UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE CURRENCY CONVERSION FEE ANTITRUST LITIGATION	MDL No. 1409 M 21-95
THIS DOCUMENT RELATES TO: ROBERT ROSS, et al., Plaintiffs, -against- BANK OF AMERICA, N.A, et al., Defendants.	Index No. 05 CV 7116 (WHP) Jury Trial Demanded

REPLY IN FURTHER SUPPORT OF (1) CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENTS (Dkt. No. 225); AND (2) MOTION FOR APPROVAL OF ATTORNEYS' FEES (Dkt. No. 228)

Plaintiffs Robert Ross, Andrea Kune, Woodrow Clark, S. Byron Balbach, Jr., Matthew Grabell, Paul Impellezzeri and Richard Mandell (collectively "Class Plaintiffs" or "Plaintiffs") on behalf of themselves and the certified Class and Subclass (the "Class") respectfully submit this memorandum in further support of (a) their Motion for Final Approval of Class Action Settlements With Bank of America, Capital One, Chase and HSBC and (b) their Motion for Approval of Attorneys' Fees and Reimbursement of Litigation Expenses Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure.

Because there have been only two responses from class members, each of which address both settlement approval and payment of attorneys' fees, plaintiffs submit this consolidated reply in further support of both motions.

I. STATEMENT

Class Plaintiffs' and counsel's compliance with the notice plan is documented in the materials submitted with Plaintiffs' opening papers. (Declaration of Nicholas Urban, ¶¶ 3-12) The notice program produced 16,348 total "visits" by some 14,354 "absolute unique visitors" to the settlement website – arbitration.ccfsettlement.com – in the period between March 25, 2010 and June 24, 2010. (Exhibit 1 to the Declaration of Jason A. Zweig submitted concurrently with this memorandum) Two class members have submitted written statements – one in support of final approval and the request for fees, and one in opposition.[1]

Class member John Hightower, represented by counsel, has submitted a "Statement in Support and Notice of Intent to Appear," in which he stated "Class counsel have demonstrated their courage and commitment to consumers' rights by achieving this settlement which halts some of the most abusive practices by banks and credit card companies." (Dkt. Item 234, at p. 2). With respect to notice, Mr. Hightower commented that "Class counsel has set the standard for disseminating information to the class through the excellent settlement website." (*Id.*) Finally, regarding fees, Mr. Hightower stated, "Class counsel has applied for and justified a well earned fee which should be approved." (*Id.*) For the record, one of Mr. Hightower's counsel represented an objector in the settlement of the related matter, *In re Currency Conversion Fee Antitrust Litig.*, Master File 95-21, 01-md-1409 (S.D.N.Y.) (Pauley, J.).

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[1] There were two objections to preliminary approval of the settlement. Both were from counsel concerned that the settlement *sub judice* would upset cases they were prosecuting. Both of these were resolved before preliminary approval.

Class member Alexander MacKenzie wrote to the Court in opposition to the proposed settlement and request for fees. His letter, which was lodged with chambers, is annexed as Exhibit 2 to the accompanying Declaration of Jason A. Zweig. Mr. MacKenzie argues as follows:

> I am writing in objection to the Settlement of Ross, et al. v. Bank of America, N.A., (USA), No. 05-cv-7116 (S.D.N.Y.)). I also take exception to the extraordinary amount of attorneys' fees that are being assessed to the class.
>
> The original case has no relation to the arbitration agreement that was strong-armed into consumer card agreements and as such is being brought up in the wrong forum. This case has been poorly publicized and I believe people who may be members of this class would strongly object as I do. THROW THIS CASE OUT.
>
> I am attaching a copy of proof that I am a member of this class in the form of a letter from the Settlement Administrator dated November 23, 2007.

II. ARGUMENT

Plaintiffs have stated the compelling reasons for granting final approval and awarding counsel their requested fee in their opening memoranda and will not repeat them here.

An "overall 'favorable reception of the settlement' from class...members supports the settlement under the second *Grinell* factor." *D.S. v. New York City Dep't of Educ.*, 255 F.R.D. 59, 77 (E.D.N.Y. 2008). As described in Class Plaintiffs' opening papers, notice was widely disseminated through, *inter alia*, publication in two national newspapers each with circulation that exceeds 2 million and the *ABA Journal*, which has a circulation of approximately 384,000, most of whom are attorneys, distributed to eight consumer advocacy organizations and published on a website, a prominent link to which was placed on the currency conversion settlement website. In all cases, the notice contained clear instructions on how to submit an objection and allowed an adequate time period for objections to be submitted. There has been only a single objection to the settlement. As discussed more fully below, that objection evidently fails to understand the settlement. The paucity of objections is evidence of the fairness of the settlement. *See Marisol*

A. v. Giuliani, 185 F.R.D. 152, 163 (S.D.N.Y. 1999) (concluding that a "small number of comments from a plaintiff class" is "evidence of the Settlement Agreement's fairness, reasonableness, and adequacy"); *Women in City Gov't United v. New York*, 1986 WL 7018, at *6 (S.D.N.Y. June 17, 1986) (finding that a small number of objectors is "a good indication of the fairness of the settlement").

Respectfully, the sole objection does not appear to understand the claims or the settlement. His statement that fees are being assessed against the class is flatly wrong. No damages were sought in this case and counsel's fee is not being taken from the Class's recovery. The requested fee award, negotiated with each settling defendant only after the resolution of all substantive terms, in no way reduces the relief flowing to the Class. The objector's argument that the amount of fees is "extraordinary" is also wrong. At 34.6% of the lodestar, the requested fee is modest. The objector evidently objects to the underlying arbitration clauses themselves, asserting that they were "strong-armed into consumer card agreements." Yet his objection challenges the first and only settlement that removes these arbitration clauses from the terms applicable to cardholders for a minimum of 3½ years. Finally, the objector's argument concerning notice is also flatly wrong. The settlement website has received more than 14,000 unique visitors. While Counsel cannot represent that every visitor was a class member, undoubtedly the vast majority were – the web address is sufficiently unique that it unlikely to have attracted a significant number of unintended or erroneous visits. Thousands of class members have actually made the effort to become more informed about this settlement and have not objected.

III. CONCLUSION

For the reasons stated herein as well as those stated in prior memoranda supporting Class Plaintiffs' Motion for Final Approval of Class Action Settlements With Bank of America, Capi-

tal One, Chase and HSBC and their Motion for Approval of Attorneys' Fees and Reimbursement of Litigation Expenses Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Class Plaintiffs' respectfully request that the Court grant their motions in full.

DATED: June 25, 2010

Respectfully submitted,

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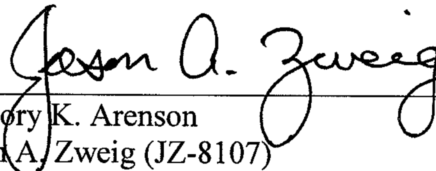

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