement here because the class actions were filed in 2004 and, therefore, stopped the statute of limitations from running before (in Argentina's view) it expired.

Each of the nine "*Grinnell*" factors traditionally considered likewise weigh in favor of approval of the class settlement.

First, as the Court is well-aware, these class actions proved to be especially complex, difficult, and burdensome on the litigants, counsel, and the Court. After twelve years of litigation, fact and expert discovery, and multiple appeals to the Second Circuit, settlement plainly is a reasonable and desirable outcome. Thus, the first and third "*Grinnell*" factors favor approval.

Second, the settlement also is fair and reasonable in light of the all too real risk that Argentina would have continued to refuse to honor judgments and orders of the U.S. courts, especially once the *pari passu* injunctions were lifted. Moreover, there continued to be risk in

these cases with respect to establishing the amount of damages and maintaining the classes. Thus, the fourth thru seventh "*Grinnell*" factors also weigh in favor of approval.

Third, although Plaintiffs sought better economic terms, a settlement at 150% of principal is itself fair and reasonable. 150% of principal equates to roughly 38-50% of the total damages (principal plus interest) owed to most class members. Few securities class actions settle on terms anywhere near as favorable as that. It is particularly fair and reasonable compared to the "0" settlement Argentina is offering to many bondholders that did not have the good fortune to be included in a class action that stopped the statute of limitations from running. Thus, the eighth and ninth "*Grinnell*" factors also favor approval of the settlement.

Finally, with respect to the second Grinnell factor" the reaction to the settlement has been overwhelmingly positive. Class members around the globe have responded to the notice of settlement by asking to be paid (at long last). Only two objections have been lodged to date.

The first objection, from Raul Oscar Tomassini, states that he believes Argentina should have paid more after not paying for so long. Scullion Decl., Ex. B (Tomassini Objection). But Mr. Tomassini "nevertheless . . .accept[s] this settlement," subject to his further objection that Argentina should pay the legal expenses because it was the party that defaulted. . The propriety of an award of fees from the class settlement is well-established under U.S. law and is addressed in the accompanying Motion for an Award of Fees and Expenses.

The second objection is from Omar Santos Palermo. Scullion Decl., Ex. C (Palermo Objection). Mr. Palermo objects on three grounds. First, he objects that he did not receive personal notice of the class action pendency in 2007 before the opt-out deadline and would now like to opt out. However, notice was published and distributed in accordance with this Court's 2007 Order, including (as Mr. Palermo acknowledges) in the legal notice section ("edictos") of a

leading Argentine newspaper, La Nacion. [Dkt. No. 87 (Roffe Declaration)]. Second, he objects to bearing any portion of an award of fees and expenses to class counsel. Again, the propriety of such an award is addressed in the accompanying Motion. Third, he objects that Co-Lead Counsel and Argentina somehow "colluded" on the settlement. There is no evidence of any such collusion, however. To the contrary, Co-Lead Counsel zealously fought for an even better settlement for class members equal to what NML and others received. Fourth, Mr. Palermo objects that he is being "forced" to take the class settlement. But class members want to say the same thing in every case: "let me settle on my own, but without sharing the cost of the class actions that yielded the settlement." Rule 23 and public policy do not support allowing such free riding. *See*, *e.g.*, *Linerboard Antitrust Litig.*, 292 F. Supp. 2d 644, 659 (E.D. Pa. 2003) (ordering sequestration of portions of opt-out settlements to prevent free riding); *Katrina Canal Breaches Litig.*, 2010 WL 2998848 (2010) ("set aside" is appropriate mechanism to prevent "free riding" on "common benefits" derived from class counsel and may be ordered pursuant to Rule 23). *See also* 2 McLaughlin on Class Actions § 6:25 (12th ed.) (discussing set aside cases).

B. The Settlement Is Procedurally Fair

"[A] strong presumption of fairness attaches to a class action settlement where, as here, it is reached in arm's length negotiations among able counsel." *Yang v. Focus Media Holding Ltd*., 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014); *see also Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *7 (S.D.N.Y. Mar. 24, 2014) ("A class action settlement is entitled to a presumption of fairness when it is the product of extensive arm's-length negotiations.").

Here, the settlement was arrived at through a non-collusive, arm's-length process. [Dkt. No. 310, Scullion Decl., dated May 23, 2016]. To be sure, the settlement is a compromise—as all settlements are—and does not afford the classes all the relief they had sought to obtain in these actions. But the proposed settlement does provide the best

opportunity for compensation to the classes after well-over a decade of stonewalling by prior Argentine regimes. Moreover, the proposed settlement avoids the considerable risk class members otherwise face of being unable to collect on any judgment the classes might obtain and unable to use "pari passu" clauses to force Argentina to the table (given the rulings of this Court and the Second Circuit lifting the pari passu injunctions, as well as Argentina's arguments that at least certain classes have no pari passu rights at all).

The settlement also plainly is the result of non-collusive discussions. *IPO*, 226 F.R.D. at 191. As explained above, these class actions have been litigated for nearly twelve years. The parties were fully apprised of the strengths and weaknesses of their respective claims and defenses and the collectability of any judgments. In addition to the discovery taken by both sides, the difficult legal issues had been litigated and laid out in multiple proceedings both in these cases and in other, similar cases pending before this Court.

Moreover, the Plaintiffs agreed to settle with Argentina only after arduous efforts to secure a better settlement offer from Argentina by, for example, seeking pari passu injunctions for the classes, moving to intervene to argue against lifting the pari passu injunctions in other cases, and arguing in this Court and the Second Circuit that Argentina's settlement offers unfairly treated similarly situated holders differently. E.g., *NML v. Argentina*, 08-cv-6978, Dkt. 883 & 884 (Plaintiff Classes Mtn. to Intervene); *Aurelius Capital Master, Ltd. v. Rep. of Arg.*, 16-628 (2d Cir.), Dkt. No. 500 (Amicus Brief of Bondholder Classes). Class counsel also engaged in multiple rounds of negotiations with counsel for Argentina to arrive at a settlement structure that best protects class members against unfair free-riding. [Dkt. No. 310, Scullion Decl., dated May 23, 2016].

The settlement does not improperly grant preferential treatment to any class representatives. Nor does it prefer certain segments of the classes over others. The settlement benefits are available across the class without preference or segregation for the class representatives or any other class member.

Finally, in light of class members' prior, extensive opportunities to opt out or otherwise pursue their own claims (or sell their bonds in the market) and given the serious potential for any new opt outs now to free-ride on other class members and the benefits of having been a class member all this time (e.g., the tolling of the limitations period), the Plaintiffs respectfully submit that no additional opt-out period should be permitted under Ruler 23(e)(4). Because Argentina has kept its Public Offer open, there is a substantial risk that opt outs would simply wait a few months or even a year after this settlement to then take the 150% offer directly from Argentina and avoid paying their fare share of any class counsel fees and expenses. Such potential free-riding is inherently unfair, especially when many class members clearly have benefitted from being members of the class because the applicable statute of limitations has been tolled, such that Argentina would have a harder time arguing (as it has elsewhere) that bonds with pre-2010 maturities or acceleration dates are ineligible to participate in the Public Offer.

C. Class Members That Have Sent in Claim Forms Should Be Allowed Additional Time to Provide Account Statements or Other Proof of Eligibility to Participate in the Settlement

As explained above, Plaintiffs understand that Argentina believes additional documentation is required for several of the individual claims. Plaintiffs address the specific issues below, some of which may require adjusting technical aspects of the claim process. Plaintiffs respectfully submit, however, that 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 objection deadline of October 21, 2016) to get more documents or to otherwise prove up the claims that they have submitted.[5]

In a few cases, individuals 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. Plaintiffs believe additional time should be permitted (through October 21, 2016) to allow the individual claimants (retirees and the like, largely outside the U.S.) to try to find additional documentation, especially considering that the documents concern transactions in 2004 or earlier. Alternatively, if there is evidence that the claimant has made diligent efforts to search for or obtain the documents, Plaintiffs submit 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, 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." Settlement Agreement, ¶ 24. The attestation referenced in Paragraph 24 is included in the Settlement Claim Form that each

[5] Plaintiffs are 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. Plaintiffs therefore intend 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 and will update the Court on the status of such issues in Plaintiffs' November 1, 2016 Reply Papers.

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. Settlement Agreement, ¶ 22 ("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 $100,000) and are submitted by individuals that have proven that they held bonds as of 2004 and have sworn under oath that they have continuously held the bonds to today. To commit fraud, these individuals (retirees in Italy, Germany, and elsewhere) would have to go out and 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.

Plaintiffs also understand that Argentina believes additional documentation is needed with respect to the claims submitted by Bank of New York Mellon ("BNYM") on behalf of fifty of its institutional account holders (including one BNYM account). On August 31, 2016, BNYM submitted the claims in the form of a single, global claim form, a spreadsheet detailing account holder names, tax i.d., and transactions in the relevant period. Scullion Settlement Decl., Para.

14. BNYM subsequently provided a revised spreadsheet (a) correcting an error in the manner in which it had retrieved and reported certain data from its records and (b) providing additional information identifying the beneficial owners of the accounts for which BNYM is submitting claims. *Id.* BNYM has submitted an affidavit attesting that the data used to compile the spreadsheet was retrieved from BNYM records and that BNYM has authority to settle and release claims on behalf of the identified account holders with respect to the bonds listed. *Id.* BNYM likewise signed the attestation under oath in the Settlement Claim Form confirming that it has authority to settle and release claims for these account holders with respect to these bonds. *Id.* Nonetheless, Argentina has asked for individual claim forms from the account holders themselves.

Plaintiffs believe BNYM has provided sufficient evidence to support the claims it has submitted and its authority to act for its account holders with respect to the class bonds. However, given the magnitude of the claims—more than $129 million in principal—Plaintiffs respectfully request that the Court allow additional time for BNYM to go back to its account holders and collect any additional evidence the Court deems necessary to submit the bonds for settlement. Otherwise, $129 million in claims will be forfeit under the Settlement Agreement (which releases class claims as to all class members, not just those who timely tender their bonds for settlement). Co-Lead Counsel is in the process of seeking such individual account holder claim forms through BNYM. Scullion Settlement Declaration, ¶ 15.

D. The Court Should Permit Claims that Were Submitted After the September 1, 2016 Deadline

A handful of claims were received after the September 1, 2016 deadline, including from claimants that initially sought to respond to Argentina's Public Offer 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. *E.g.*, *In re Crazy Eddie*, 906 F. Supp. 840, 845 (S.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)). 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 October 21, 2016 deadline for objections. This will allow Argentina ample time to lodge any objections prior to the November 10, 2016 Fairness Hearing. And, if the Court allows the claims, Argentina will have more than 60 days to prepare to pay the claims, along with the vast bulk of claims submitted prior to September 1, 2016.

CONCLUSION

For all of the above reasons, Plaintiffs respectfully request that the Court grant final approval for the class settlement, with allowance for the additional evidence and filings noted above.

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