UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Laydon v. Mizuho Bank, Ltd., et al.	No. 12-cv-3419 (GBD)
Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.	No. 15-cv-5844 (GBD)

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSMENT OF EXPENSES, AND INCENTIVE AWARDS FOR CLASS REPRESENTATIVES

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Pursuant to this Court's June 22, 2016 Order,[1] Plaintiffs,[2] through Lowey Dannenberg Cohen & Hart, P.C. ("Class Counsel") respectfully move under Rule 23(h) of the Federal Rules of Civil Procedure for an award of attorneys' fees, reimbursement of litigation expenses, and incentive awards for named Plaintiffs in the related cases *Laydon v. Mizuho Bank, Ltd., et al.,* No. 12-cv-3419 (GBD) ("*Laydon*") and *Sonterra Capital Master Fund, Ltd., et al, v. UBS AG et al.*, No. 15-cv-5844 (GBD) ("*Sonterra*"), from the common fund established by Plaintiffs' settlements in these actions.

INTRODUCTION

Class Counsel has been litigating on behalf of investors in Euroyen-based derivatives as sole Lead Counsel for over four-and-a-half years on a fully-contingent basis. Taking on 44 of the world's largest financial institutions regarding the manipulation of Yen-LIBOR and Euroyen TIBOR, Class Counsel has achieved significant results, including $58 million in monetary compensation and valuable cooperation, while facing many of the top antitrust lawyers in the country and the vast resources of their clients. These results are impressive considering that HSBC, who paid $35 million, was neither fined nor prosecuted by government regulators for manipulating Yen-LIBOR or Euroyen TIBOR.

Class Counsel's ability to successfully recover for the Class is a testament to the quality of the work and resources devoted to this massive case involving multiple amended pleadings, more than 30 separate motions to dismiss, and over ten million pages in discovery. The Third Amended Complaint's ("TAC") (*Laydon*, ECF No. 580) detailed allegations describing, *inter alia*, the structure

[1] Superseding Order Preliminarily Approving Proposed Settlements with Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., and Citigroup Global Markets Japan Inc., HSBC Holdings plc, HSBC Bank plc, R.P. Martin Holding Limited and Martin Brokers (UK) Ltd., Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Class, *Laydon,* ECF No. 659 & *Sonterra*, ECF No. 264.

[2] Plaintiffs are Jeffrey Laydon, Sonterra Capital Master Fund, Ltd. ("Sonterra"), Hayman Capital Master Fund, L.P. and Japan Macro Opportunities Master Fund, L.P. (collectively, "Hayman"), and California State Teachers' Retirement System ("CalSTRS").

of Defendants' conspiracy and its economic impact on the Euroyen-based derivatives market represent the effort expended to date.

The Proposed Plan of Allocation is similarly representative. Class Counsel developed this data-driven approach over several months with one of the leading commodities manipulation experts, advancing all associated costs. Class Counsel deployed cutting-edge document review technology and a team specially trained in analyzing transactional data to mine the necessary records from the millions of documents that Defendants produced in *Laydon*. This process was time-consuming but invaluable and resulted in a damages model capable of fairly allocating settlement funds.

Having worked diligently and without compensation for years, Class Counsel should now be awarded a fair and reasonable fee of 25% of the monetary value of the settlement fund, or $14.5 million. This request is objectively fair and reasonable because it follows the graduated fee scale that Plaintiff CalSTRS negotiated with Class Counsel before joining this case. *See* Part IA *infra*. The request is also qualitatively reasonable because it satisfies all six *Goldberger* factors used to evaluate attorneys' fees in this Circuit (*see* Part IC-D *infra*) and is consistent with fee awards in other similarly complex class actions. *See* Part IB *infra*.

Class Counsel also seeks reimbursement for $1,000,000 in out-of-pocket expenses and $500,000 to cover ongoing expenses, as provided for by the HSBC and Citi settlement agreements.[3] These expenses, described in the accompanying declaration of Geoffrey M. Horn ("Horn Decl."), and those of additional Plaintiffs' Counsel,[4] were incurred for the Class's benefit and predominantly

[3] *See e.g.*, HSBC Settlement Agreement, *Laydon*, ECF No. 656-1 & *Sonterra*, ECF No. 262-1, at § 5(E); Citi Settlement Agreement, *Laydon,* ECF No. 567-2 & *Sonterra*, ECF No. 189-2, at § 5(E).

[4] *See* Declaration of Benjamin M. Jaccarino, Esq. (Lovell Stewart Halebian Jacobson LLP); Declaration of Todd A. Seaver, Esq. (Berman DeValerio); Jennifer W. Sprengel, Esq. (Cafferty Clobes Meriwether & Sprengel LLP); Robert. G. Eisler, Esq. (Grant & Eisenhofer); and Douglas G. Thompson, Esq. (Finkelstein Thompson LLP).

consist of expert work, mediation, and discovery costs. Plaintiffs' Counsel advanced all of the costs of the litigation, using reasonable methods to minimize expenses.

Lastly, Class Counsel seeks incentive awards for all named Plaintiffs in the *Laydon* and *Sonterra* actions. The named Plaintiffs expended significant time and effort as active participants in the litigation. Named Plaintiffs, for example Plaintiff Hayman, alleged collusion among the direct counterparties they depend on to execute trades. Plaintiffs' courage in standing up to Wall Street should be recognized with a reasonable incentive award.

THE WORK UNDERTAKEN BY CLASS COUNSEL

The settlements in *Laydon* and *Sonterra* are the product of years of hard work by some of the country's most experienced commodities manipulation lawyers and experts. Class Counsel expended immense resources and took on great financial risk as the sole Lead Counsel litigating this case. The procedural history behind this multi-year endeavor is fully described in Class Counsel's preliminary approval papers. *Laydon,* ECF Nos. 565-67, 590-91, 654-57 & *Sonterra,* ECF Nos. 187-89, 221-22, 260-63. The work undertaken for the Class's benefit is fully described in the accompanying Declaration of Vincent Briganti ("Briganti Decl."). A summary is included below.

A. Initial Case Investigation and the *Laydon* Complaint

Class Counsel began investigating manipulative conduct in the Euroyen-based derivatives market more than five years ago, after UBS revealed it had entered the Department of Justice's "ACPERA"[5] leniency program by self-reporting criminal cartel activity involving Yen-LIBOR and Euroyen TIBOR. The investigation continued as new information from various global regulatory investigations was released in the following months. *See* Briganti Decl. ¶ 3.

Class Counsel filed the initial Class Action Complaint ("CAC") (*Laydon,* ECF No. 1) on behalf of Jeffrey Laydon on April 30, 2012. The CAC asserted claims under the Sherman Act,

[5] Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108-237.

Commodity Exchange Act ("CEA"), and several states' laws against twenty-five Defendants that were members of the Yen-LIBOR and/or Euroyen TIBOR panels. *Id.* at ¶ 4.

B. The First and Second Amended *Laydon* Complaints

Two months after the CAC was filed, Barclays became the first Defendant to settle with global regulators in June 2012. *See* Briganti Decl. ¶ 10. Class Counsel retained a leading expert in benchmark manipulation and began working on the First Amended Complaint ("FAC") (*Laydon,* ECF No. 124) to incorporate Barclays's settlement. This process developed economic evidence of collusion in the Yen-LIBOR and Euroyen TIBOR rate-setting process, including a dramatic decrease in variability among Defendant banks' Yen-LIBOR and Euroyen TIBOR submissions during the Class Period. *See* FAC ¶¶ 205-14. The FAC also alleged facts demonstrating price artificiality attributable to Defendants. *Id.* at ¶¶ 219-29, 231-39, 240-53. Class Counsel filed the FAC on December 3, 2012, expanding the CAC's allegations by more than 100 pages with 48 charts, graphs, and tables reflecting this new economic evidence.

Defendant UBS announced on December 19, 2012 that it had agreed to pay government regulators $1.5 billion to settle charges that it manipulated Yen-LIBOR, Euroyen TIBOR, and other "IBOR" rates. *See* Briganti Decl. ¶ 12. UBS's settlements contained 246 pages of new evidence, including previously undisclosed electronic chats between Defendants. These chats provided rare "smoking gun" evidence of collusion. Class Counsel immediately analyzed UBS's settlements and prepared a Second Amended Complaint ("SAC"). *Id.* Six weeks later Defendant RBS settled with government regulators regarding its manipulation of Yen-LIBOR and Euroyen TIBOR.

After months of collecting and analyzing data, including manipulative communications released in Defendants UBS's and RBS's regulatory settlements, Class Counsel filed an enhanced SAC replete with detailed allegations describing a conspiracy to manipulate Yen-LIBOR, Euroyen

TIBOR, and the prices of Euroyen-based derivatives, including the Euroyen TIBOR futures contracts that Plaintiff Laydon traded on the Chicago Mercantile Exchange ("CME"). *Id.* at ¶ 14.

C. Defendants' First Rule 12 Motions to Dismiss the SAC

Defendants filed **thirteen** separate memoranda of law in support of their motions to dismiss the SAC on June 14, 2013. *See Laydon,* ECF Nos. 205, 206, 208-14, 217-18, 220-21; Briganti Decl. ¶ 17. Defendants' antitrust brief relied heavily on Judge Buchwald's first decision in the U.S. Dollar LIBOR case[6] and argued, *inter alia*, that Plaintiff did not have an antitrust claim because Yen-LIBOR and Euroyen TIBOR were set through a "cooperative" process (a position that would later be rejected by the Second Circuit in *Gelboim v. Bank of America Corp.*, 823 F.3d 759 (2d Cir. 2016)). Defendants' CEA brief also relied on *LIBOR I* but focused on causation, *e.g.*, arguing that Plaintiff had not sufficiently demonstrated that certain Defendants' admitted manipulation of Yen-LIBOR affected CME Euroyen TIBOR futures contract prices.

Class Counsel filed an omnibus opposition to Defendants' motions to dismiss the SAC on August 13, 2013. After a full day of oral argument on March 5, 2014, the Court granted-in-part and denied-in-part Defendants' motion to dismiss on March 28, 2014,[7] adopting *LIBOR I*'s reasoning to dismiss Plaintiff's antitrust claims but crediting the SAC's economic analysis to sustain CEA claims.

D. Motion to Amend the SAC & Defendants' Second Rule 12 Motion

Class Counsel moved for leave to amend and filed a Proposed Third Amended Complaint ("PTAC") on June 17, 2014. Briganti Decl. ¶ 21. The PTAC reflected Class Counsel's continuing investigation and sought to add four newly-identified Defendants. It also sought to add two new named plaintiffs, Oklahoma Police Pension & Retirement System ("OPPRS") and Stephen Sullivan ("Sullivan"). *Id.* OPPRS transacted in hundreds of millions of dollars of Euroyen-based derivatives

[6] *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 688 (S.D.N.Y. 2013) ("*LIBOR I*").

[7] *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD), 2014 WL 1280464 (S.D.N.Y. Mar. 28, 2014) ("*Laydon I*").

directly with several Defendants. The PTAC included new claims for breach of the implied covenant of good faith and fair dealing, and renewed claims for unjust enrichment based on these direct dealings. *Id.* at ¶ 22. The PTAC also added claims for violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") based in part on Defendant Rabobank's traders' recent guilty pleas to wire fraud in connection with the manipulation of Yen-LIBOR and Euroyen TIBOR. *Id.*

On August 7, 2014, fourteen Defendants filed eight new motions to dismiss the SAC under Rule 12(b)(2), arguing that the Supreme Court's seven-month old decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), created a previously-unavailable personal jurisdiction defense. *See* Briganti Decl. ¶ 24. Class Counsel immediately began drafting an opposition to these motions arguing, *inter alia*, that Defendants had waived their personal jurisdiction defenses by not raising them sooner.

Defendants filed their opposition to Plaintiff's motion for leave to amend four days later. *Id.* at ¶ 25. While Class Counsel was preparing Plaintiff's response, CalSTRS retained Class Counsel to prosecute claims based on its Euroyen-based derivatives transactions with certain Defendants. As described fully in the accompanying declaration of CalSTRS's general counsel, Brian J. Bartow, before joining the case, CalSTRS negotiated a graduated fee schedule with Class Counsel that provided for a 25% fee on the first $100 million recovered and lower fee percentages on subsequent amounts added to the common fund. *See* Declaration of Brian J. Bartow ("Bartow Decl") ¶ 7; *see also* Briganti Decl. ¶ 27. The fee agreement also limited the amount of fees Class Counsel could request to 3.5 times the aggregate lodestar of all Plaintiffs' Counsel. *See* Bartow Decl. ¶ 7. Class Counsel then drafted detailed allegations, including examples of how Defendants' misconduct impacted CalSTRS's transactions. These new allegations were included with Plaintiff's reply brief to avoid the need for an additional round of motion to amend briefing. *See* Briganti Decl. ¶ 27.

On March 31, 2015, the Court allowed Plaintiff to add the four new Defendants but denied leave to include the new plaintiffs and RICO and state law claims. *Id.* at ¶ 28. CalSTRS's request to

join the action was also denied but it was permitted to renew its application by letter within 30 days. Lastly, the Court denied ten Defendants' motions to dismiss the SAC, agreeing with Plaintiff that they had waived their personal jurisdiction defenses. *Id.*

E. The Initial *Sonterra* Complaint and the *Laydon* TAC

CalSTRS filed a letter motion to intervene in *Laydon* on April 29, 2015. *Id.* at ¶ 33. While that motion was pending, Class Counsel initiated the *Sonterra* action on behalf of two U.S.-based investment funds—Sonterra and Hayman Capital Management L.P. ("Hayman Management"). *Id.* ¶ 35. Like CalSTRS, Sonterra and Hayman Management transacted in over-the-counter Euroyen-based derivatives, including Yen-LIBOR-based interest rate swaps and Yen foreign exchange forward agreements, directly with several Defendants. *Id.* Class Counsel related this new case to *Laydon* and quickly moved to consolidate the actions because of the overlapping facts, occurrences, and law, involving the same Defendants, government settlements, Euroyen-based derivatives, and economic evidence of manipulation and price artificiality. *Id.*

The Court addressed both CalSTRS's motion to intervene and the *Sonterra* Plaintiffs' motion to consolidate on October 8, 2015. *Id.* ¶ 38. First, the Court denied Plaintiff's motion to consolidate the *Laydon* and *Sonterra* actions without prejudice, explaining that it would reconsider whether consolidation was appropriate after all Defendants had either answered or filed motions to dismiss in both cases.[8] Next, the Court denied CalSTRS's motion to intervene in *Laydon* and instructed CalSTRS to file its own complaint.[9] To avoid unnecessarily spending resources on a new complaint and a round of motion to dismiss briefing, Class Counsel suggested adding CalSTRS to the *Sonterra* action.[10] The Court agreed and ordered the *Sonterra* plaintiffs to file an amended complaint including CalSTRS by December 1, 2015. Laydon was ordered to file a TAC by the same date. After a brief

[8] Tr. of Oct. 8, 2015 Conf. at 5; *see also Laydon,* ECF No. 524.

[9] Tr. of Oct. 8, 2015 Conf. at 6-7.

[10] *Id.* at 7-8.

extension, amended complaints were filed in *Laydon* and *Sonterra* on December 18, 2015.

Defendants subsequently moved to strike the TAC on the ground that it did not comply with the Court's order granting leave to amend because, *inter alia*, it included claims that were previously dismissed in order to preserve those claims for appeal. *Id.* at ¶ 43. The Court granted this motion, instructing Class Counsel to submit a new PTAC with a letter seeking leave to file that complaint. *Id.* Defendants opposed leave to file the new PTAC, arguing that it too violated the Court's order granting leave to amend and that the amendment was futile because it added time-barred claims. *Id.* The Court granted Plaintiff's motion and Class Counsel filed a new TAC on February 29, 2016. Defendants' subsequent attempts to strike that complaint were denied. *Id.*

Meanwhile, the *Sonterra* Defendants filed 7 briefs and 33 declarations in support of their motions to dismiss on February 1, 2016, arguing, *inter alia*, that the Court should dismiss Plaintiffs' claims for lack of personal jurisdiction, lack of antitrust standing and antitrust injury, and because they involve an extraterritorial application of United States law. *Id.* at ¶ 48. On May 5, 2016, the Court held an all-day oral argument at which Class Counsel delivered a multi-hour presentation refuting Defendants' arguments with documentary evidence. This motion remains pending before the Court. *Id.* at ¶ 50.

F. Discovery Efforts in *Laydon*

While litigating the *Sonterra* motions to dismiss, Class Counsel simultaneously moved forward with document discovery in *Laydon*. *Id.* at ¶ 51. Plaintiff served his first discovery request on Defendants in June 2014, shortly after the Court's decision in *Laydon I*. *Id.* Immediately, Class Counsel began negotiating for all documents produced by Defendants in the course of global regulatory investigations into Yen-LIBOR and Euroyen TIBOR manipulation. *Id.* These preliminary conferences produced the Joint Initial Report and discovery plan filed on August 4, 2014. *Id.* at ¶ 52.

That discovery plan was delayed when, later that same week, fourteen Defendants filed a second round of Rule 12 motions to dismiss *Laydon* for lack of personal jurisdiction. *Id.* at ¶ 51.[11] The Court stayed discovery until the end of September 2014 pending oral argument on these new motions to dismiss. *Id.* at ¶ 52. Before the discovery stay expired, the Department of Justice ("DOJ") moved to intervene, expressing concerns that the information Plaintiff sought might compromise the government's ability to prosecute the Yen-LIBOR and Euroyen TIBOR manipulation. *Id.* The DOJ proposed that the Court extend the stay of discovery for at least eight months to protect the ongoing grand jury investigation. *Id.* The Court granted the DOJ's request and stayed discovery until May 15, 2015. *Id.*

Class Counsel then began the arduous process of meeting and conferring with Defendants about their responses and objections to Plaintiff's first discovery request in an effort to resolve these issues by the time the stay was lifted. These negotiations lasted months and involved more than 45 conferences with 20 Defendants. By the summer of 2015, the parties had isolated a single issue for resolution by the Court: whether foreign data privacy and bank secrecy laws prohibit disclosure of certain documents. *Id.* at ¶ 54. After extensive briefing and expert submissions, Class Counsel defeated Defendants' first motion to withhold documents under U.K. data privacy and bank secrecy laws, substantially accelerating discovery. *Id.* at ¶ 55.

While discovery negotiations continued in the foreground, a separate team of attorneys began working with e-discovery experts to ensure Class Counsel was equipped to process, analyze, and review Defendants' productions as soon as possible once the discovery stay expired. *Id.* at ¶ 53. Here, Class Counsel leveraged its in-house technological expertise to locally deploy Relativity, a sophisticated document review platform, rather than relying on expensive outside vendors. *Id.* In

[11] Five more Defendants subsequently requested leave to file motions to dismiss for lack of personal jurisdiction in November 2014. *Laydon,* ECF No. 404. The Court denied those requests as untimely. *Laydon,* ECF No. 409.

addition to avoiding unnecessary document hosting costs, a measure projected to save the Class millions of dollars over the course of this litigation, this decision gave Class Counsel unlimited access to Relativity's powerful analytics engine. *Id.*

Developing an analytics-based workflow allowed Class Counsel to effectively manage over 2.7 million documents (approximately 10.5 million pages) that Defendants produced by suppressing duplicates and promoting documents involving key custodians, keywords, and other factors gleaned from four-and-a-half years of litigation. *Id.* Based on the average time required to review a document in *Laydon*, this reduced the amount of review time by approximately 50,000 hours, saving tens of millions of dollars in additional lodestar. In fact, Class Counsel so effectively used technology to reduce discovery costs that it was featured in a third party e-discovery case study.[12]

G. Expert Work and Developing a Plan of Allocation

With document review progressing at full speed, Class Counsel started working with Dr. Craig Pirrong to develop evidence of impact and damages. As more fully described in Dr. Pirrong's declaration in support of preliminary approval, *see Laydon,* ECF No. 591-1 & *Sonterra,* ECF No. 222-1, Class Counsel worked with Dr. Pirrong to develop a model based on actual Euroyen market transactions, determining the amount of artificiality by analyzing the rates Defendants actually paid to borrow Yen during the Class Period in relation to what they reported. *See* Briganti Decl. ¶ 63. This model is being used to carry out the Plan of Allocation and ensure a fair claims process.

To develop a damages model, Class Counsel used its technological expertise to leverage various datasets, which collectively included millions of records. For example, R.P. Martin produced its entire trading database to Class Counsel as settlement cooperation. *Id.* at ¶ 58. This database housed all transactions the firm brokered over a ten-year period, and included millions of trades in

[12] *See Just Add Relativity: Appliance Saves Lowey Dannenberg $2.5M on Class Action Case*, KCURA, available at https://www.kcura.com/relativity/ediscovery-resources/customer-wins/lowey-appliance/ (last accessed Sept. 23, 2016).

different financial instruments denominated in several currencies. *Id.* Class Counsel developed proprietary software to traverse this database and extract the appropriate information. *Id.* at ¶ 63.

Isolating the necessary information from the non-settling Defendants' productions in *Laydon* was more challenging. Class Counsel recognized early on that these productions included Euroyen market data but that this information was mixed in with millions of other documents. *Id.* Class Counsel deputized a separate team to track down all cost of funding data. *Id.* This group utilized the analytics tools built into Relativity to segregate documents containing transactional data. The cost of funding team converted thousands of trade confirmations from their human-readable form of images and PDFs into a machine-readable database by manually inputting all necessary data fields. *Id.* These additional data points supplemented the transactional records received as settlement cooperation to produce a credible model capable of calculating, on a formulaic basis, the damages suffered by every class member in their Euroyen-based derivatives trades.

H. Mediation and Settlements

In light of the number of Defendants in these actions, Class Counsel was willing to explore settlements with Defendants to minimize risk and maximize gains for the Class. For example, in late 2014, Class Counsel learned that Defendant R.P. Martin was entering liquidation proceedings in the United Kingdom and there was a potential chance of not recovering from this key co-conspirator. *See id.* at ¶ 56. Class Counsel immediately began working with R.P. Martin's CEO and Chairman Stephen Welch to negotiate a settlement and ensure cooperation. *Id.*

Settlements with Citibank and HSBC were similarly achieved after months of arm's-length negotiations, at which counsel on both sides presented the strengths and weaknesses of the claims and defenses. *Id.* at ¶ 59-60. In HSBC's case, this process culminated in a full-day mediation with CalSTRS present. *Id.* at ¶ 60; *see also* Bartow Decl. ¶ 11. As a result, Class Counsel was well informed

about the legal risks, factual uncertainties, potential damages, and others aspects of the case when each settlement was executed. *See* Briganti Decl. ¶ 56-60.

The Citi and HSBC deals established a common fund of $58 million, providing monetary compensation for the Class's otherwise uncompensated injuries, and additional transaction data, communications, and other documents that have greatly assisted (and will continue to greatly assist) Class Counsel in prosecuting the case and developing a data-driven Plan of Allocation. *Id.* at 60.

Class Counsel retained Kenneth Feinberg, Esq., to oversee the allocation process and ensure a fair and reasonable distribution of settlement funds to Class members. *See* Declaration of Kenneth R. Feinberg ("Feinberg Dec."), ¶ 11. As part of this process, Class Counsel appointed separate allocation counsel to represent the interests of settlement Class members that transacted in different types of Euroyen-based derivatives. *Id* at ¶12. In August 2016, Mr. Feinberg led a two-day mediation among allocation counsel to determine if any legal discounts should be applied to the value of Class members' claims. *Id.* at ¶ 15.

ARGUMENT

I. CLASS COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE

"'Attorneys whose work created a common fund for the benefit of a group of plaintiffs' may receive 'reasonable' attorneys' fees from the fund." *See In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *16 (S.D.N.Y. April 26, 2016) ("*CDS Litig.*") (quoting *Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 86 (2d Cir. 2010)). Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method" although "the trend in this Circuit is toward the percentage method." *McDaniel v. City of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)). Class Counsel's request is reasonable under either approach because it: (1) is consistent with the fee schedule that CalSTRS negotiated at arm's-length when it first retained

Class Counsel in connection with this action; (2) is within the range of "percentage method" fee awards made in this Circuit; and (3) satisfies all six *Goldberger* factors, including the lodestar "cross-check." *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

A. The Request is Consistent with the Fee Scale Negotiated by CalSTRS

The touchstone of "reasonableness" when evaluating attorneys' fees is "what a reasonable, paying client would be willing to pay" for counsel's services. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections,* 522 F.3d 182, 184 (2d Cir. 2008); *see also Goldberger*, 209 F.3d at 52 ("market rates, where available, are the ideal proxy for [class counsel's] compensation."). Consistent with this measure, courts give great weight to negotiated fee agreements between lead plaintiffs and class counsel because they typically reflect actual market rates. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("In many cases, the agreed-upon fee will offer the best indication of the market rate."). For example, there is a well-recognized rebuttable "presumption of correctness"[13] given to the terms of an *ex ante* fee agreement between class counsel and lead plaintiffs applied in antitrust cases where the fee was negotiated by a "sophisticated benefits fund with fiduciary obligations to its members and where that fund has a sizeable stake in the litigation." *CDS Litig.*, 2016 WL 2731524, at *16.

The attorneys' fees requested here are calculated directly from the retainer agreement that CalSTRS negotiated with Class Counsel before moving to join *Laydon* in September 2014. *See* Bartow Decl. ¶ 16. CalSTRS is a "sophisticated benefits fund" with an investment portfolio of approximately $193.4 billion. *Id.* at ¶ 4. It is the second-largest pension fund in the United States and the largest educator-only pension fund in the world. *Id.* CalSTRS owes a fiduciary duty to its more than one million members. *Id.* at ¶ 5. This duty not only motivated CalSTRS to negotiate at arm's-length a fair and reasonable fee arrangement with Class Counsel, but also to remain an active

[13] *See Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Employees Ret. Sys.*, 814 F.3d 652, 659 (2d Cir. 2016).

participant in the litigation. For example, CalSTRS's general counsel Brian Bartow was directly involved in settlement discussions with HSBC and traveled from Sacramento, California, to New York to participate in the parties' May 2016 mediation. *Id.* at ¶ 11. CalSTRS's high level of involvement is commensurate with its "sizable stake in the litigation" having engaged in tens of thousands of Euroyen-based derivatives transactions with nine Defendants. *Id.* at ¶ 6. CalSTRS's *ex ante* judgment about an appropriate attorneys' fee in this case, therefore, satisfies the three factors the *CDS* court identified and is entitled to a presumption of reasonableness.

Moreover, CalSTRS supports the fee request based on its active monitoring of Class Counsel's work and the results Class Counsel achieved. *Id.* at ¶ 16. As a result of its involvement in the case, CalSTRS has an intimate understanding of the complexity and difficulty of this litigation. Its *ex post* support of this fee request demonstrates that it is fair and reasonable.

B. Class Counsel's Request is Well Within the Range Used Under the Second Circuit's Preferred Percentage-Based Methodology

The reasonableness of the requested fee is confirmed by cases applying the "percentage method" of fee calculation favored in this Circuit. *See Wal-Mart Stores*, 396 F.3d at 121 ("The trend in this Circuit is toward the percentage method") (citation omitted); *see also In re Beacon Assoc. Litig.*, No. 09 Civ. 777(CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) (explaining that "percentage of recovery" is "the preferred method of calculating the award for class counsel in common funds cases"). Courts prefer the "percentage method" because it is easy to administer and avoids the "dubious merits of the lodestar approach." *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008) (noting that it absolves district courts from taking on the cumbersome task of computing a lodestar); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 485 (S.D.N.Y. 1998) ("*NASDAQ III*") (noting that the percentage method is easy to administer). It also "'aligns the interests of the class and its counsel'" while incentivizing "'the efficient prosecution and early

resolution of litigation.'" *Hall v. Children's Place Retail Stores Inc.*, 669 F. Supp. 2d 399, 401 (S.D.N.Y. 2009) (citation omitted). Furthermore, the reasonableness of the requested fee can be ensured by cross-checking the percentage fee against counsel's lodestar. *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 667-68 (S.D.N.Y. 2015). *See* Part ID, *infra*.

Here, Class Counsel requests 25% of the common fund, well within the range of reasonable attorneys' fees approved in other complex class actions in this Circuit. *See, e.g., City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *10-12 (S.D.N.Y. May 9, 2014) (awarding 33% in attorneys' fees); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding 33.33% attorneys' fees in a complex Commodity Exchange Act class action); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999) (awarding 27.5% attorneys' fees in a complex Commodity Exchange Act and RICO class action). It is particularly significant that the fee here is a lesser percentage than many of the approved fees in complex common fund class actions where "courts have sometimes awarded contingency fees exceeding 30% of the overall fund." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 447 n.11 (E.D.N.Y. 2014) ("*Interchange Fee Litig.*").

C. The Requested Fees are Supported by the *Goldberger* Factors

The requested fees are supported by the application of the six-factor reasonableness test set forth in *Goldberger*. Under that standard, to determine the reasonableness of the requested fee, courts must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger,* 209 F.3d at 50. As the time and labor Class Counsel expended is detailed above (*see supra* at 3-12) and in the supporting declarations, factors 2 through 6 will be addressed below.

1. The Risk of the Litigation

The risk of the litigation is the preeminent *Goldberger* factor. *See Interchange Fee Litig.*, 991 F. Supp. 2d at 440 ("The most important *Goldberger* factor is often the case's risk"); *see also In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 12 Civ. 5575 (SWK), MDL 1500, 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 26, 2006) (noting that the judiciary's focus is on "fashioning a fee" that encourages lawyers to "undertake future risks for the public good"); *Goldberger,* 209 F.3d at 54 ("We have historically labeled the risk of success as 'perhaps the foremost' factor to be considered in determining whether to award an enhancement.") (citation omitted). While all cases involve some level of risk, this case involved a particularly high level of risk for several reasons.

Risk of Prosecuting the Case as Sole Lead Counsel: Class Counsel is the sole Lead Counsel bringing claims on behalf of the Euroyen-based derivatives investors represented here. The choice to litigate against 44 of the world's largest financial institutions, which have virtually unlimited resources and could continue this case for years at the trial and appellate levels, presented a substantial risk that Class Counsel was and remains prepared to shoulder. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting "substantial risk" where counsel bore the "risk of defeat").

Risk of Establishing Liability: When *Laydon* and *Sonterra* were filed, no court had ruled that conspiring to fix LIBOR was an antitrust violation. In fact, Defendants argued (and several courts in this District agreed) that, because of the allegedly "cooperative" nature of the LIBOR rate-setting process, manipulating LIBOR did not cause antitrust injury. Class Counsel litigated this case for more than four years before the Second Circuit rejected Defendants' competing arguments and validated its legal theory that fixing Yen-LIBOR and Euroyen TIBOR, which serve as a component of price in the derivatives Plaintiffs traded, is a *per se* antitrust violation. *See Gelboim,* 823 F.3d 759.

Risk of Establishing Damages: There were also risks associated with establishing a class-wide damages model. *See In re Platinum and Palladium Commodities Litig.,* No. 10 CV 3617, 2014 WL

3500655, at *12 (S.D.N.Y. July 15, 2014) ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). For example, Plaintiffs' case depended on showing what Yen-LIBOR and Euroyen TIBOR would have been absent Defendants' manipulation. While both rates are intended to reflect Defendants' cost of borrowing Yen in the interbank money market, data reflecting these funding transactions is not public and was unavailable at the start of the litigation. Class Counsel had to develop the data necessary to build a credible damages model through settlements and discovery. *See supra* at 10-11.

In spite of these risks, Class Counsel took this case on a fully-contingent basis, devoting more than 46,000 hours and a substantial percentage of the firm's resources to litigating this case for over four-and-a-half years. As Judge Gleeson aptly noted: "Counsel should be rewarded for undertaking [the above noted risks] and for achieving substantial value for the class. If not for the attorneys' willingness to endure for many years the risk that their extraordinary efforts would go uncompensated, the settlement would not exist." *Interchange Fee Litig.*, 991 F. Supp. 2d at 441.

2. The Magnitude and Complexity of the Case

"Class actions have a well-deserved reputation as being most complex," *NASDAQ III*, 187 F.R.D. at 477, with antitrust and commodities cases standing out as some of the most "'complex, protracted, and bitterly fought.'" *Meredith Corp.*, 87 F. Supp. 3d at 670 (citations omitted); *see also In re Platinum and Palladium Commodities Litig.,* 2014 WL 3500655 at *12 (noting that commodities cases are "complex and expensive" to litigate); *In re Vitamin C Antitrust Litig.*, No. 06 Md. 1738 (BMC)(JO), 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012). This case is no exception.

Complexity: *Laydon* and *Sonterra* involve a conspiracy among multiple banks and interdealer brokers to fix Euroyen-based derivatives prices over a five-and-a-half year Class Period through multiple means, including, *inter alia*: (1) making false Yen-LIBOR and Euroyen TIBOR submissions; (2) "spoofing" the market with false bids and offers; (3) sending fake run-throughs with artificial

Yen cash prices; (4) publishing false rates on electronic screens maintained by interdealer brokers; and (5) rewarding co-conspirators through an intricate kickback and bribery system. *See Wal-Mart Stores*, 396 F.3d. at 122 (noting that the case was particularly large and complicated as it involved nearly every U.S. bank and over five million class members). Defendants often used multiple means at the same time to achieve the goal of their conspiracy. *See*, *e.g.*, TAC ¶¶ 647-654 (describing the "Turn Campaign"). The amount of work required to reverse-engineer the inner workings of a cartel with this level of sophistication was "extraordinary" in both its "complexity and scope" and required Class Counsel to master the properties of complex financial instruments and markets by working with seasoned experts. *See In re Holocaust Victim Assets Litig.*, No. CV 06-0983 (FB)(JO), 2007 WL 805768, at *46 (E.D.N.Y. Mar. 15, 2007).

Magnitude: This is a massive case. Over the course of four-and-a-half years of litigation involving 44 Defendants, the parties in *Laydon* and *Sonterra* have produced hundreds of docket entries associated with three amended complaints, including 50 memoranda and reply memoranda of law in support of and in opposition to 15 motions to dismiss as well as 16 answers. There have been numerous contentious discovery objections, including, *inter alia*, to the relevant time period, phases of discovery, foreign bank secrecy and data privacy laws, and confidentiality and privilege objections. These objections have led to two motions for orders sustaining objections to discovery and over 20 letters. The scope of discovery is just as large. The *Laydon* Defendants have now produced more than ten million pages of documents, thousands of audio files, and transaction records from hundreds of custodians. This number is likely to grow as certain Defendants are still withholding documents under foreign data privacy laws. *See Laydon,* ECF No. 511. The global nature, duration, size of the case, complexity of the financial instruments, and sophistication and the depth of the conspiracy weigh heavily in favor of approving the requested fee.

3. Quality of Representation

"[T]he quality of representation is best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the background of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008).

Results Obtained: The settlements reached so far provide significant value to the Class. The $58 million in monetary compensation, for example, was obtained from just Citi and HSBC. Notably, HSBC has yet to settle with government regulators for manipulating Yen-LIBOR or Euroyen TIBOR. Class Counsel's ability to recover for the Class highlights the extraordinary nature of the results reached here. These funds will provide Class members with an immediate recovery and ensure funding of the litigation so that Class Counsel can continue to pursue claims against the remaining thirty-plus Defendants in the *Laydon* and *Sonterra* actions.

Beyond monetary compensation, Class Counsel also secured significant cooperation from the Settling Defendants. *See supra* at 11-12. The value of this non-monetary compensation and result obtained by Class Counsel is further highlighted by Plaintiffs' settlement with HSBC. Documents obtained as settlement cooperation from R.P. Martin played a crucial role in Class Counsel's negotiations and the eventual mediation with HSBC, allowing them to present a compelling case on liability at the mediation that would have been impossible using only public documents.

The R.P. Martin deal also produced one of the most valuable pieces of information obtained to date—the "BOSS" transaction database—which contained millions of records, including the "wash trades" R.P. Martin brokered on behalf of Defendants UBS, RBS, and JPMorgan. *See e.g.*, TAC ¶¶ 392-94. The transaction data and information contained in Defendants' documents produced so far have helped Class Counsel specifically identify the names of Yen traders and submitters who were active participants in the manipulation and aided the development of a class-wide damages model and Plan of Allocation. *See supra* at 11-12.

Background of Lawyers Involved: Class Counsel has extensive experience prosecuting some of the largest commodities manipulation cases, including what were at the time, the first, second, third, and fourth largest class action recoveries in the history of the CEA.[14] This includes specific expertise in benchmark manipulation as demonstrated by Class Counsel's current tenure as lead counsel in cases alleging anticompetitive and manipulative conduct for several "IBOR" rates and the London Silver Fix.[15] Additional examples of Class Counsel's more than 50 years of experience with complex litigation are detailed in Lowey's firm resume.[16]

Another consideration for assessing the quality of the representation is "[t]he quality of the opposing counsel" in the case. *See Maley*, 186 F. Supp. 2d. at 373. The valuable settlement that Class Counsel secured cannot be understated given the caliber of defense counsel in this action. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries"); *NASDAQ III*, 187 F.R.D. at 488 (approving attorneys' fee award where defendants were represented by "several dozen of the nation's biggest and most highly regarded defense law firms."). The fact that Class Counsel was able to successfully prosecute this action for four-and-a-half years against such formidable opponents further reflects the quality of representation provided.

4. The Fee is Reasonable in Relation to the Settlements

Courts evaluate the requested fee in relation to the settlement by looking to "comparable cases" for "guideposts." *See Interchange Fee Litig.*, 991 F. Supp. 2d at 443-44 (evaluating a fee request in case where a class of merchants alleged that large credit card companies and banks conspired to fix certain rules and fees against other "large class cases with court-set fees"). This approach

[14] Declaration of Vincent Briganti, *Laydon*, ECF No. 567 & *Sonterra*, ECF No. 189 ("Feb. 1 Briganti Decl."), at 2.

[15] *See e.g.*, *Sonterra Capital Master Fund Ltd. et al. v. Credit Suisse Group AG et al.*, No. 15-cv-871 (SHS) (S.D.N.Y.) (Swiss franc LIBOR); *Sullivan et al. v. Barclays PLC et al.*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (Euribor); and *In re: London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573 (VEC) (S.D.N.Y.).

[16] Feb. 1 Briganti Decl., *Laydon*, ECF No. 567-5 & *Sonterra*, ECF No. 189-5.

prevents "unwarranted disparities in outcomes" and provides greater predictability for counsel. *Id.* at 446-47. The fee requested here is reasonable in relation to the settlement for at least two reasons:

First, Class Counsel's request for 25% of the common fund comes directly from the graduated fee scale that CalSTRS negotiated before joining the action. *See supra* at 13-14. This satisfies a key legal "guidepost" that Judge Gleeson identified in large class action cases—that "the percentage of the fund awarded should scale back as the size of the fund increases"—and supports the reasonableness of Class Counsel's request. *See Interchange Fee Litig.*, 991 F. Supp. 2d at 444.

Second, the 25% fee CalSTRS negotiated is less than what was approved in two recent "guidepost" cases. *See id.* at 443. For example, both *CDS Litig.*, 2016 WL 2731524, at *17 n.24, and *Interchange Fee Litig.*, 991 F. Supp. 2d at 445, courts in this District approved fee awards in large class cases based on a graduated fee scale. However, the fee agreements approved in those cases awarded counsel an average percentage fee of 27.5% for the first $100 million recovered, a 10% increase from the 25% that Class Counsel is requesting here. The requested fee of 25% is reasonable in relation to the settlement achieved here and compares favorably to other concrete "guideposts" such as the fees awarded in analogous cases.

5. Public Policy Supports Approval

Had Class Counsel not taken on the risk of this lawsuit in April 2012, before any Defendant had entered into government settlements, the Class of investors in Euroyen-based derivatives would have been left without recompense for their losses. Despite the subsequent government investigations and Defendants' admissions of wrongdoing, investors who were actually harmed by Defendants' conspiracy would not have received any money at all. *See e.g., In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014) ("providing lawyers with sufficient incentive to bring common fund cases . . . serve[s] the public interest") (citations omitted).

Public policy encourages enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws."). Awarding a reasonable percentage of the common fund further ensures that Class Counsel retains the ability and incentive to pursue antitrust violations through trial, at their own expense and while recovery is uncertain. *See Goldberger*, 209 F.3d at 51 ("There is . . . commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.").

D. The Lodestar Cross-Check Supports the Requested Fee

Class Counsel's fee request is also reasonable under the lodestar method, which has "fallen out of favor because it encourages bill-padding and discourages early settlements." *In re Colgate-Palmolive*, 36 F. Supp. 3d at 353. In light of these deficiencies, courts in this Circuit have determined that the lodestar "works best as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall," for example, if the multiplier is too large and "grossly disproportionate to the percentage fee award . . . ." *Id.*; *see also Goldberger*, 209 F.3d at 49-50 (explaining the lodestar method should be used as a cross-check to ensure the award here is not an "unwarranted windfall."). There is no windfall here.

First, in negotiating a graduated fee scale, CalSTRS capped any fee request by Class Counsel to 3.5 times the aggregate lodestar incurred by Plaintiffs' Counsel in the case. As with the percentage fee method, this negotiated rate should be given great weight in evaluating attorneys' fees. *Alderman v. Pan Am World Airways*, 169 F.3d 99, 103 (2d Cir. 1999) ("[A] court should seek to enforce the parties' intentions in a contingent fee agreement, as with any contract."). Plaintiffs' Counsel have spent 69,022 hours working on *Laydon* and *Sonterra* as of August 31, 2016, for an aggregate lodestar of $36,649,109.00. *See* Briganti Decl. ¶¶ 65-74. Thus, the 25% or $14.5 million fee requested is a

fraction of Plaintiffs' Counsel's aggregate lodestar at the agreed upon 3.5 times multiplier, demonstrating that a full fee will not result in an "unwarranted windfall."

Second, the 3.5 times multiplier CalSTRS negotiated is reasonable because it is consistent with the range of multipliers approved in this and other circuits. *See, e.g.*, *CDS Litig.*, 2016 WL 2731524, at *17 (approving a lodestar of "just over 6" in a complex antitrust class action); *In re Colgate-Palmolive,* 36 F. Supp. 3d at 353-354 (approving a multiplier of 5 in a complex class action); *Beckman v. KeyBank N.A.,* 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (approving a multiplier of 6.3 in class action, explaining that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Maley*, 186 F. Supp. 2d at 371 (holding that a 4.65 lodestar multiplier is modest, fair, and reasonable); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (listing nationwide class action settlements where the lodestar multiplier ranged up to 8.5). The Court should approve the requested fee as the parties intended a lodestar multiplier of no more than 3.5 and this intended multiplier is lower than that in similarly complex class action cases.

II. CLASS COUNSEL'S EXPENSES ARE REASONABLE

"An attorney who has created a common fund . . . is entitled to reimbursement of reasonable expenses from that fund." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 12 cv 1609, 2015 U.S. Dist. LEXIS 26053, at *24 (W.D. La. Feb. 11, 1998); *see also In re Arakis Energy Corp. Sec. Litig.*, No. 95 CV 3431(ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). As detailed in the accompanying declarations, Plaintiffs' Counsel incurred $1,028,464.69 in expenses prosecuting this case through August 31, 2016. *See* Horn Decl. ¶ 6; *see supra* at 2 n.4. However, Class Counsel is limiting its request to $1,000,000 consistent with the disclosures in the Court-approved notice sent to settlement Class members. *See*, *e.g.*, *Laydon,* ECF No. 657-3 at 8.

These costs and expenses were "incidental and necessary to the representation of the Class," and should be reimbursed. *See Carpenter v. Paige Hospitality Grp., LLC*, No. 13-cv-4009(GBD), 2015 U.S. Dist. LEXIS 82771, at *5 (S.D.N.Y. June 2, 2015). The majority of the expenses incurred in this matter involve expert work, discovery costs, and travel expenses for the meetings and mediations that resulted in settlement. Thus, there is "no reason to depart from the common practice in this circuit of granting expense requests." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 (E.D.N.Y. 2003) (granting $18.7 million expense request where bulk of expenses were "experts and consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses").

Class Counsel also requests $500,000, as provided for in the HSBC and Citi Settlement Agreements, to cover ongoing expenses associated with the continued prosecution of these actions. *See supra* at 2 n.3; *see also Teachers' Ret. Sys. of Louisiana v. A.C.L.N., Ltd.*, No. 01-cv-11814, 2004 WL 1087261, at *5-6 (S.D.N.Y. May 14, 2004) (awarding "$250,000 to defray the ongoing costs incurred in connection with the continuing prosecution of the Action"); *Brunson v. City of New York*, No. 94 Civ. 4507, 2000 WL 1876910, at *4 (S.D.N.Y. Dec. 22, 2000) (awarding future expenses).

III. INCENTIVE AWARDS ARE APPROPRIATE

"'An incentive award is meant to compensate the named plaintiff for any personal risk incurred by the individual or any additional effort expended by the individual for the benefit of the lawsuit.'" *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D 118, 124 (S.D.N.Y. 2001) (citing *Berrios v. Sprint Corp.*, No. 97-cv-0081 (CPS), 1998 WL 1749828, at *3 (E.D.N.Y. Sept. 11, 1998); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997) (approving incentive awards for a class plaintiff who "provided valuable assistance to counsel in prosecuting the litigation")). Class Counsel requests an incentive award of 1% of the common fund, or $580,000, for Plaintiffs in recognition of their service to the class and substantial risks assumed by participating in this action.

Plaintiffs have each expended effort for the benefit of this action including, *inter alia*, committing time and resources to: (1) collect and analyze trading records during a five-and-a-half year Class Period (a sizable task for multi-billion dollar funds like CalSTRS); (2) review hundreds of filings, pleadings, motions, and orders; and (3) confer with Class Counsel regarding settlement opportunities. *See* Bartow Decl. ¶¶ 8-13. CalSTRS's general counsel and chief compliance officer, Brian Bartow, for example, was directly involved in Plaintiffs' settlement with HSBC, personally traveling to New York to attend the May 2, 2016 mediation. *Id.* at ¶ 11. Expending this kind of effort in furtherance of the Class' claims justifies an incentive award becuase without Plaintiffs' collective efforts, there would have been no suit, or recovery.

More importantly, Plaintiffs took on substantial risk in standing up to some of the largest Wall Street banks to represent Euroyen-based derivatives investors. Becoming a Lead Plaintiff in this action meant suing their direct counterparties, including the very banks and brokers they depend on to execute and clear their trades. There was a real possibility they would be blacklisted as banks refuse to trade with those willing to challenge them. Plaintiffs risked their financial well-being and business relationships with Defendants and others by putting their names on this action. This deserves compensation.

The requested incentive award is also reasonable and consistent with what has been approved in similarly complex cases. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187-88 (W.D.N.Y. 2005) (finding an incentive award equal to 8.4% of the total settlement fund to be reasonable); *In re Air Cargo Shipping Serv. Antitrust Litig.*, No. 06-md-1775, 2015 WL 5918273, at *5 (E.D.N.Y. Oct. 9, 2015) (granting $540,000 incentive award to six plaintiffs in partial settlement).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the court approve Plaintiff's application for attorneys' fees and costs and incentive awards in the amounts set forth above.

Dated: September 27, 2016
White Plains, New York

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