

Berger & Montague, P.C.
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August 19, 2008

BY OVERNIGHT MAIL

The Honorable William H. Pauley, III
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2210
New York, NY 10007-1312

Re: *In re Currency Conversion Fee Antitrust Litigation*
Master File No. M 21-95; MDL No. 1409

Dear Judge Pauley:

Enclosed please find two courtesy copies of Plaintiffs' Co-Lead Counsel and Claims Administrator Report Regarding the Cost of Settlement Notice and Administrative Costs and Motion for Approval of Settlement Notice and Administration Costs in Excess of \$100,000 to a Single Vendor for the Second Quarter 2008; the Affidavit of Ronald A. Bertino, CPA; a [Proposed] Order; and a Certificate of Service.

Plaintiffs respectfully request a disbursement from the Principal Settlement Fund, maintained with the Court Registry Investment System ("CRIS") as account number 07-cc-0001-1, to pay notice and claims administration costs owed to the Claims Administrator, the Special Master and Analysis Research Planning Corporation. The amounts owed are: (i) \$997,324.28 to the Claims Administrator (for May & June 2008 fees); (ii) \$5,130.05 to the Special Master (for April and May 2008 fees and expenses); and (iii) \$38,361.50 to Analysis Research Planning Corporation (for April through June 2008 fees and expenses).

Plaintiffs' Co-Lead Counsel respectfully request that the Clerk of the Court be directed to draw checks in these amounts and to these payees from the CRIS Principal Settlement Fund, account no. 07-cc-0001-1. The Clerk of Court should send the checks by overnight mail, no later than Wednesday, September 3, 2008, to Co-Lead Counsel Berger & Montague, P.C., c/o Merrill G. Davidoff, Esquire, 1622 Locust Street, Philadelphia, PA 19103, for disbursement to these payees.

Respectfully submitted,



David A. Langer

DAL/jk
enclosures

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August 19, 2008

BY OVERNIGHT MAIL

J. Michael McMahon
Clerk of the District Court
United States District Court
for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *In re Currency Conversion Fee Antitrust Litigation*
Master File No. M 21-95; MDL No. 1409

Dear Mr. McMahon:

Please find enclosed for filing in the above-captioned action the original and one copy of Plaintiffs' Co-Lead Counsel and Claims Administrator Report Regarding the Cost of Settlement Notice and Administrative Costs and Motion for Approval of Settlement Notice and Administration Costs in Excess of \$100,000 to a Single Vendor for the Second Quarter 2008; the Affidavit of Ronald A. Bertino, CPA; a [Proposed] Order; and a Certificate of Service. Kindly file the originals and please return the copies with a time stamp to this office using the enclosed self-addressed, pre-paid envelope. Courtesy copies of these documents have been sent under separate cover to Judge Pauley's chambers.

Respectfully submitted,



David A. Langer

DAL/jk
enclosures

Pursuant to the Stipulation and Agreement of Settlement (“Settlement Agreement”) and this Court’s Order dated November 8, 2006, Plaintiffs’ Co-Lead Counsel and the Claims Administrator¹ submit the following report and motion for approval of settlement and administration costs to the Court. *See* Order at ¶ 11 and Settlement Agreement at ¶ 12(b). This report contains information on income and expenses attributed to the two Settlement funds described below for the Second Quarter of 2008, ending June 30, 2008. Also included is a request for approval of the payment of costs to the Claims Administrator, the Special Master² and Analysis Research Planning Corporation,³ as required by the November 8, 2006 Order and the Court’s October 22, 2007 Amended Order.

By way of background, on July 24, 2006, Plaintiffs’ Co-Lead Counsel established two separate settlement accounts. One, the Principal Settlement Fund, was established with an initial balance of \$318,000,000.00. The other, a Notice and Cost Administration Fund, was established with an initial balance of \$18,000,000.00. The Notice and Cost Administration Fund was established to pay for the costs, administrative fees and expenses associated with: the preparation, handling, mailing, printing, publication and any other aspects of the dissemination of the notice of pendency and settlement of class action, the publication notice, or the claim form according to the terms and conditions of the Class and Settlement Notice Plan; the maintenance of the foreign transaction litigation escrow account; and all aspects of claims administration

¹ Pursuant to this Court’s Order dated November 8, 2006, the Court appointed Heffler, Radetich & Saitta, L.L.P. (“HR&S”) as Claims Administrator.

² On June 8, 2007, the Court appointed Professor Francis E. McGovern as a Special Master to assist the parties with reviewing and revising the settlement notice and claims procedures.

³ On August 30, 2007, the Court appointed B. Thomas Florence and Analysis Research Planning Corp. (collectively “ARPC”) as experts to the Special Master to assist the Special Master with his evaluation of the terms of the notice and claims procedure, and the development of the algorithm.

including, without limitation, the costs, fees and expenses incurred and charged by the Claims Administrator in connection with this settlement according to the terms and conditions of the Revised Plan of Administration and Distribution. *See* Settlement Agreement ¶ 12(b).

Pursuant to the Court's October 22, 2007 Amended Order, the two funds have been deposited into two separate interest-bearing accounts with the Court Registry Investment System ("CRIS"). The CRIS accounts were established on October 23, 2007 when Co-Lead Counsel caused the two funds to be wired to the Clerk of the Court for the Southern District of New York. At that time, the balance of the Principal Settlement Fund account was \$334,733,965.87 and the balance of the Notice and Cost Administration Fund account was \$13,425,584.57.

Settlement Funds Balance. The CRIS account statements report that the combined balance of the two funds as of June 30, 2008 was \$337,558,916.39. Affidavit of Ronald A. Bertino, CPA Regarding the Costs of Administration Through June 30, 2008 ("Bertino Affidavit") ¶3 and Exhibit A ("Cash & Investments as of June 30, 2008").⁴ For the Second Quarter 2008, the balance of the CRIS Principal Settlement Fund (account number 07-cc-0001-1) was \$336,854,345.24 and the balance of the CRIS Notice and Cost Administration Fund (account number 07-cc-0001-2) was \$704,571.15. *See* Bertino Affidavit ¶3 and Exhibit A ("Cash & Investments as of June 30, 2008").

In addition, the settlement funds received two federal tax refunds: (i) a refund of \$1,826,225 for federal taxes paid for the year 2007 received on March 14, 2008; and (ii) a refund of \$1,136,610 for federal taxes paid for the year 2006 received on April 17, 2008. *See* Bertino Affidavit ¶4 and Exhibit C. These funds were placed into an investment account at Citizens Bank (U.S. Treasury-backed money market funds) to accrue interest pending the Court's

⁴ For reference to the Bertino Affidavit, the Principal Settlement Fund is account number 2518, and the Notice and Cost Administration Fund is account number 2526.

authorization to wire the funds to the CRIS Principal Settlement Fund.⁵ The balance of these tax refund monies held at Citizens Bank as of June 30, 2008, including interest, was \$2,969,073.36. See Bertino Affidavit Exhibit C.

Net Settlement Fund Income. The funds have earned and received a total of \$26,454,550.05 in interest income from the inception of the funds to the end of the Second Quarter, June 30, 2008. Bertino Affidavit ¶4 and Exhibit A (“Income – 07/24/06 to 6/30/08”). The funds also have an interest receivable amount at June 30, 2008 of \$79,663.94 (*i.e.*, interest earned on investments that have not matured as of June 30, 2008). Bertino Affidavit ¶4 and Exhibit A (“Income/Refunds Receivable”).

Total Expenses for the Second Quarter 2008. The total expenses incurred by the funds in the Second Quarter 2008 amount to \$2,069,476.69. Bertino Affidavit ¶5 and Exhibit B (Note X). This amount includes the fees and expenses billed by the Claims Administrator (for April through June 2008), the Special Master (for April and May 2008) and ARPC (for April through June 2008). See Bertino Affidavit Exhibit D (enclosing invoices for these expenses).

No estimated tax payments were made in the Second Quarter. The total estimated tax payments from inception (July 24, 2006) through the Second Quarter (June 30, 2008) are \$4,488,000. Bertino Affidavit Exhibit C. Accounting for the 2007 tax refund of \$1,826,225 and the 2006 tax refund of \$1,136,610, the net taxes paid from inception through the Second Quarter 2008 are \$1,525,165. See *supra*.

⁵ Pursuant to this Court’s Order of June 27, 2008, the tax refund monies held at Citizens Bank have been disbursed to pay Court-approved expenses, and the remaining funds (\$2,017,432.25) were transferred to the CRIS Principal Settlement Fund on July 8, 2008. Please note that this report provides transactional data through June 30, 2008 and therefore the tax refund funds are listed as being held in investment accounts with Citizens Bank because the wire transfer to CRIS occurred after the reporting period.

Request for Approval of Payment of Outstanding Expenses. Paragraph 3(f) of the Settlement Agreement sets out the guidelines for payments from the Settlement Fund.⁶ As required by Paragraph 3(f) and the Court's October 22, 2007 Amended Order, Court approval is required to be paid for notice and claim administration services provided by: (i) the Claims Administrator (\$997,324.28, for May & June 2008); (ii) the Special Master (\$5,130.05, for April & May 2008); and (iii) ARPC (\$38,361.50, for April through June 2008).

Claims Administrator. The Claims Administrator's invoices for May 2008 (\$629,095.49) and June 2008 (\$368,228.79), dated June 16, 2008 and July 21, 2008 respectively, are attached at Exhibit D to the Bertino Affidavit. These invoices detail the services provided by the Claims Administrator to administer the Revised Class and Settlement Notice Plan and the Revised Plan of Administration and Distribution.

The Claims Administrator's services are billed on either a per item basis or an hourly basis. There were no services billed on an hourly basis for May and June 2008.

Services billed on a per item basis for May and June 2008 include: setting up, maintaining, monitoring and updating the website (www.ccfsettlement.com) and the automated "800" telephone service with live operator available (the "TVR" system), which includes revising and updating the information and/or documents available to Class Members at the request of counsel for the parties; the collection and sorting of mail and claim forms from Class Members; responding to telephone, mail and email inquiries from Class Members; providing documentation (claim forms, settlement agreements, opt-out forms, etc.) to Class Members;

⁶ Paragraph 3(f) of the Settlement Agreement reads, in its entirety: "No distribution or payment from the Gross Settlement Fund or the Net Settlement Fund shall be made without the express prior approval of the Court for any purpose other than (i) Tax Payments, (ii) costs for Publication Notice, notice printing costs or notice postage costs, or (iii) payment of Settlement Notice and Administration Costs in amounts of less than \$100,000 to a single vendor."

reviewing and preparing quarterly reports for the two CRIS settlement funds; preparing the Agency/Company claim submission procedures and assisting Agency/Company Class Members with their claims; preparing status reports and settlement claims activity updates for counsel; preparing, updating and distributing a log of Class Members who have opted-out of the settlement; and participating in meetings and conference calls with counsel for plaintiffs and defendants to address settlement administration issues.

Payment for these costs to the Claims Administrator is authorized by Paragraph 12(b) of the Settlement Agreement. Accordingly, Plaintiffs' Co-Lead Counsel respectfully request that the Court approve the payment of \$997,324.28 (\$629,095.49 for May 2008 and \$368,228.79 for June 2008) to the Claims Administrator.

Special Master. Pursuant to the Court's June 8, 2007 Order, the Special Master, Professor Francis E. McGovern, shall be paid from the Settlement Fund. The Special Master has submitted an invoice, which is attached at Exhibit D to the Bertino Affidavit, for his fees and expenses for April and May 2008. The total fees and expenses for this period are \$5,926.95.

Additionally, the Court entered an Order on July 11, 2008 reflecting a submission by the Special Master reducing by \$796.90 the overall amount of his fees and expenses that were either approved by the Court or submitted to the Court for approval prior to July 11, 2008.

Accordingly, Plaintiffs' Co-Lead Counsel respectfully request that the Court approve the payment of \$5,130.05 (\$5,926.95 for April and May 2008 less \$796.90) to Francis E. McGovern, Special Master.

ARPC. ARPC has submitted three invoices for the period April through June 2008, which are attached as Exhibit D to the Bertino Affidavit, for services pertaining to the notice and claims procedures, and for developing the algorithm for Option 2 claims. With respect to the

algorithm, ARPC compiled and analyzed data, conducted testing, prepared reports, attended meetings and conference calls with counsel, as well as attending hearings before the Court, and it is developing an algorithm methodology.

The total for ARPC's fees and expenses for April through June 2008 is \$38,361.50 (\$840.00 for April 2008, \$1,237.50 for May 2008 and \$36,284.00 for June 2008). Of this amount, \$37,800.50 is for work billed at ARPC's normal hourly rates and \$561.00 is for expenses.

Payment for these costs to the Claims Administrator is authorized by Paragraph 12(b) of the Settlement Agreement and the Court's August 30, 2007 Order.⁷ Accordingly, Plaintiffs' Co-Lead Counsel respectfully request that the Court approve the payment of \$38,361.50 to ARPC.

Summary of Outstanding Expenses. Co-Lead Counsel respectfully request that the Court authorize payments from the Principal Settlement Fund, maintained in a CRIS account (designated as account number 07-cc-0001-1), for costs to the Claims Administrator, the Special Master and ARPC. The Clerk of the Court should be directed to draw checks to these payees in the amounts indicated below and to send the checks by overnight mail, no later than Wednesday, September 3, 2008, to Co-Lead Counsel Berger & Montague, P.C., c/o Merrill G. Davidoff, Esq., 1622 Locust Street, Philadelphia, PA 19103, for distribution to the payees. The disbursements from the CRIS Principal Settlement Fund should be made for the following amounts and payees:

⁷ At the time the Court appointed ARPC as an expert to the Special Master, the parties had contemplated that ARPC would provide advice and some assistance with developing the algorithm, and, as a result, the August 30 Order limits ARPC's compensation to \$60,000. However, ARPC now has primary responsibility for developing the algorithm, and the work required for it to reasonably complete its analysis of data and to develop the algorithm has exceeded that threshold amount. ARPC will continue its work until the algorithm is finalized. Co-Lead Counsel, therefore, respectfully request that the Court grant payments to ARPC in excess of \$60,000 for work done in connection with the algorithm.

- (i) the amount of \$997,324.28 paid to Heffler Radetich & Saitta, LLP (Claims Administrator);
- (ii) the amount of \$5,130.05 paid to Francis E. McGovern (Special Master); and
- (iii) the amount of \$38,361.50 paid to Analysis Research Planning Corporation.

Respectfully submitted,

DATED: August 19, 2008

BERGER & MONTAGUE, P.C.
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Co-Lead Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	x	
In re CURRENCY CONVERSION FEE	:	MDL Docket No. 1409
ANTITRUST LITIGATION	:	
	:	M 21-95
	:	
_____	:	[PROPOSED] ORDER
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	x	

WILLIAM H. PAULEY III, District Judge:

This Court having reviewed the Report Regarding the Cost of Settlement Notice and Administrative Costs and Motion for Approval of Settlement Notice and Administration Costs in Excess of \$100,000 to a Single Vendor for the Second Quarter 2008 and the Affidavit of Ronald A. Bertino, CPA, it is ORDERED that, pursuant to Paragraph 3(f) of the Stipulation and Agreement of Settlement preliminarily approved by this Court on November 8, 2006 and this Court's October 22, 2007 Amended Order, the Clerk of the Court is directed to draw checks from the Principal Settlement Fund, designated as account no. 07-cc-0001-1 with the Court Registry Investment System ("CRIS"), made payable to the Claims Administrator, the Special Master and Analysis Research Planning Corporation in the amounts indicated below, and to send these checks by overnight mail, no later than Wednesday, September 3, 2008, to Co-Lead Counsel Berger & Montague, P.C., c/o Merrill G. Davidoff, Esq., 1622 Locust Street, Philadelphia, PA 19103, for distribution to these payees. The disbursements from the CRIS Principal Settlement Fund shall be made for the following amounts and payees:

- (i) the amount of \$997,324.28 made payable to Heffler Radetich & Saitta, LLP (Claims Administrator);
- (ii) the amount of \$5,130.05 made payable to Francis E. McGovern (Special Master); and
- (iii) the amount of \$38,361.50 made payable to Analysis Research Planning Corporation.

Dated: _____
New York, New York

SO ORDERED:

William H. Pauley, III
U.S.D.J.

Copies to:
All Counsel of Record

Members in this action, and to prepare federal tax returns and tax estimates for the settlement monies, which were placed in two escrow funds described below. These services are provided by HR&S at the amounts and rates set forth in the revised proposal, dated December 26, 2006 and the updated budget report issued to counsel dated through August 31, 2007. The initial proposal, dated May 10, 2006, was revised with the consent of all parties to allow for improvements in settlement administration procedures that were developed subsequent to the initial proposal.

3. Two escrow funds for the settlement monies were established on July 24, 2006 in accordance with the Stipulation and Agreement of Settlement ("Settlement Agreement"). \$318,000,000.00 was placed in the "Principal Settlement Fund" escrow account to be used for the distribution to the Class Members and to pay taxes on the fund's earnings. \$18,000,000.00 was placed in the "Notice and Cost Administration Fund" escrow account to be used to pay for the notice and administrative costs and to pay for the taxes on the fund's earnings. An Order was issued on October 22, 2007 directing counsel to effectuate the wire transfer of the balances in the two escrow funds to the Court Registry Investment System ("CRIS"). Wire transfers of \$334,733,965.87 from the Principal Settlement Fund Account and \$13,408,289.70 from the Notice and Cost Administration Fund Account were effectuated on October 23, 2007 to the CRIS. The balance in the CRIS accounts, per the CRIS statements at June 30, 2008, is \$337,558,916.39 (Exhibit A). This is made up of \$336,854,345.24 of money market and United States treasury bill investments in the Principal Settlement Fund portion of the CRIS account and \$704,571.15 of money market and United States treasury bill investments in the Notice and Cost Administration Fund portion of the CRIS account (Exhibit A). In addition, there is \$2,969,081.73 in investment accounts in U.S. Treasury-backed money market funds held at Citizens Bank (which monies had been received by HR&S as federal tax refunds for the settlement funds; now including accrued interest). The funds remaining in the accounts held by Citizens Bank after paying certain Court approved expenses were transferred to the CRIS in the third quarter pursuant to a Court Order dated June 29, 2008.

4. The two settlement funds have earned and received a total of \$26,454,550.05 in interest income from the inception of the funds (on July 24, 2006) to the end of the Second Quarter of 2008 (June 30, 2008) (Exhibit A). The funds also have an interest-receivable amount at June 30, 2008 of \$79,663.94 (*i.e.*, interest earned on investments that have not matured as of June 30, 2008) (Exhibit A). Further, estimated federal tax payments on these earnings from the funds have been paid. From the inception of the funds (on July 24, 2006) through the Second Quarter of 2008, the total estimated tax payments for the funds are \$4,488,000.00. A refund of taxes paid was received in March related to tax year 2007 in the amount of \$1,826,225 and in April related to tax year 2006 in the amount of \$1,136,610. The net amount of taxes paid from the inception of the funds to June 30, 2008 is \$1,525,165 (Exhibit C).

5. In accordance with Section 12(b) of the Settlement Agreement, HR&S is providing a quarterly accounting of the total expenses billed in the Second Quarter of 2008 and the amounts paid for the notification and administration of the settlement. Total expenses billed to the fund during the Second Quarter of 2008 amounts to \$2,069,476.69, as summarized in Exhibit B (Note X). Copies of the corresponding invoices (HR&S, Special Master & ARPC) are attached at Exhibit D. No amount for estimated taxes was due for the second quarter.

6. In accordance with Paragraph 3(f) of the Settlement Agreement, HR&S must seek Court approval for their fees and expenses incurred (excluding Notice printing and mailing costs) from April 1, 2008 to June 30, 2008, which total \$1,779,054.16. Paragraph 3(f) provides that Court approval is not required for tax payments, any notification costs and any payments under \$100,000 to a single vendor.

7. The attached reconciliation (Exhibit B) reflects outstanding balances from February 2008 to June 2008. A Court Order dated June 29, 2008 was issued approving HR&S's fees, in the amount of \$790,585.32, for services rendered in February 2008. This amount was paid out of the escrow funds maintained at Citizens Bank and the payment was made on July 9, 2008. A Court Order dated July 9, 2008 was issued approving HR&S's fees, in the amount of