

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII**

IN RE:

**ESTATE OF FERDINAND E. MARCOS }
HUMAN RIGHTS LITIGATION }**

**MDL NO. 840
No. 86-390
No. 86-330**

THIS DOCUMENT RELATES TO:

**Hilao et al v. Estate of Ferdinand
E. Marcos,
and
DeVera et al v. Estate of Ferdinand
E. Marcos.**

**DECLARATION OF
ROBERT A. SWIFT**

ROBERT A. SWIFT, declares under penalty of perjury as follows:

1. I am an attorney practicing law as a senior member of Kohn, Swift & Graf, P.C. in Philadelphia, Pennsylvania. I have been practicing law for 44 years and am admitted to the bars of many state and federal courts, including the Pennsylvania Supreme Court and the United States Supreme Court. I am admitted *pro hac vice* in this litigation. This Declaration is submitted in support of Class Counsel's Joint Motion for a Third Interim Award of Attorneys Fees and Reimbursement of Expenses.

2. I initiated the above cases in March 1986 shortly after the “Bloodless Revolution” in the Philippines that removed Ferdinand E. Marcos from the presidency. At the time the Class was certified in 1991, I was appointed Lead Counsel, and Sherry Broder was appointed Liaison Counsel. Jon Van Dyke was appointed Class Counsel, and Filipino counsel continued to assist in all phases of the litigation. Numerous other attorneys have assisted in the many aspects of the litigation over 33 years.

3. In August 2013, I submitted to the Court my 33-page Declaration (ECF # 10702, Ex. 2) which described the litigation from its inception in 1986 through August 2013. Below I will detail the services performed in the period from September 2013 through August 2018.

New York Artwork Litigation

4. The settlement which prompts the filing of the instant Motion arises from litigation begun in 2012 against Vilma Bautista, a former assistant to Imelda Marcos. In November 2012, the District Attorney for New York County (“DANY”) unsealed an indictment against Vilma Bautista. The indictment alleged that in September 2010 Bautista sold an impressionist painting by Claude Monet titled *Le Bassin aux Nymphéase* (the “Water Lily”) owned by Imelda Marcos to an unnamed art gallery – but without the authority of Imelda Marcos – for

\$32,000,000. Bautista was convicted by a jury, but on appeal the count charging her with illegally selling the Water Lily was overturned.

5. Within 10 days of the indictment, Class Counsel filed a lawsuit against Bautista and DANY (who had seized the Painting and proceeds from its sale) in New York Supreme Court seeking the Water Lily, other artwork owned by Imelda Marcos, and the proceeds from the sale of the Water Lily. Class Counsel learned that the art gallery resold the Water Lily to a foreign citizen. In July 2013, the owner of the Painting agreed to pay \$10,000,000 to the Class to avoid litigation. The settlement proceeds were distributed to Class members in 2014.

6. In that settlement, Class Counsel preserved the Class' right to pursue the proceeds from the sale of the "Water Lily" and other property allegedly owned by Imelda Marcos. The Class filed a turnover proceeding and a damage action in New York Supreme Court against numerous parties involved in the sale of the Water Lily. The Republic filed to remove the cases to federal court. The Class opposed the removal petition.

7. In February 2014, the District Attorney filed in the United States District Court for the Southern District of New York an interpleader naming as defendants the Class, the Republic of the Philippines, Vilma Bautista, Imelda Marcos and others and seeking a ruling of ownership of 269 items of property. *See District Attorney of New York County v. The Republic of the Philippines, et al.*, No.

14-890 (KFP). The District Attorney deposited the property with the Clerk of Court. The federal court stayed the State Court proceedings. The Class asserted claims against certain of the interpleaded property, limited to the proceeds from the sale of the Water Lily and two impressionist paintings: *L'Eglise et La Seine a Vetheuil* by Claude Monet (“L’Eglise”) and *Langland Bay* by Alfred Sisley (“Langland Bay”). The Class also intervened in a related case known as *The Republic of the Philippines v. Gavino Abaya et al.*, No. 14-3829 (KFP) seeking damages against certain parties including their proceeds from the sale of the Water Lily.

8. Full discovery ensued in both cases, including the production of thousands of pages of documents and about 10 depositions. Three depositions were taken in the Philippines. The deposition of Bautista continued for five days. The Class and other parties moved for summary judgment. The other parties asserted substantial claims to the interpleaded property. Bautista produced a written Deed of Assignment dated 1983 from Imelda Marcos gifting her the paintings. The Republic claimed that all the paintings had been purchased with monies stolen from the Republic. Golden Budha Corporation claimed that all the paintings had been purchased with gold stolen from its assignor, Roger Roxas.

9. In a 93-page Opinion dated March 29, 2018, 307 F.Supp. 3d 171, the federal court denied all the motions and was prepared to set a trial date.

Various efforts to settle the cases ensued for many months. After an all-day settlement conference with the federal court judge, the parties reached a Settlement in which the Class will receive \$13.75 million and the other parties, including the Republic, will divide less than \$10 million remaining of interpleaded property.

Arelma/Merrill Lynch

10. In April 2009 the Class filed a writ of execution and turnover proceeding against Merrill Lynch in New York Supreme Court to execute on \$40 million in Merrill Lynch's possession in an account in the name of a Marcos alter ego -- Arelma. Arelma and Philippine National Bank ("PNB") intervened and moved to dismiss on the ground that the \$2 billion Hawaii judgment had expired, and the Class had failed to join an indispensable party – the Republic of the Philippines (the "Republic"). Merrill Lynch joined in the motion.

11. The Manhattan trial court denied the motion and scheduled a trial. But Arelma and PNB filed an interlocutory appeal and the New York Appellate Division stayed all proceedings. The appeal was briefed in early 2010 and argued in April 2010. In June 2011, the court (4-1) reversed the trial court and dismissed the case without prejudice on the ground that the Republic needed to be joined but had asserted its sovereign immunity.

12. On appeal to the New York Court of Appeals, that court affirmed the ruling of the Appellate Division on the ground that the Republic must

be joined. *Swezey v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 19 N.Y.3d 543 (2013) But it allowed that if the Republic did not initiate a timely action to enforce its Philippine forfeiture judgment in New York, the Class could renew its turnover petition.

13. On June 18, 2013, one year after the ruling of the New York Court of Appeals, the Class filed a new turnover petition against Merrill Lynch and the New York City Commissioner of Finance. The trial court denied a motion to dismiss, but once again PNB appealed to the Appellate Division. This time the United States Department of Justice (“DOJ”) filed an *amicus* brief stating it was reviewing a request by the Republic for a 28 U.S.C. § 2467 forfeiture proceeding. The Appellate Division stayed the case to give DOJ more time to consider filing a forfeiture proceeding. *Swezey v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 122 A.D.3d 489 (2014). Class counsel filed five separate motions to vacate the stay, including a petition for King’s Bench, but each motion was denied.

14. On June 27, 2016, DOJ filed in the District Court for the District of Columbia a § 2467 proceeding to enforce the Republic’s forfeiture judgment as to the Arelma funds. *In re Enforcement of Philippine Forfeiture Judgment*, No. 16-1339 (DDC). The Class quickly moved to intervene. DOJ did not oppose the motion. Class counsel sought to expedite the litigation by proposing a case management order and sending DOJ relevant documents from the

Arelma case in the District of Hawaii. More recently, Class counsel moved to change the venue of the action to the Southern District of New York. Disappointingly, the District of Columbia Court has not ruled on intervention or the other motions filed in the case.

Recognition of the Judgments in the Philippines

15. In May 1997 the Class filed a complaint in the Makati Regional Trial Court in the Philippines for recognition and enforcement of the Judgment. *Mijares v. Estate of Marcos*, No. 97-1052. Filipino attorneys Rod Domingo and Ruben Fruto prosecuted the case with the direction and assistance of Class Counsel. The Marcoses moved to dismiss on the ground that a filing fee of US\$8.4 million was not paid. The court dismissed the complaint on that basis. The Class took a direct appeal to the Philippine Supreme Court in 1999. The appeal languished in that court for years with no action by the Court even though the only issue was the correct filing fee.

16. In October 2004, Class Counsel filed a complaint against the Republic before the United Nations Human Rights Committee (“UNCHR”) in Geneva, Switzerland contending that the refusal of the Philippine court to adjudicate the enforcement proceeding violated the international rights of the Class under several international conventions to which the Republic was signatory.

17. The Republic opposed the complaint. On March 19, 2007 the UNCHR found that the Republic had violated the rights of the Class under the International Covenant on Civil and Political Rights by depriving the Class of an effective remedy for enforcement of their Judgment by not adjudicating the proper filing fee or charging an excessive filing fee. The UNCHR ruled that the Class was entitled to an adequate remedy under Philippine law including a prompt resolution of their complaint and compensation.

18. The Philippine Supreme Court issued its decision on the Class appeal holding that the filing fee was only 400 pesos (about US\$10) and directing the trial court to promptly adjudicate the complaint.

19. After numerous delays and continuances, a trial was held. In June 2013, the trial court dismissed the complaint without prejudice holding that the United States Court lacked subject matter jurisdiction because of non-compliance with the provision of the Torture Victim Protection Act, enacted in 1992, which required exhaustion of remedies in the country where the abuses occurred.

20. The Class appealed to the intermediate appellate court. On July 7, 2017, the Philippine Court of Appeals affirmed the lower court's refusal to recognize and enforce the 1995 Judgment of this Court. Reconsideration was

denied. The Class then filed a petition for certiorari in the Philippine Supreme Court which is still pending.

21. On June 17, 2015, the Class filed a complaint in the Makati Regional Trial Court seeking recognition and enforcement of the Class' 2011 Judgment awarding it \$353.6 million. *Rosales v. Estate of Marcos*, No. 15-621. The Marcos defendants filed a motion to dismiss. By Order dated May 20, 2016, the Court denied the motion and ordered the defendants to file answers to the complaint. When no answers were filed, the Class moved for a default. The judge assigned to the case retired without deciding the motion and no replacement judge has been assigned.

22. Despite repeated motions to the UNCHR by Class Counsel, damages have yet to be awarded against the Republic.

Second Distribution to Eligible Class Members

23. By Order dated November 6, 2013 (ECF #10714), this Court directed Lead Counsel to distribute \$1,176 to eligible Class members from the monies in the Class Settlement Fund.

24. Lead Counsel devised a distribution plan whereby all eligible Class members residing in the Philippines would appear at one of 15 regional distribution centers to receive compensation. Because the logistics for distribution at 15 locations in nine weeks was complex, Lead Counsel engaged one of the

human rights groups, Claimants 1081, to arrange for manpower, food, security and a venue. The venue had to be accessible to class members but have a secure perimeter. At each location tents or a roofed pavilion were rented. Workers were hired locally to assist in: reviewing identification papers, employing a triage approach to expedite processing, and funneling eligible claimants to a paymaster. Local workers were also valuable to the process because they spoke the local languages and dialects of the class members. Security personnel insured that there was no criminality. The manpower engaged at each location ranged from 6 to 24. The Philippine Commission on Human Rights provided from two to six staff members, usually attorneys, at each location to assist in screening claimants. The number of checks distributed at each location differed from 50 to over 1,000. Digital photos were taken of each class member receiving a check.

25. Not all eligible Class members appeared to receive compensation. At the conclusion of the distribution in April 2014, Lead Counsel decided to re-notify those who had not appeared and to conduct a second phase of distribution at 6 distribution centers in June 2014. A third re-notification and distribution was conducted in Manila in September and October 2014. In all, 6,375 payments of Php 50,000 (US\$1,176) were given to eligible Class members. Class Counsel filed a Final Accounting with the Court on February 3, 2015 (ECF # 10718).

26. Class members regularly correspond with Lead Counsel by mail or e-mail to update their address or inform counsel of the death of a Class member. Each inquiry generates a response from Lead Counsel. Many hours of secretarial time is devoted to updating the Class database for which no fees are sought.

27. Class Counsel were reimbursed for costs incurred with the distribution but not for the services of the attorneys and paralegals.

Philippine Legislation to Compensate Class members

28. For 20 years, bills have been introduced in the Philippine Congress to compensate victims of human rights abuses during the Marcos regime. Lead Counsel has communicated with members of the Philippine Congress to comment on and recommend changes to provisions of the proposed law to assist Class members.

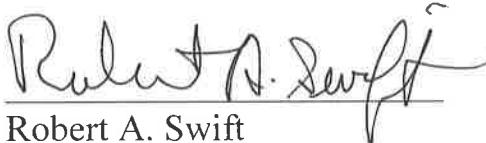
29. In February 2013, the Philippine Congress passed and the President signed legislation, Republic Act 10368, to compensate victims of human rights abuses during the Marcos regime. The legislation appropriated US\$250 million and designated a 9-member commission to handle distribution. The nature of the abuses for which compensation is appropriated is far broader than the Class lawsuit. The legislation provides that the claims of the original 9,539 Class members are presumptively valid. It further provides that any recovery on the

Class judgment will not diminish the amount that Class members receive. Both provisions had been proposed by Class Counsel. Some 3,900 members of the Class applied for and received distributions of money ranging from \$3,500 to \$35,000 depending upon the severity of the injury sustained. Heirs of victims of summary execution and disappearance received the maximum \$35,000.

30. The \$250 million funding provided for in R.A. 10368 derived directly from Swiss bank accounts controlled by Ferdinand and Imelda Marcos. This Court had assigned those bank accounts to the Class by Order dated July 14, 1995. However, authorities and banks in Switzerland, Singapore and the Republic refused to recognize this Court's judicial assignment despite the best efforts of Class counsel to enforce it. *See In re Philippine Nat'l. Bank*, 397 F.3d 768, 770 (9th Cir. 2005); *Republic of the Philippines v. Maler Foundation*, 2013 SGCA 66 (Singapore Ct. Appeals 2013). Although the work of Class counsel in obtaining judgments against the Marcoses was seminal in the payout to Class members from R.A. 10368, Class counsel received no compensation therefor.

I declare under penalty of perjury that the foregoing facts are true and correct.

February 11, 2019


Robert A. Swift