

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re CURRENCY CONVERSION FEE :
ANTITRUST LITIGATION :

MDL Docket No. 1409

M 21-95

This Document Relates To:

ALL ACTIONS.

:
: PLAINIFFS' 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

:
: FIRST QUARTER 2009

X

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 First Quarter of 2009, ending March 31, 2009. Also included is a request for approval of the payment of costs to the Claims Administrator and Analysis Research Planning Corporation,² 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 including, without limitation, the costs, fees and expenses incurred and charged by the Claims

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 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.

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 March 31, 2009 was \$337,233,818.36. Affidavit of Ronald A. Bertino, CPA Regarding the Costs of Administration Through March 31, 2009 ("Bertino Affidavit") ¶3 and Exhibit A ("Cash & Investments as of March 31, 2009").³ For the First Quarter 2009, the balance of the CRIS Principal Settlement Fund (account number 07-cc-0001-1) was \$336,524,415.68 and the balance of the CRIS Notice and Cost Administration Fund (account number 07-cc-0001-2) was \$708,745.49. *See* Bertino Affidavit ¶3 and Exhibit A ("Cash & Investments as of March 31, 2009").

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 authorization to wire the funds to the CRIS Principal Settlement Fund. Pursuant to this Court's

³ 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.

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.

Net Settlement Fund Income. The funds have earned and received a total of \$28,458,287.17 in interest income from the inception of the funds to the end of the First Quarter, March 31, 2009. Bertino Affidavit ¶4 and Exhibit A (“Income – 07/24/06 to 03/31/09”). The funds also have an interest receivable amount at March 31, 2009 of \$3,053.48 (*i.e.*, interest earned on investments that have not matured as of March 31, 2009). Bertino Affidavit ¶4 and Exhibit A (“Income/Refunds Receivable”).

Total Expenses for the First Quarter 2009. The total expenses incurred by the funds in the First Quarter 2009 amount to \$595,447.22. Bertino Affidavit ¶5 and Exhibit B (Note X). This amount includes the fees and expenses billed by the Claims Administrator (for January through March 2009) and ARPC (for January through March 2009). *See* Bertino Affidavit Exhibit D (enclosing invoices for these expenses).

No estimated tax payments were made in the First Quarter of 2009. Bertino Affidavit ¶5. The total estimated tax payments from inception (July 24, 2006) through the First Quarter (March 31, 2009) 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 First Quarter 2009 are \$1,525,165. *See supra.*

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.⁴ As

⁴ 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

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 (\$593,553.22 for January through March 2009); and (ii) ARPC (\$1,894.00, for January through March 2009).

Claims Administrator. The Claims Administrator's invoices for January 2009 (\$220,190.36), February 2009 (\$189,403.75) and March 2009 (\$183,959.11), dated April 16, 2009, April 16, 2009 and April 20, 2009, 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. Services billed on an hourly basis for January through March 2009 concern the implementation of the audit program. Hourly services in connection with the audit program include: selecting claims for audit based on various factors; implementing and revising the audit program on an ongoing basis based, in part, on the results of completed audits; corresponding with audited class members; gathering information in response to audits; analyzing the audit data and information, and determining whether all or a portion of a claim is valid; and logging and summarizing results of all completed audits on a daily basis.

Services billed on a per item basis for January through March 2009 include: setting up, maintaining, monitoring and updating the website (www.ccfsettlement.com) and the automated "800" telephone service with live operator available (the "IVR" system), which includes revising and updating the information and/or documents available to Class Members at the request of

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."

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 or information requested by Class Members; reviewing and preparing quarterly reports for the two CRIS settlement funds; 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 \$593,553.22 (\$220,190.36 for January 2009, \$189,403.75 for February 2009, and \$183,959.11 for March 2009) to the Claims Administrator.

ARPC. ARPC has submitted two invoices for January 2009 through March 2009, which are attached at 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 analyzed data and outstanding issues in connection with finalizing the algorithm methodology.

The total for ARPC's fees for January 2009 through March 2009 are \$1,894.00, which amount is for work billed at ARPC's normal hourly rates (*i.e.*, no expenses were billed).

Payment for these costs to ARPC is authorized by Paragraph 12(b) of the Settlement Agreement and the Court's August 30, 2007 Order.⁵ Accordingly, Plaintiffs' Co-Lead Counsel respectfully request that the Court approve the payment of \$1,894.00 to ARPC.

⁵ 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.

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 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 Friday, June 5, 2009, 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:

- (i) the amount of \$593,553.22 paid to Heffler Radetich & Saitta, LLP (Claims Administrator); and
- (ii) the amount of \$1,894.00 paid to Analysis Research Planning Corporation.

Respectfully submitted,

DATED: May 20, 2009

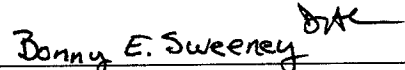
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Co-Lead Counsel, therefore, respectfully request that the Court grant payments to ARPC in excess of \$60,000 for work done in connection with the algorithm.

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