**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| IN RE CREDIT DEFAULT SWAPS ANTITRUST LITIGATION<br><br>This Document Relates To: All Actions | 13 Md. 2476 (DLC) |

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

Plaintiffs, through Quinn Emanuel Urquhart & Sullivan, LLP and Pearson, Simon & Warshaw LLP (together, "Class Counsel"), submit this supplemental brief in further support of Class Counsel's January 29 Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Payments pursuant to Rule 23(h) of the Federal Rules of Civil Procedure (the "Motion"). *See* Dkt. Nos. 480, 481.

This is an extraordinary case in which Plaintiffs, through Class Counsel, secured one of the largest antitrust class action settlements in history. And Class Counsel did so in a skillful and efficient manner, despite considerable risk. The proposed fee award abides by the sliding fee scale negotiated at the outset of the case by the sophisticated lead plaintiff, the Los Angeles County Employees Retirement Association ("LACERA"). The fee request also accords with fee awards by courts in the Second Circuit in other large antitrust cases. Indeed, the proposed fee falls below the percentages awarded in comparable cases, including those with large common funds.

Perhaps most notably, not one of the nearly 14,000 potential class members has objected to the fee, expense, or incentive-payment requests. The absence of any objection is a testament to the reasonableness of these requests and the tremendous result achieved by Class Counsel.

## I. CLASS COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE

As discussed in the Motion, the requested fee of approximately 13.61% of the Settlement Fund is manifestly fair and reasonable:

- The request abides by the fee scale negotiated by LACERA at the beginning of the case. It is therefore a reliable proxy for what a fully informed client in the relevant market would have paid to prosecute this case. *See* Motion at 16-19.
- The request is consistent with fee awards approved in other large antitrust cases in this Circuit. *See id.* at 19-20.

- The fee is supported by each and every one of the *Goldberger* factors — the risk of the litigation, the complexity of the case, the time spent by Class Counsel, the efficient manner in which the case was prosecuted, and the fee in relation to the settlement. *See id.* at 21-31.

That no class member objected to the fee request strongly confirms that the request is appropriate. *See, e.g.*, *Fleisher v. Phoenix Life Ins. Co.*, No. 11 Civ. 8405 (CM), 2015 U.S. Dist. LEXIS 121574, at *75 (S.D.N.Y. Sept. 9, 2015) ("When a class is comprised of sophisticated business entities that can be expected to oppose any request for attorney fees they find unreasonable, the lack of objections indicates the appropriateness of the [fee] request.") (citations and internal quotes omitted); *In re High-Crush Partners L.P. Sec. Litig.*, No. 12 Civ. 8557 (CM), 2014 WL 7323417, at *18 (S.D.N.Y. Dec. 18, 2014) ("[C]ourts in the Second Circuit consider the reaction of the Class to the fee request in deciding how large a fee to award.").

More generally, the reaction of the Class to the Settlement overall has been overwhelmingly positive. *See* Dkt. No. 503 at 8-10 (describing enthusiastic reaction of the Class). Only *five* exclusion (or "opt out") requests, out of a class of nearly 14,000,[1] were timely submitted, representing less than one percent of the market. This is a small opt-out rate, particularly considering the sophistication of the Class and the publicity this case has attracted. Similarly, as of the February 29, 2016 deadline for exclusion requests and objections, Class Counsel and Claims Administrator Garden City Group, LLC ("GCG") had received just five objections, *none* of which objects to the Settlement itself or to the requested fees, expenses, or incentive awards. Rather, the objectors focused on the treatment of certain types of trades under the Plan of Distribution.[2]

[1] *See* Dkt. No. 503 at 9 n.8.

[2] *See* Dkt. No. 503 at 28-40 (discussing the objections).

The favorable reaction of the class to the Settlement further supports the conclusion that the fee request is reasonable. *See In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 400 (S.D.N.Y. 2013) (noting the "class's overwhelmingly favorable reaction reflects" that "the recovery here is substantial" and "weighs in favor of a substantial fee award"); *In re Sturm, Ruger, & Co., Inc. Sec. Litig.*, No. 09 Civ. 1293 (VLB), 2012 WL 3589610, at *13 (D. Conn. Aug. 20, 2012) (noting "the reasonableness of the requested award is underscored by the favorable reaction of the class").

Finally, applying a lodestar cross-check confirms that the request would not provide an "unwarranted windfall." *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 49-50 (2d Cir. 2000) (noting that lodestar is considered only as a cross-check to guard against an "unwarranted windfall"). As reported in the Motion, using our attorney-hours through December 31, 2015, resulted in a reasonable lodestar multiple of approximately 6.36 (or 6.24, when including the time of Associated Counsel). *See* Dkt. No. 482, Ex. A; Dkt. No. 483, Ex. A. *See, e.g.*, *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481-82 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.").

Over the last few months, Class Counsel have continued to work, as fiduciaries of the class, to ensure the efficient administration of the notice and claim processes preliminarily approved by the Court.[3] This included working with our experts to finish the Plan of Distribution, finalizing the class mailing list and supervising the mailing of class notice, working with the Claims Administrator and the experts on populating individual class members' claim portals, and reviewing execution desk information received from the Defendant banks to ensure that eligible CDS transactions are included in the Settlement.

[3] The fees associated with this recent work are detailed in the attached Declarations of Daniel L. Brockett (the "Supplemental Brockett Declaration") and Bruce L. Simon.

Throughout this period, Class Counsel fielded calls from class members on a daily basis. We routinely provided them with detailed information about the Settlement, answered their questions and clarified aspects of the Settlement and the Plan of Distribution, and addressed the objections filed to the Plan of Distribution. When the post-Motion work of Class Counsel is taken into account, the total collective number of hours spent on this matter rises to 93,174.70, and the lodestar multiple correspondingly falls to approximately 6.08. This figure is squarely within the accepted range, *see* Motion at 31-33 (gathering cases), especially given that Class Counsel's efforts yielded a large recovery for the class even though the respective investigations of the U.S. Department of Justice and the European Commission into the conduct of the Defendant banks yielded no penalties at all.

## II. CLASS COUNSEL'S EXPENSES ARE REASONABLE

Through the date of this filing, $10,086,795.80 of total expenses have been incurred by Class Counsel. *See* Supp. Brockett Decl. ¶ 9, Appendix B. Courts "normally grant expense requests in common fund cases as a matter of course." *In re Vitamin C. Antitrust Litig.*, No. 06 MD 1738 (BMC), 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012). These expenses reflect the complexity of the factual and legal issues involved in this action. Motion at 34-36. Simply put, "substantial expenses were necessary in this complex antitrust case." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 671 (S.D.N.Y. 2015). As noted, no class member has objected to Class Counsel's request for expenses.

Over $9.3 million of the total amount of expenses incurred to date were detailed in the opening Motion and supporting documentation. *See, e.g.*, Motion at 34-36. We have, of course, continued to incur expenses. For administrative ease, we are not requesting reimbursement for relatively minor expenses being incurred by many routine activities undertaken since December 31, 2015 (such as legal research, copying costs, etc.).

We have, however, incurred material "out of pocket" expenses since the filing of the Motion in January. These mostly are fees paid to the Berkeley Research Group ("BRG") and other consultants. Among other things, BRG has continued its work in identifying and reviewing transactions submitted by class members that they claim qualify as "Covered Transactions" under the Settlement.[4] This works requires multiple professionals at BRG to review these additional transactions and respond to class members questions. In order to ascertain whether a given transaction meets the criteria for a Covered Transaction, BRG is required to analyze data specific to each trade. Class Counsel have also worked with BRG and an industry expert to evaluate and respond to the technical objections to the Plan of Distribution made by the Objectors. Class Counsel thus are requesting reimbursement of additional expenses associated with these activities.

Finally, and relatedly, Class Counsel highlight an intended change in the logistics of payment going forward. As set forth in our initial papers,[5] pursuant to the terms of the Settlements and the Court's Order Preliminarily Approving Settlements and Providing for Notice to the Settlement Class (Dkt. No. 465), we have been allowing GCG to request payment directly from the Settlement Fund. However, because BRG was previously serving as consulting experts and supplementing the work of GCG, Class Counsel have been, as discussed above, paying BRG directly out of our own pockets. At this stage of the case, however, BRG's role has also become squarely within the confines of purely administrative expenses that the Court approved be paid directly out of the Settlement Fund.

---

[4] Approximately 5% of CDS transactions during the class period were not recorded in the DTCC database. Class members are entitled to submit additional qualifying transactions for inclusion in the Settlement, subject to review by the Claims Administrator.

[5] *See generally* Brockett Decl. ¶¶ 33-35 (Dkt. No. 482) (informing Court of intent to pay GCG's expenses directly out of the Settlement Fund, subject to a reasonableness review by Class Counsel).

Thus, in an abundance of caution, Class Counsel inform the Court that we intend going forward to allow both GCG *and* BRG — who will both continue to perform work administering the Settlement through the May 27, 2016 class submissions deadline and beyond — to be paid directly out of the Settlement Fund, subject to a reasonableness review of their invoices by Class Counsel and to the $15 million cap specified in the settlement agreements. Though payment to GCG and BRG will make up the overwhelming majority of any expenses incurred going forward, Class Counsel will also exercise their judgment in determining whether any other expenses incurred going forward fall within the confines of the Settlements and the Order Preliminarily Approving Settlements as to be paid directly from the Settlement Fund.

## III. THE REQUESTED INCENTIVE AWARDS ARE REASONABLE AND APPROPRIATE

Finally, the requested incentive awards are reasonable and appropriate. As explained in Class Counsel's opening Motion and the declarations of the two lead plaintiffs, individuals from LACERA and Salix put forth an extraordinary effort and expended over 1000 hours in helping to obtain an excellent result for the class — all at the risk of facing retaliation from the banks. *See* Dkt. No. 481 at 36-37, Dkt. Nos. 484-87. No objection was made to these requests either. *See, e.g.*, *In re Facebook, Inc. IPO Sec. & Derivative Litig.*, 12 MD 2389 (RWS), 2015 WL 6971424, at *13 (S.D.N.Y. Nov. 9, 2015) (approving request for incentive awards where "no objections to the incentive awards ha[d] been made"). Incentive awards are, therefore, appropriate to compensate these lead plaintiff for their hard and productive work.

## CONCLUSION

For the foregoing reasons, as well as those articulated in Class Counsel's Motion, we respectfully request that the Court grant Plaintiffs' Motion for attorneys' fees, expenses, and

incentive awards. For the Court's convenience, we submit herewith a Proposed Order granting the Motion for fees, expenses, and incentive awards.

DATED: New York, New York
April 8, 2016

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: /s/ Daniel L. Brockett
Daniel L. Brockett
Steig D. Olson
Sascha N. Rand
Jonathan Oblak
51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Fax: (212) 849-7100
danbrockett@quinnemanuel.com
steigolson@quinnemanuel.com
sascharand@quinnemanuel.com
jonoblak@quinnemanuel.com

Jeremy D. Andersen
865 S. Figueroa St., 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Fax: (213) 443-3100
jeremyandersen@quinnemanuel.com

***Lead Counsel for Plaintiffs***

PEARSON, SIMON & WARSHAW, LLP

By: /s/ Bruce L. Simon
Bruce L. Simon
Clifford Pearson
George S. Trevor
44 Montgomery Street, Suite 2450
San Francisco, California 94104
Telephone: (415) 433-9000
Fax: (415) 433-9008
bsimon@pswlaw.com
cpearson@pswlaw.com
gtrevor@pswlaw.com

***Co-Lead Counsel for Plaintiffs***

# Exhibit A

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | | |
|---|---|---|
| IN RE CREDIT DEFAULT SWAPS ANTITRUST LITIGATION | : | 13 Md. 2476 (DLC) |
| This Document Relates To: All Actions | : | |

**[PROPOSED] ORDER GRANTING CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES**

Class Counsel's Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards (Dkt. Nos. 480, 507; together, the "Fee and Expense Application") came before the Court for hearing on April 15, 2016. The Court has considered the Fee and Expense Application and all supporting and other related materials, including the matters presented at the April 15 Fairness Hearing. Adequate notice having been given to the Settlement Class as required by the Court's October 29 and November 4, 2015 Orders Preliminarily Approving the Settlements and Providing for Notice to the Settlement Class (Dkt. Nos. 465, 468; together, the "Preliminary Approval Order"), and having considered all papers and proceedings in this matter, the Court finds, concludes, and orders as follows:

1. This Order incorporates by reference the definitions in the Stipulations and Agreements of Settlement (Dkt. No. 445, Exs. 1–14; collectively, the "Settlement Agreements") and all capitalized terms used but not defined herein shall have the same meanings as in the Settlement Agreements.

2. This Court has jurisdiction over the subject matter of the Action and over all parties to the Action, including all members of the Settlement Class.

3. Notice of the Fee and Expense Application was provided to 13,923 potential class members in a reasonable manner, and such Notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure and due process requirements.

4. Settlement Class members were given the opportunity to object to the Fee and Expense Application in compliance with Rule 23(h)(2) of the Federal Rules of Civil Procedure.

5. No member of the Settlement Class objected to the Fee and Expense Application.

6. The Fee and Expense Application is granted as described below.

7. Class Counsel are hereby awarded attorneys' fees in the amount of $253,758,000 (approximately 13.61% of the total Settlement Fund) and $10,181,190.76 in expenses.

8. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

a. The Settlement Agreements have created a Settlement Fund of $1,864,650,000 in cash that has been transferred to an escrow account administered by Escrow Agent Signature Bank for the benefit of the Settlement Class pursuant to the terms of the Settlement Agreements;

b. Settlement Class Members who submit acceptable proof of claim forms will benefit from the Settlement Agreements because of the efforts of Class Counsel and class representatives;

c. The fee sought by Class Counsel is fair and reasonable, as supported by the determinations of the sophisticated investors that were substantially involved in the prosecution of this Action;

d. The fee sought by Class Counsel abides by the sliding fee schedule negotiated by lead plaintiff Los Angeles County Employees Retirement Association ("LACERA") at the outset of this Action;

e. The Notice mailed to all potential class members stated that Class Counsel could seek attorneys' fees of up to 14% of the Settlement Fund, and further directed class members to a website on which the full Fee and Expense Application was accessible as of January 29, 2016, and no objections to the fee and expense provision of the Settlement Agreements or Fee and Expense Application were made;

f. Class Counsel have prosecuted the Action with skill, perseverance, and diligence, as reflected by the substantial Settlement Fund achieved and the positive reception of the Settlement Agreements by the Settlement Class;

g. The Action involved complex factual and legal issues that were extensively researched and developed by Class Counsel, and vigorously disputed in briefing, discovery, and mediation for over two years;

h. Had the Settlement Agreements not been achieved, a significant risk existed that Plaintiffs and class members may have recovered significantly less or nothing from Defendants;

i. Public policy considerations support the requested fee, as only a small number of firms have the expertise and resources to successfully prosecute cases such as the Action; and

j. The amount of attorneys' fees awarded and expenses reimbursed is appropriate to the specific circumstances of the Action and consistent with awards in similar cases.

9. Class Counsel shall allocate the awarded attorneys' fees and expenses among Class Counsel and Associated Counsel in a manner in which, in their judgment, reflects the contributions of such counsel to the prosecution and settlement of the Action.

10. Pursuant to sections 8(a) and (b) and section 15(o) of the Settlement Agreements,[1] and paragraph 17 of the Court's Preliminary Approval Order, this fee and expense award is independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement and is also independent of the Court's consideration the Plan of Distribution. The fees and expenses awarded herein shall be payable from the Settlement Fund upon entry of this Order.

11. Class representative LACERA is hereby awarded $200,000 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

12. Class representative Salix Capital US Inc. is hereby awarded $193,700 from the Settlement Fund in recognition of its contributions and reasonable expenses related to the Action on behalf of the Settlement Class.

DATED: New York, New York
_____, 2016

_____
DENISE COTE
UNITED STATES DISTRICT JUDGE

[1] These provisions are contained in each agreement. The relevant language that appears in thirteen of the Settlement Agreements at section 8 is contained in the Agreement between Plaintiffs and Defendant International Swaps and Derivatives Association ("ISDA") at section 9. *See* Dkt. No. 445-9. Similarly, the provisions of section 15(o) of all other Settlement Agreements appear in section 16(o) of the Agreement between Plaintiffs and ISDA.