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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
2 -----x

3 SILVIA SEIJAS, et al,  
4 Plaintiffs,

5 v. 04 Civ. 400 (TPG)

6 THE REPUBLIC OF ARGENTINA,  
7 Defendant

8 -----x  
New York, N.Y.  
9 December 1, 2015  
2:45 p.m.

10 Before:

11 HON. THOMAS P. GRIESA  
12 District Judge

13 APPEARANCES

14 LAW OFFICES OF SAUL ROFFE, ESQ.  
15 Attorneys for All Plaintiffs  
16 BY: SAUL ROFFE

HAGENS BERMAN SOBOL SHAPIRO LLP  
17 Attorneys for Individual Plaintiff Henry Brecher  
18 BY: JASON ZWEIG

19 CLEARY GOTTLIEB  
Attorneys for Defendant  
20 BY: CARMINE BOCCUZZI, JR.  
JOHN BLACKMAN  
21 DANIEL NORTHRUP  
EZEQUIEL SANCHEZ HERRERA

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1 (Case called)

2 (In open court)

3 THE COURT: Sit down, please. The hearing today  
4 relates exclusively to the class actions. There is  
5 obviously -- there are other aspects to this overall  
6 litigation, but the hearing this afternoon is about the class  
7 actions only.

8 Now, I believe that there was a conference on  
9 September 30 relevant to these actions, and I asked to have a  
10 report back to the court on December 1, and we are now at  
11 December 1. So, who would like to report?

12 MR. ROFFE: Good afternoon, your Honor. Saul Roffe  
13 for the plaintiffs. At this time we have sent out subpoenas to  
14 FINRA and the Depository Trust Corporation -- excuse me, the  
15 Depository Trust Company, and we are awaiting responses. The  
16 responses are due next week, and we filed letters rogatory for  
17 entities outside the United States with your Honor and are  
18 awaiting approval of those subpoenas from the court, and then  
19 we will proceed down that road and see where we stand getting  
20 documents from all of those entities.

21 THE COURT: Can you just back up a bit and tell me how  
22 you view what is necessary for evidentiary hearing, because the  
23 court will hold an evidentiary hearing as directed by the Court  
24 of Appeals. Of course that will be done.

25 Now, can you just back up, and without getting into

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1 all the details, tell me what you envision for evidentiary  
2 hearing and how you are preparing for it.

3 MR. ROFFE: Well, at this time what we're trying to do  
4 is locate continuous holders of the bonds in the various class  
5 actions. To do that --

6 THE COURT: You're trying to do what?

7 MR. ROFFE: Located continuous holders of the bonds in  
8 the various class actions.

9 THE COURT: In other words, the members of the class.

10 MR. ROFFE: Correct.

11 THE COURT: And you are trying to locate the  
12 individual members of the class, right?

13 MR. ROFFE: Or their beneficial holders. They may be  
14 held through Merrill Lynch or through some other firm as well,  
15 and at this time what we're trying to do is drill down and find  
16 out first where they are and then go that one step further and  
17 see if we can find the individuals, yes.

18 THE COURT: All right, fair enough. And I know I'm  
19 asking you to repeat something, but go back to where you  
20 started at the hearing. And that is relevant in what way?

21 MR. ROFFE: By locating the number of bonds that are  
22 being continuously held, we can determine the amount of damages  
23 for that class, even if we don't necessarily -- or are not able  
24 to drill down to each individual holder.

25 If we can find bonds that are held continuously,

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1 they're part of our class, and that would be part of our damage  
2 figure. To the extent that bonds are not continuously held,  
3 they would not be part of our class, and we wouldn't count them  
4 as part of our damage figure.

5 So, what we are trying to do is find evidence showing  
6 which bonds or the aggregate amount of bonds that are held  
7 continuously.

8 THE COURT: Now, again you probably said this, but how  
9 are you going about getting that information? Can you go into  
10 that again, please.

11 MR. ROFFE: Sure. At present what we've done is we've  
12 subpoenaed FINRA, and we have subpoenaed the Depository Trust  
13 Corporation, which keep records of trading and keeps records of  
14 how bonds are beneficially held in the United States. We have  
15 also given your Honor --

16 THE COURT: Who keeps those records again?

17 MR. ROFFE: FINRA, the Financial Industry Regulatory  
18 Authority, and the Depository Trust Company. Trades generally  
19 go through them.

20 THE COURT: I'm not familiar with FINRA. Is that a  
21 government agency? I'm just not familiar with it.

22 MR. ROFFE: It's a quasi government agent. It's an  
23 industry organization that regulates broker dealers and NASDAQ  
24 that the SEC oversees. It used to be called the NASD.

25 THE COURT: Oh, OK. That's more familiar to me. Just

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1 a minute.

2 MR. ROFFE: Sure.

3 THE COURT: I want to go a little more into what you  
4 just described so that we definitely get the task done which  
5 the Court of Appeals requires. I want to deal with the  
6 question of an evidentiary hearing, which is what the Court of  
7 Appeals requires to be done, and I want to set a date for that  
8 so there is no doubt about getting it accomplished.

9 I think some time is necessary in view of various  
10 circumstances. I don't think that that evidentiary hearing can  
11 be held until a date that we can set in late April or early  
12 May. There are things that have to be done in advance of that.

13 MR. ROFFE: With all due respect, your Honor, I think  
14 that would be an ambitious schedule, given we're dealing with  
15 overseas entities. The letters rogatory process by itself  
16 probably won't get us documents until March from the overseas  
17 entities, and then we may have to send out a second round based  
18 on what comes from those documents. And in terms of the  
19 domestic discovery, until I see what I have I won't know what  
20 other subpoenas may need to go out. We might be able to finish  
21 the domestic part of it, but I don't see how we could finish  
22 the overseas part.

23 THE COURT: Well, I think the timing inevitably has  
24 something to do with the issues which need to be covered at  
25 that hearing to carry out the Court of Appeals mandate.

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1           MR. ROFFE: I agree, your Honor. The problem is  
2 letters rogatory in my experience usually takes about six  
3 months to get a response.

4           THE COURT: The Court of Appeals decision came down  
5 last August or thereabouts; it is now December. They have  
6 directed that an evidentiary hearing be held, and the subject  
7 matter of that evidentiary hearing was reasonably well  
8 described in the Court of Appeals opinion, and it's of concern  
9 to me it's already taken several months as of now from the time  
10 of the Court of Appeals opinion.

11           Now, it seems to me that the issues that need to be  
12 dealt with to carry out the Court of Appeals mandate we know  
13 now.

14           MR. ROFFE: I agree, your Honor.

15           THE COURT: We know now. Now, wait a minute. It  
16 doesn't mean that there aren't people with rights that have to  
17 be considered ultimately, but I am concerned about undue delay  
18 in carrying out the requirements of the Court of Appeals,  
19 because whatever this court does, there could very well be and  
20 probably will be another appeal, and so if we wait month after  
21 month after month to carry out the evidentiary hearing, I mean  
22 this litigation simply goes on too long, and I want to avoid  
23 that.

24           Therefore, I don't want to prejudice the rights of  
25 people, but at the same time I just don't see why either in law

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1 or in fairness this court, when we all know what the issues  
2 are, I don't see why we have to wait a great deal of time until  
3 every last person in every last country is served with perhaps  
4 letters rogatory or something like that.

5 I just believe there ought to be a way -- and maybe  
6 I'm wrong -- but there ought to be a way to act reasonably  
7 promptly to carry out the Court of Appeals direction so that  
8 the district court has done that, and then if there is a  
9 further appeal to the Court of Appeals, that can go forward  
10 without taking any exorbitant amount of time.

11 I don't see why there can't be a reasonable  
12 circulation in some form of interested parties so that we can't  
13 have this evidentiary hearing this spring. I mean that's  
14 already many, many months away from the Court of Appeals  
15 decision.

16 MR. ROFFE: Your Honor, Argentina has repeatedly said  
17 they don't have relevant documents to this issue.

18 THE COURT: Wait. A little louder, please.

19 MR. ROFFE: Argentina has repeatedly said they don't  
20 have any relative responsive documents throughout the  
21 litigation, so we have to go through the process of gathering  
22 the information from other sources, including --

23 THE COURT: What information are you talking about?

24 MR. ROFFE: What are the aggregate amounts of  
25 continuous holders of bonds in these series of bonds in the

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1 class actions. The evidence we need to present at the  
2 evidentiary hearing, in other words. Unfortunately --

3 THE COURT: Which will, of course, as you are  
4 indicating, be all about damages.

5 MR. ROFFE: Yes.

6 THE COURT: Of course.

7 MR. ROFFE: Yes. Unfortunately a great deal of this  
8 information is overseas.

9 THE COURT: What kind of information are you talking  
10 about?

11 MR. ROFFE: The dollar amounts of the bonds that are  
12 continuously held. A lot of that information was traded in  
13 Europe or in Argentina, so we have to go to Europe and  
14 Argentina to get that information as well. That requires us to  
15 issue letters rogatory.

16 We've done the first step in that process and filed  
17 the papers with your Honor to get an order from you which we  
18 can now take overseas, which once signed, assuming it will be  
19 signed, we can take overseas and start the process overseas of  
20 getting orders there and then responses there. In my  
21 experience, it generally takes five or six months for that  
22 process from start to finish to be done.

23 And I have discussed this in our prior conference when  
24 we met, and I laid out the plan that we are now in the process  
25 of putting into action. I don't know how to speed that process

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1 up any more than what we're doing. We are not at the mercy of  
2 ourselves here; we're at the mercy of foreign government and  
3 foreign courts that have to issue relevant orders, assuming  
4 your Honor does issue the order here.

5 THE COURT: Let me interrupt and ask you this. Could  
6 you, without going into endless detail, describe what you  
7 consider is necessary to be shown at this damages evidentiary  
8 hearing? What must be shown?

9 MR. ROFFE: The dollar amount of bonds that are being  
10 held continuously.

11 THE COURT: Let me pause on that. Continuously from  
12 what to what?

13 MR. ROFFE: From the filing of each individual  
14 complaint until the time of judgment.

15 THE COURT: All right. Now repeat what you said. Go  
16 back over that.

17 MR. ROFFE: From the time we filed the individual  
18 complaints in each of the eight actions until judgment.

19 THE COURT: In other words, you're talking about the  
20 members of your classes, right?

21 MR. ROFFE: Right. We are looking for the dollar  
22 amounts of the bonds held by the members of the class. That's  
23 what I understand the Second Circuit is asking us for. And in  
24 order to have an evidentiary hearing on that issue, we have to  
25 gather the evidence, and a lot of that evidence unfortunately

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1 is overseas.

2 THE COURT: And that evidence consists of what?

3 MR. ROFFE: Records showing the dollar value of bonds  
4 held continuously through the class period.

5 THE COURT: Who would be in possession of that  
6 evidence?

7 MR. ROFFE: The letters rogatory we have directed to  
8 Euroclear and to caja de Valores in Argentina. We believe that  
9 at least would be the first step in that direction.

10 THE COURT: What is Euroclear?

11 MR. ROFFE: Euroclear is similar to the DTC in the  
12 United States, except it's the European equivalent.

13 THE COURT: Of the SEC.

14 MR. ROFFE: Not the SEC. The Depository Trust  
15 Company.

16 THE COURT: Depository Trust Company.

17 MR. ROFFE: Yes.

18 THE COURT: OK. And then the entity in Argentina --

19 MR. ROFFE: -- would be the equivalent of the  
20 Depository Trust Company in Argentina.

21 THE COURT: And you believe that they would have  
22 records of what? Say it again.

23 MR. ROFFE: Of basically the dollar amounts of the  
24 class members, the dollar amounts of the bonds held  
25 continuously through the class period.

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1           THE COURT: Let me jump ahead a bit. These are class  
2 actions, and as we know people can be members of the class;  
3 they have a right to opt out; but there is no such thing in the  
4 law as opting in. And I want to make that clear on the record  
5 here that the court understands that. But there has to be a  
6 procedure by which class members identify and submit what they  
7 claim they are owed. That is relevant to damages, and that's  
8 what I'm talking about.

9           Now, I thought coming into the hearing today that it  
10 would be useful and helpful in the way of information to have  
11 class members submit proof of claim forms. It doesn't make  
12 them members of the class or unmake them, but it provides  
13 information as to what individual class members are claiming by  
14 way of damages.

15           MR. ROFFE: With all due respect, that process would  
16 take even longer than the process we're in now.

17           THE COURT: Why is that?

18           MR. ROFFE: Because before we can even reach out to  
19 the class members, we would have to go through the process  
20 we're now in the middle of, doing letters rogatory to Euroclear  
21 and caja de Valores and subpoena FINRA and the Depository Trust  
22 Company, and then we would have to reach out to the beneficial  
23 holders and further down to the individual class members to get  
24 that information directly from the class member, and that would  
25 require a new round of subpoenas and letters rogatory to go

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1 further down that line.

2 THE COURT: Well, OK. What you say leads me to ask  
3 this question. You've probably answered it, but answer it  
4 again. In what you are doing now, how does that obtain  
5 specifications of the damages that class members are entitled  
6 to?

7 MR. ROFFE: The records that we are seeking from these  
8 various entities should show the dollar amount of bonds that  
9 are held continuously by various entities and individuals.  
10 Once we have that information, we could add up the various  
11 amounts for the various entities and individuals and have the  
12 total amount of the damages by the class members in the  
13 aggregate without having to reach the class member stage.

14 THE COURT: Without?

15 MR. ROFFE: Without having to reach individual class  
16 members.

17 THE COURT: Well, who is going to ultimately recover?  
18 Won't it be class members?

19 MR. ROFFE: Yes. And when we have a settlement or  
20 dollars for our judgment, we will be reaching out, we will  
21 follow the second step of that procedure and reach out to class  
22 members in an attempt to get them their money.

23 THE COURT: In other words, do I understand you  
24 correctly, you believe at least in the first instance you are  
25 going to try to get a judgment for aggregate damages; is that

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1 right?

2 MR. ROFFE: Yes.

3 THE COURT: OK. And if you can get that, then there  
4 would be a next step to determine how much individual class  
5 members get out of that judgment; is that right?

6 MR. ROFFE: No, your Honor, that's not right. They  
7 are entitled to whatever the amount of bonds they purchased  
8 plus the interest on those bonds. It's not a question of the  
9 amount that they're entitled to.

10 The second step in the process I'm referring to would  
11 be if we reach an accord with Argentina, and Argentina either  
12 pays some or all of what is owed in the damage amount that we  
13 reach, we will reach out to them and try to get them their  
14 share and try to pay them their money.

15 THE COURT: Wait, I'm not quite following. Let's step  
16 back.

17 MR. ROFFE: Sure.

18 THE COURT: If you can get what you seek at least in  
19 the first instance, if you can get a judgment for an aggregate  
20 amount of damages --

21 MR. ROFFE: -- then we would attempt to collect on the  
22 judgment. And if we are successful on collecting on the  
23 judgment, then we would try to give the proceeds of that  
24 collection to the individual class members.

25 THE COURT: Now, is this correct or isn't it, that the

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1 aggregate judgment is really an aggregate of what is owed on  
2 the bonds to these people? Isn't that right?

3 MR. ROFFE: Yes.

4 THE COURT: So it's an aggregate of what is owed on  
5 the bonds, in other words, the face amount of the bonds plus  
6 interest, right?

7 MR. ROFFE: Correct.

8 THE COURT: OK. Now, you get this aggregate judgment,  
9 and then next step you take the aggregate judgment and you try  
10 to collect on it.

11 MR. ROFFE: Correct.

12 THE COURT: And whatever happens on that or doesn't  
13 happen, it happens. But you are assuming that there will be an  
14 amount that can be collected on the judgment, right?

15 MR. ROFFE: I'm hopeful.

16 THE COURT: OK. Well, for purposes of our discussion,  
17 let's just assume X dollars can be collected on the judgment.  
18 Then if you've got an amount that is collected on the judgment,  
19 then you will divide that up among the class members, right?

20 MR. ROFFE: Well, we would seek permission of the  
21 court to do so, because it's a class action.

22 THE COURT: Right, but I mean that's the idea.

23 MR. ROFFE: Yes.

24 THE COURT: OK. Now, I'm repeating myself. I came  
25 into court thinking of the possibility of having claim forms

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1 submitted to class members so that they could fill them out and  
2 provide the amount owed to them. Now, I think what you're  
3 saying is that to try to do that, in other words, to reach out  
4 to class members now would not be productive. Is that what  
5 you're saying?

6 MR. ROFFE: I think it would not be productive; it  
7 would take longer; and it would give you a smaller amount,  
8 because if class members are just filling it out in the hopes  
9 that maybe some day they get money as opposed to when we're  
10 saying we have money we're trying to give you, they're less  
11 likely to take the trouble to fill the form out and send it in.  
12 But I think instead of taking a six to nine month period, it  
13 would take over a year to do that.

14 THE COURT: OK. And instead of that, please repeat.  
15 This takes you back to your initial discussion with me, but  
16 describe again, please, what process you are now proposing. I  
17 will understand it a little better now.

18 MR. ROFFE: OK. The process we have been doing is the  
19 process we discussed in September, subpoenaing the Depository  
20 Trust Company and FINRA for their records of continuous holders  
21 in the United States. We have also filed with the court  
22 letters rogatory for approval by the court which we're then  
23 going to take overseas to try to get similar documents from  
24 Euroclear and caja de Valores. We believe at this time that  
25 probably will capture the lion's share of the information we

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1 will need.

2           And then using those documents we hope to be able to  
3 generate an aggregate damage number without having to go  
4 further to reach the individual class members, because that  
5 would require yet another round of the same subpoenas and  
6 letters rogatory.

7           THE COURT: Now, look, say again. I mean according to  
8 your proposal now, you are seeking information from -- I've got  
9 to ask you to repeat -- what entities?

10           MR. ROFFE: FINRA, the Depository Trust Company, and  
11 that's domestically. And overseas, Euroclear and caja de  
12 Valores.

13           THE COURT: And that's Argentine.

14           MR. ROFFE: Yes.

15           THE COURT: Is that a bank in Argentina?

16           MR. ROFFE: It's the equivalent of the Depository  
17 Trust Company in Argentina. I believe it's regulated by  
18 Argentina, but they've claimed they don't have any control over  
19 it.

20           THE COURT: Euroclear is obviously in Europe.

21           MR. ROFFE: Yes.

22           THE COURT: And the other entity is in Argentina.

23           MR. ROFFE: Yes.

24           THE COURT: Now, I take it that you are in the process  
25 of carrying this out now.

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1 MR. ROFFE: Yes, we are.

2 THE COURT: And that what you need from the court is  
3 signing the letters rogatory; is that right?

4 MR. ROFFE: Yes.

5 THE COURT: Let me take a very brief recess and I will  
6 be back.

7 (Recess)

8 THE COURT: Sit down, please. Let me recall that at  
9 the conference that was held on September 30 I asked for a  
10 report on the issues, and I asked that that report be made on  
11 December 1. We are now at December 1, and let me ask the  
12 plaintiffs' attorneys if there is anything else you wish to  
13 report other than what you've already given me.

14 MR. ROFFE: I believe that's it, your Honor. We have  
15 started along the process of getting the evidence we need, and  
16 we're going to continue down the road.

17 THE COURT: All right. I haven't turned to Cleary  
18 Gottlieb, but I'd like to ask you if there is anything you wish  
19 to report or comment on, please go ahead.

20 MR. BOCCUZZI: Thank you, your Honor. Carmine  
21 Boccuzzi from Cleary Gottlieb for the Republic. Just two  
22 things. We by way of discovery served some discovery on the  
23 plaintiffs in Mr. Roffe's actions just to make sure we had the  
24 proof of ownership of the bonds by the class representatives,  
25 and he has responded to that discovery. There may be one

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1 question as to the Chorny class action. I alluded to that at  
2 the September 30th conference, and I raised that with Mr. Roffe  
3 before the status conference this afternoon, and he is looking  
4 into that, and we are discussing that issue.

5 Then the only other point, your Honor, I think you  
6 canvassed the various points that were raised last time in  
7 terms of Mr. Roffe's report at this status conference. I think  
8 what your Honor suggested -- and you suggested it at the  
9 September 30th conference, and you reraised it this  
10 afternoon -- about the proof of claim going out to potential  
11 class members, we think that is a sensible approach that can be  
12 done in addition to what is being pursued by the plaintiffs.  
13 Of course it's Mr. Roffe's and the court's choice, but we  
14 thought that sounded sensible to us.

15 THE COURT: I agree with that. I will come back to  
16 that.

17 What needs to be done now is to set the date and time  
18 for evidentiary hearing which is required by the Court of  
19 Appeals decision, so I will now proceed to do that.

20 Evidentiary hearing required by the Court of Appeals  
21 decision will be held commencing at 11 a.m., April 26, 2016,  
22 and it will continue day to day as needed. So that is the  
23 evidentiary hearing required by the Court of Appeals, and that  
24 is now set.

25 Mr. Boccuzzi referred to the possibility of a proof of

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1 claim form, and I believe and had so considered it in  
2 preparation of this hearing, and I believe that in order to  
3 pursue the question of damages efficiently it is necessary to  
4 do the best we can to get proof of claim forms from class  
5 members.

6 The class members are in the class, but in order to go  
7 forward with dealing with their claims, we have to get some  
8 information from the class members or do the best that can be  
9 done to get information. Therefore, I am making the following  
10 direction in court today, and that is as follows:

11 In aid of determining damages -- whether aggregate or  
12 individual -- in connection with the evidentiary hearing that  
13 the court will hold as I have announced, the parties are  
14 directed to confer in order to develop a proof of claim form to  
15 be used by class members. This is an important step towards  
16 ultimately arriving at the damages and arriving at what class  
17 members are entitled to. I am directing that the parties are  
18 to submit a proposed proof of claim form for approval by the  
19 court no later than noon on December 10, 2015.

20 We need to set some dates and keep those dates. We  
21 have already set a date for an evidentiary hearing, and we now  
22 have another requirement and a date for that requirement to be  
23 fulfilled as I have just announced.

24 I believe that that concludes the business we need to  
25 take care of today, and the matter is adjourned.

