

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re AMERICAN REALTY CAPITAL	:	Civil Action No. 1:15-mc-00040-AKH
PROPERTIES, INC. LITIGATION	:	
_____	:	<u>CLASS ACTION</u>
	:	
This Document Relates To:	:	
	:	
ALL ACTIONS.	:	
_____	X	

DECLARATION OF LAURIE A. GOMEZ IN SUPPORT OF MOTIONS FOR FINAL  
APPROVAL OF SETTLEMENT AND PLAN OF ALLOCATION, AND AWARD OF  
ATTORNEYS' FEES AND EXPENSES

I, LAURIE A. GOMEZ, declare as follows:

1. I respectfully submit this Declaration in support of the motion for final approval of the Settlement and Plan of Allocation and Robbins Geller Rudman & Dowd LLP's ("Lead Counsel" or "Robbins Geller") application for an award of attorneys' fees and expenses.

2. I am currently employed by TIAA as Senior Director and Associate General Counsel, Litigation. During the Litigation, I served as one of the TIAA attorneys primarily responsible for the oversight and prosecution of this Litigation.

3. Since the enactment of the PSLRA, TIAA has involved itself as a lead plaintiff and/or class representative in only a few cases. TIAA seeks to optimize the net recovery for the class and has served as lead plaintiff only after making a determination that the case warranted the involvement of, and oversight by, TIAA. TIAA determined that the ARCP litigation was such a case. TIAA retained Robbins Geller as counsel and negotiated a fee agreement with Robbins Geller at the outset of the case. The fee grid TIAA utilized for this case provides as follows:

Incremental Recovery	Fee (%)
\$0 - \$25,000,000	0%
\$25,000,000 - \$50,000,000	8.0%
\$50,000,000 - \$100,000,000	9.0%
\$100,000,000 - \$250,000,000	10.0%
\$250,000,000 - \$750,000,000	12.0%
\$750,000,000	14.0%

The fee grid also provides for a 17.5% fee with respect to amounts obtained from individuals implicated in the wrongful conduct. Under TIAA's agreement with Lead Counsel, there is also an overall fee cap of 13%.

4. The Court appointed TIAA as a Lead Plaintiff on February 13, 2015 and Class Representative on August 31, 2017. TIAA took an active role in this case as a Lead Plaintiff and

Class Representative to ensure the interests of TIAA and absent class members were protected.

TIAA actively oversaw the prosecution of this case by, among other things:

- (a) selecting Robbins Geller as Lead Counsel;
- (b) working closely with and regularly conferring with Lead Counsel;
- (c) reviewing and commenting on pleadings and motions filed in the case;
- (d) responding to discovery requests, including providing relevant documents and information;
- (e) preparing TIAA's corporate designee for deposition testimony, and giving deposition testimony;
- (f) reviewing expert reports and engaging in related analysis with Robbins Geller;
- (g) attending court hearings, including the summary judgment hearing; and
- (h) attending mediation sessions and participating in settlement discussions.

5. TIAA demanded substantial payments from the individual Defendants and other named parties as part of any settlement. In fact, TIAA's retention agreement was specifically designed to incentivize Lead Counsel to maximize both the overall recovery and recoveries from individual wrongdoers. As an institution, TIAA believes that personal contributions from those alleged to have engaged in self-dealing has both a compensatory effect as well as a deterrent effect on market participants who might contemplate engaging in future misconduct. TIAA agreed with Lead Counsel's settlement recommendations that TIAA reject less than optimal offers to settle the case and, instead, push the case forward to trial. Ultimately, Defendants' offers reached a level that TIAA believed was appropriate given the harm suffered by the Class and agreed with Lead Counsel's recommendation to settle the case.

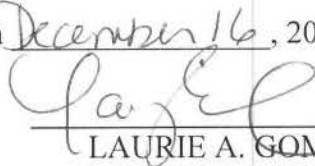
6. In addition to the outstanding recovery the proposed Settlement will provide for the Class, TIAA was mindful that there were real risks with proceeding to trial, including ultimately proving damages. Lead Plaintiff also considered the likely delay in the Class's recovery – even – if TIAA won at trial, and approved the decision to settle the case recognizing that the burdens and difficulties of continuing the Litigation were substantial.

7. The Settlement is extraordinary not only because of its absolute magnitude (one of only 15 PSLRA class action cases to ever recover more than \$1 billion), but also because it represents a recovery of approximately 50% of the Class's damages – a percentage recovery that I am informed has never before been achieved in a pre-trial settlement of a major PSLRA securities class action. As discussed above, the Settlement includes significant individual contributions from ARCP's former CEO (and the entity he controls) and ARCP's former CFO. I am not aware of any other securities class action settlement where a current or former officer or director of a public company made larger individual contributions to a settlement. Simply put, TIAA utilized a fee structure in this case designed to maximize the net recovery for the Class and it worked.

8. I believe that TIAA capably served as Lead Plaintiff in this case, obtaining one of the best results ever achieved in a PSLRA class action. The team of lawyers Lead Counsel deployed on this case was exceptional. Lead Counsel shouldered an extraordinary burden and incurred substantial financial risk to enable TIAA to obtain this result on behalf of the Class, including more than \$4 million in costs incurred by Lead Counsel in prosecuting this case to the eve of trial. Robbins Geller attorneys devoted tens of thousands of hours on this case, and, in my view, they spent those hours productively. This Settlement would not have been possible without Lead Counsel's diligent and aggressive prosecutorial efforts.

9. On behalf of TIAA, I respectfully request that the Court approve the Settlement, the Plan of Allocation and Lead Counsel's application for attorneys' fees equal to 12.4% of the Settlement Amount pursuant to the schedule TIAA previously negotiated with Lead Counsel, together with reimbursement of expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 16, 2019, at New York, NY.



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LAURIE A. GOMEZ  
SENIOR DIRECTOR & ASSOCIATE  
GENERAL COUNSEL, LITIGATION  
TIAA

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 17, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Debra J. Wyman

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DEBRA J. WYMAN

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