

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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*Laydon v. Mizuho Bank, Ltd., et al.*

No. 12-cv-3419 (GBD)

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*Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*

No. 15-cv-5844 (GBD)

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**DECLARATION OF VINCENT BRIGANTI**

I, Vincent Briganti, declare pursuant to 28 U.S.C. §1746, as follows:

1. I am a member of the Bar of this Court and a shareholder with the law firm Lowey Dannenberg, P.C. (“Lowey” or “Class Counsel”), Court-appointed class counsel for Plaintiffs in the related actions *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*”). I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlements with Defendants The Bank of Tokyo-Mitsubishi UFJ, Ltd. (now known as MUFG Bank, Ltd.) (“BTMU”) and Mitsubishi UFJ Trust and Banking Corporation (“MUTB”) (collectively, “Settling Defendants”) and Class Counsel’s Motion for Award of Attorneys’ Fees and Expenses from the common fund created by the settlement.

2. Below, I describe the work undertaken by Class Counsel in these Actions. The first section reports on some of the work Class Counsel have performed since Plaintiffs’ most recent settlements with Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, “Deutsche Bank”) and JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Securities plc (collectively, “JPMorgan”). The second section summarizes the history of the case and Class Counsel’s earlier work. The third section provides Class Counsel’s and additional Plaintiffs’ Counsel’s total hours worked and lodestar in these Actions, including the hours and lodestar of their work since September 30, 2017. A summary of recent expenses is also provided.

**I. CLASS COUNSEL’S WORK ON BEHALF OF PLAINTIFFS AND THE CLASS SINCE SEPTEMBER 30, 2017**

3. Lowey continues to vigorously prosecute claims on behalf of Plaintiffs and the Class and continues to achieve outstanding results. After seven months of negotiations, Lowey reached a \$30,000,000 settlement with BTMU and MUTB, the first Japanese Bank Defendants to settle the Actions. Lowey negotiated additional productions of valuable transaction data from many Defendants, adding to the millions of lines of transaction data already produced. Lowey coordinated

with leading commodities manipulation experts to further analyze the transaction data and refine models to show class-wide damages and artificiality. Lowey also negotiated and enforced compliance with Magistrate Judge Pitman's order requiring four Japanese Bank Defendants to produce documents reflecting communications involving their Euroyen-Based Derivatives traders.

Additionally, Lowey has been constructing timelines that track Defendants' manipulation of Yen-LIBOR, Euroyen TIBOR, and Euroyen-based Derivatives from the various productions, in the process uncovering thousands of additional instances of manipulation throughout the Class Period. Lowey's work over the last eight months is described more fully below.

#### **Settlement Efforts with BTMU and MUTB**

4. The negotiations with BTMU and MUTB took place over seven months starting approximately in June 2017 and continuing until the Settlement was executed in January 2018. Plaintiffs' settlements with BTMU and MUTB benefited from the knowledge Class Counsel gained from numerous Court decisions in these Actions, settlement cooperation materials received from R.P. Martin, Citi, HSBC, Deutsche Bank and JPMorgan, the discovery produced in *Laydon*, government settlements and public accounts of the manipulation involving Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives, Class Counsel's own investigation, industry and expert analysis of Yen-LIBOR, Euroyen TIBOR and the Euroyen-Based Derivatives market, and information shared by BTMU and MUTB during the course of settlement negotiations.

5. After an initial phone call from BTMU and MUTB's counsel, Plaintiffs held a teleconference with BTMU and MUTB's counsel on August 29, 2017 for preliminary settlement discussions. The August 2017 teleconference did not result in a settlement.

6. Counsel for BTMU and MUTB contacted Plaintiffs again on October 4, 2017 to resume settlement discussions.

7. Class Counsel and counsel for BTMU and MUTB held a series of teleconferences over the following weeks. During these calls, the parties discussed, among other issues, Plaintiffs' view on BTMU and MUTB's liability and BTMU and MUTB's arguments against finding them liable for claims in these Actions. On November 17, 2017, Plaintiffs and BTMU and MUTB reached an agreement in principle to settle the claims in the Actions and immediately began drafting a Term Sheet.

8. On December 4, 2017, Class Counsel and counsel for BTMU and MUTB executed a binding Term Sheet setting forth the terms on which Plaintiffs and BTMU and MUTB agreed to settle Plaintiffs' claims. At the time the Term Sheet was executed, Class Counsel were well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Actions.

9. On January 23, 2018, Plaintiffs executed a formal settlement agreement with BTMU and MUTB. On February 6, 2018, Plaintiffs moved the Court under Rule 60 to further amend its March 10, 2017 judgment in *Sonterra* to exclude BTMU and MUTB for the purposes of considering approval of the Settlement. The district court granted Plaintiffs' motion on February 7, 2018 and further amended the judgment. *Sonterra*, ECF No. 396.

10. On February 9, 2018, Plaintiffs moved for preliminary approval of the Settlement. *Sonterra*, ECF Nos. 397-99; *Laydon*, ECF Nos. 849-51. On March 8, 2018, the Court preliminarily approved the Settlement. *Sonterra*, ECF No. 402; *Laydon*, ECF No. 854.

11. The BTMU and MUTB settlement established a common fund of \$30,000,000, adding to the \$206,000,000 of compensation for the Class's injuries, and provided additional transaction data that will greatly assist Class Counsel in prosecuting the case.

**-Related Work and Analysis**

12. Class Counsel have engaged leading commodities manipulation experts to dissect the Yen money market and Euroyen-Based Derivatives data produced by Defendants. The data will be used to assess potential class-wide damages and market artificiality, and to develop economic models of these effects. Class Counsel have worked closely with the experts to identify, collect, and understand the data produced, and have made supplemental requests to Defendants for missing data, data dictionaries, etc. to obtain the correct data set on which to perform the requisite analyses. As they receive the relevant data, Plaintiff's experts undertake the tremendous task of normalizing the data collected from the Class Period, constructing relevant tables and regression models, and analyzing risk reports detailing Defendants' exposure in the Euroyen-Based Derivatives market.

**Ongoing Discovery Efforts in *Laydon***

13. Lowey continues to meet-and-confer with Defendants with respect to Plaintiff's second request for the production of documents and deficiencies that Class Counsel have observed in productions received to date.

14. Defendants raised objections to producing certain categories of transaction data requested by Plaintiff. After several rounds of negotiations during which each side discussed the appropriateness of the data sought, Lowey reached an agreement with many Defendants as to an acceptable scope of data production and a means to address certain bank data privacy issues raised during the negotiations. Some Defendants have yet to provide an acceptable data proposal, and Plaintiff anticipates that he may seek leave to bring a motion to compel to resolve the disputes.

15. Following the Court's September 27, 2017 Order instructing six Japanese Bank Defendants to produce responsive documents from 10% of their Euroyen-Based Derivatives trader custodians, Class Counsel engaged in numerous discussions and correspondence with counsel for those Defendants to identify the traders whose files were to be searched. After several months,

Plaintiff and four Japanese Bank Defendants reached agreement on the number and identity of the traders whose files would be produced. These Japanese Bank Defendants have produced relevant documents and additional documents are expected. Class Counsel have begun review of these documents and will seek supplemental productions of documents, where appropriate, based on their review.

16. Class Counsel's in-depth review of certain productions made to date also identified deficiencies, such as the absence of certain risk reports, chats, and other communications, in certain Defendants' productions. These deficiencies have been raised with the relevant Defendants, and Class Counsel have negotiated or are working to negotiate a resolution to address the issues.

17. Defendants served Laydon with a third set of requests for the production of documents on October 20, 2017. Laydon served his responses and objections to these requests on November 27, 2017. Over several weeks, Lowey worked with Laydon to collect, identify and produce documents responsive to Defendants' request, and responded to specific questions from Defendants relating to the scope and nature of Plaintiff's collection and production efforts.

18. On November 15, 2017, Laydon and Defendants entered into a fact deposition and interrogatory protocol. *Laydon*, ECF No. 829. The parties are in the process of negotiating the number, timing and certain other aspects of the fact depositions.

19. In January 2018, Laydon and Defendants agreed, and the Court so-ordered their request, to extend the deadline to substantially complete document production from January 31, 2018 to April 2, 2018. *Laydon*, ECF No. 846. That deadline was later further extended to June 1, 2018. *Laydon*, ECF No. 857.

20. Class Counsel have devoted substantial resources to reviewing the almost 11,000,000 pages of documents received. To maximize efficiency and cut costs for the Class, Lowey continues to leverage its in-house technological expertise to locally deploy Relativity, a sophisticated document

review platform. In addition to avoiding unnecessary document hosting costs, Lowey has unlimited access to Relativity's powerful analytics engine and continues to use and refine its analytics-based workflow to effectively manage almost 2.8 million documents (more than 10.9 million pages) and more than 100,000 audio files produced by Defendants.

21. As additional foreign language documents have been produced, Lowey continues to leverage the language skills of its attorneys and other Plaintiff's counsel, as well as external resources, to translate documents produced in French, German, and Japanese to further develop Plaintiff's theory of the case and identify additional areas of discovery that are likely to produce relevant documents.

22. Class Counsel have been preparing for depositions. In addition to collaborating with their experts, a team of attorneys has drafted a FED. R. CIV. P. 30(b)(6) Notice to be served shortly on Defendants. Other attorneys are preparing for the corporate and individual fact deposition by identifying potential deponents, creating litigation timelines, and organizing the relevant or significant documents to be used in depositions.

## **II. CASE HISTORY AND WORK PREVIOUSLY PERFORMED ON BEHALF OF PLAINTIFFS AND THE CLASS**

### **Case Investigation, the Initial Pleading, and Service**

23. Following reports in July 2011 that UBS AG and UBS Securities Japan Co., Ltd. (collectively, "UBS") admitted to anticompetitive conduct involving Yen-LIBOR and Euroyen TIBOR and entered the Department of Justice's ("DOJ") leniency program under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108-237 ("ACPERA"), Lowey conferred with its clients and started researching the market for Euroyen-Based Derivatives, and assembled a team to work on an initial complaint.

24. This investigation continued as new information was released over the next several months, including: (a) in December 2011, Japan's Financial Services Agency's administrative action

against Defendants UBS Securities Japan Co. Ltd. and Citigroup Global Markets Japan Inc. for making false Yen-LIBOR and Euroyen TIBOR submissions; and (b) the Swiss COMCO's disclosure that it had found evidence of a conspiracy among multiple Defendants to fix the bid and ask prices charged on Euroyen-Based Derivatives in addition to manipulating Yen-LIBOR and Euroyen TIBOR.

25. Lowey retained investigators, experts, economists and industry consultants to further develop the factual record. Based on this extensive investigation, Lowey filed an initial Class Action Complaint ("CAC") on behalf of Jeffrey Laydon on April 30, 2012. *See Laydon*, ECF No. 1. The CAC asserted claims under the Sherman Act, Commodity Exchange Act ("CEA"), and several states' laws, including claims for unjust enrichment, deceptive trade practices, and fraud, against twenty-five Defendants that were members of Yen-LIBOR and/or Euroyen TIBOR panels.

26. After filing the CAC, Lowey began the lengthy and costly process of serving the complaint upon four Japanese Bank Defendants (Mizuho Bank, Ltd., Resona Bank, Ltd., Mizuho Trust and Banking Co., Ltd., and The Shoko Chukin Bank) through the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters ("Hague Service Convention"). This process involved translating the CAC into Japanese and engaging a Court-appointed international process server to serve Defendants Mizuho Bank, Ltd., Resona Bank, Ltd., Mizuho Trust and Banking Co., Ltd., and The Shoko Chukin Bank via Japan's Central Authority. *See Laydon*, ECF Nos. 46, 84.

27. Lowey separately negotiated stipulations and scheduling orders with the non-Japanese Bank Defendants to extend their time to answer or otherwise move against the CAC to account for the uncertainty of the completion of service upon the Japanese Bank Defendants via the Hague Service Convention. *See, e.g., Laydon*, ECF Nos. 21-23, 32, 57, 85. After approximately four months, all Defendants had been served.



28. At about the same time, twelve Defendants—Barclays Bank plc, BNP Paribas S.A., Citi, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (now known as Coöperatieve Rabobank) (“Rabobank”), Deutsche Bank AG, HSBC Holdings plc, JPMorgan Chase Bank, National Association, Lloyds Banking Group plc, The Norinchukin Bank, The Royal Bank of Scotland Group plc, Société Générale SA, and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (collectively, the “Transfer Defendants”)—filed a letter motion on May 23, 2012 requesting to transfer the *Laydon* action to the Honorable Naomi Reice Buchwald, for consolidation with the *U.S. Dollar LIBOR MDL*, No. 11-md-2262 (S.D.N.Y.).

29. Lowey opposed the request, arguing, *inter alia*, that *Laydon* and the *U.S. Dollar LIBOR MDL* involved different misconduct associated with the manipulation of different benchmarks, *i.e.*, Yen-LIBOR and Euroyen TIBOR (*Laydon*) versus *U.S. Dollar LIBOR*. This Court and Judge Buchwald agreed and denied the Transfer Defendants’ motion.

30. Lowey then moved pursuant to FED. R. CIV. P. 23(g) to be appointed as interim lead class counsel. *Laydon*, ECF Nos. 95-97. On August, 29, 2012, the Court entered a pre-trial order granting the request and authorized Lowey to, *inter alia*, (a) make, brief, and argue all motions; (b) assign work to additional Plaintiff’s counsel; (c) request that the Court approve settlements and fee awards; and (d) allocate fees among Plaintiff’s counsel. *Laydon*, ECF No. 99.

### **First and Second Amended *Laydon* Complaints**

31. In June 2012, Barclays Bank plc became the first Defendant to settle with government regulators. Lowey analyzed Barclays’ settlement and retained a leading expert on benchmark manipulation to assist in preparing Laydon’s First Amended Class Action Complaint. *Laydon*, ECF No. 124 (“FAC”). Lowey worked closely with this consulting expert, holding multiple in-person meetings and conference calls, to distill complex economic evidence into detailed allegations.

32. The FAC, filed December 3, 2012, supplemented the CAC with more than 100 pages of allegations and 48 charts, graphs, and tables describing economic evidence of collusion in the Euroyen-Based Derivatives market, including a dramatic decrease in variability among Defendants' Yen-LIBOR and Euroyen TIBOR submissions during the Class Period (FAC ¶¶ 205-15), price artificiality attributable to Defendants' Yen-LIBOR and Euroyen TIBOR submissions (FAC ¶¶ 219-29, 231-39, 240-53), and a deviation from the historical price-spread relationship between Yen-LIBOR and Euroyen TIBOR once Defendants' alleged conspiracy began. *See* FAC ¶¶ 216-39.

33. On December 19, 2012, less than three weeks after Lowey filed the FAC, UBS announced settlements with government regulators related to their manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives. UBS's settlement documents included an admitted "Statement of Facts," which, for the first time, provided direct, "smoking gun" evidence of manipulation and collusion, including instant messages, emails, and transcripts of phone calls between UBS traders and certain other Defendants' employees discussing the manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives.

34. While Lowey was analyzing this new evidence and preparing a Second Amended Complaint ("SAC"), on February 6, 2013, Defendants The Royal Bank of Scotland plc and RBS Securities Japan Limited (collectively, "RBS") entered into settlements with government regulators related to their manipulation of Yen-LIBOR and the prices of Euroyen-Based Derivatives. RBS's settlements provided additional direct evidence of collusion, including communications among certain Defendants' traders and submitters.

35. Lowey filed the SAC on April 15, 2013. *Laydon*, ECF No. 150. This 337-page complaint incorporated evidence released in UBS's and RBS's government settlements and, based on that information, added Broker Defendants ICAP plc and R.P. Martin Holdings Limited. The

SAC also included a separate 65-page appendix detailing 146 separate communications released in government settlements at that time.

36. Because interdealer brokers ICAP plc and R.P. Martin Holdings Limited were both incorporated in the United Kingdom, Lowey served them in compliance with the Hague Service Convention.

37. After filing the SAC, Lowey negotiated two stipulations with Defendants Mizuho Bank, Ltd., Mizuho Trust & Banking Co., Ltd., Resona Bank, Ltd., ICAP plc, UBS Securities Japan Co. Ltd., RBS Securities Japan Limited, and R.P. Martin Holdings Limited to defer briefing on these Defendants' motions to dismiss for lack of personal jurisdiction until after the Court ruled on Defendants' motion to dismiss for failure to state a claim under FED. R. CIV. P. 12(b)(6). *See Laydon*, ECF Nos. 160, 194.

#### **Defendants' First Rule 12 Motions to Dismiss the SAC**

38. Defendants filed their motions to dismiss the SAC on June 14, 2013, including thirteen separate memoranda challenging Laydon's antitrust, CEA, and state law unjust enrichment claims. *See Laydon*, ECF Nos. 204-21. Lowey dedicated significant resources to analyzing Defendants' positions, researching opposing arguments, and drafting Plaintiff's responses. On August 13, 2013, Lowey filed a 93-page omnibus opposition to Defendants' motions to dismiss. *See Laydon*, ECF No. 226. Defendants filed eleven reply memoranda of law on September 27, 2013. *Laydon*, ECF Nos. 232-33, 235-43. These reply memoranda raised, for the first time, arguments against Plaintiff's CEA claims based on Judge Buchwald's decision in *In re Libor-Based Fin. Instruments Antitrust Litig.*, 962 F. Supp. 2d 606 (S.D.N.Y. 2013). Lowey sought leave to file a sur-reply addressing these new arguments. *See Laydon*, ECF No. 244. The Court granted this request on October 4, 2013 and Lowey filed Plaintiff's sur-reply on October 9, 2013. *Laydon*, ECF Nos. 244-45.

39. On October 29, 2013, Rabobank announced its settlements with the DOJ, U.S. Commodity Futures Trading Commission (“CFTC”) and U.K. Financial Services Authority (“FSA”), in which it admitted to participating in a conspiracy to manipulate Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives. The European Commission also revealed that same day that it had uncovered evidence of “Yen Interest Rate Derivatives Cartels” involving Defendants UBS, RBS, Deutsche Bank, JPMorgan, R.P. Martin, and Citigroup, imposing fines on those Bank Defendants while continuing its investigation against Broker Defendant ICAP. Lowey analyzed these new settlements and drafted a letter to the Court emphasizing the significance of these developments. *Laydon*, ECF No. 247.

40. After oral argument, the Court granted-in-part and denied-in-part Defendants’ motions to dismiss on March 28, 2014, sustaining claims CEA manipulation and aiding and abetting manipulation in violation of the CEA, but dismissing Plaintiff’s antitrust and unjust enrichment claims. *See Laydon*, ECF No. 270 (“*Laydon P*”).

41. All Defendants except UBS Securities Japan Co., Ltd. filed motions for reconsideration of *Laydon I* on April 11, 2014. *See Laydon*, ECF Nos. 275-83. The Defendants’ four memoranda challenged the Court’s decision to sustain Plaintiff’s claims under the CEA arguing, *inter alia*, that the Court incorrectly interpreted the meaning of actual damages and manipulative intent under the CEA. *See id.* Lowey filed Plaintiff’s opposition on May 9, 2014. *Laydon*, ECF No. 290. Defendants filed reply memoranda on May 30, 2014. *Laydon*, ECF Nos. 292-93, 295-96. The Court denied Defendants’ motions for reconsideration on October 20, 2014. *Laydon*, ECF No. 398.

**Laydon’s Motion for Leave to Amend &  
Defendants’ Second Rule 12 Motion to Dismiss the SAC**

42. Lowey moved for leave to amend the SAC and to file a Proposed Third Amended Complaint (“PTAC”) on June 17, 2014. *Laydon*, ECF Nos. 301-02. The PTAC added four new Defendants—ICAP Europe Limited, Martin Brokers (UK) Ltd., Lloyds Banking Group plc, and

Tullett Prebon plc—and new facts from the Rabobank, ICAP Europe Limited, and R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd. (collectively, “R.P. Martin”) government settlements released during the year-and-a-half since the SAC was filed. *See id.* The PTAC also proposed two additional named plaintiffs, Oklahoma Police Pension & Retirement System (“OPPRS”) and Stephen Sullivan (“Sullivan”), to cure certain deficiencies identified by the Court in *Laydon I.* *See id.*

43. These new plaintiffs transacted in other types of Euroyen-Based Derivatives; OPPRS, for example, traded over-the-counter Yen foreign exchange forward contracts directly with Defendants UBS, Citi, Barclays, Deutsche Bank, and JPMorgan, while Sullivan transacted in Yen currency futures contracts on the Chicago Mercantile Exchange (“CME”). Based on their transactions, the PTAC included new claims for breach of the implied covenant of good faith and fair dealing, and renewed unjust enrichment and antitrust claims.

44. The PTAC also added claims for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) based in part on Defendant Rabobank’s traders’ guilty pleas to felony wire fraud for manipulating Yen-LIBOR and the Second Circuit’s decision in *European Community v. RJR Nabisco, Inc.*, 764 F.3d 149 (2d Cir. 2014), which clarified the extraterritoriality analysis applicable to the RICO statute.

45. Before opposing Plaintiff’s motion for leave to amend, fourteen Defendants filed nine motions to dismiss the SAC for lack of personal jurisdiction on August 7, 2014, arguing that the Supreme Court’s seven-month old decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), had created a previously-unavailable personal jurisdiction defense. *See Laydon*, ECF Nos. 310, 315, 323, 327, 331, 337, 341, 344. Four of these Defendants, ICAP plc, Mizuho Bank, Ltd., Mizuho Trust & Banking Co., Ltd., and Resona Bank, Ltd., (collectively, the “Stipulating Defendants”) moved pursuant to a prior stipulation with Plaintiff preserving their right to challenge personal jurisdiction

after the Court ruled on the merits. *See* ¶ 37 *supra* (describing stipulation); *see also Laydon*, ECF Nos. 310, 323, 331. The other ten Defendants—Deutsche Bank AG, The Bank of Tokyo Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., Mitsubishi UFJ Trust and Banking Corporation, Mizuho Corporate Bank, Ltd., The Norinchukin Bank, Shinkin Central Bank, The Shoko Chukin Bank, Ltd., Sumitomo Mitsui Trust Bank, Ltd., and Sumitomo Mitsui Banking Corporation (collectively, the “Non-Stipulating Defendants”)—moved to dismiss for lack of personal jurisdiction despite having failed to preserve their Rule 12(b)(2) defenses in a similar stipulation with Plaintiff. *See Laydon*, ECF Nos. 315, 327, 337, 341, 344.

46. On August 15, 2014, Defendants filed their opposition to Plaintiff’s motion for leave to amend, arguing, *inter alia*, that OPPRS’s and Sullivan’s claims were barred by the applicable statutes of limitations. *See Laydon*, ECF No. 361.

47. Lowey filed Plaintiff’s opposition to the Stipulating and Non-Stipulating Defendants’ motions to dismiss for lack of personal jurisdiction on August 29, 2014. *See Laydon*, ECF Nos. 366-70. Plaintiff argued that the Stipulating Defendants were subject to jurisdiction based on their contacts with the United States and that Non-Stipulating Defendants had waived their personal jurisdiction defenses by not asserting them sooner. Fourteen Defendants filed reply memoranda on September 15, 2014. *See Laydon*, ECF Nos. 375-79, 381-84. The Court heard oral arguments on September 30, 2014.

48. On September 18, 2014, the California State Teachers’ Retirement System (“CalSTRS”) retained Lowey to prosecute claims based on, among other things, its direct transactions in Euroyen-Based Derivatives, including Yen foreign exchange forwards, with Defendants UBS, Citi, Deutsche Bank, Royal Bank of Scotland, HSBC, JPMorgan, Barclays, and Société Générale. To avoid a subsequent round of motion to amend briefing, Lowey drafted allegations based on CalSTRS’s transactions to be included in the PTAC and submitted them with

Plaintiffs' reply memorandum in support of the pending motion for leave to amend on September 22, 2014. *Laydon*, ECF Nos. 387, 388-1.

49. The Court addressed the pending motions to dismiss and Plaintiff's motion for leave to amend the SAC on March 31, 2015. Dealing with the issue of personal jurisdiction in two separate orders, the Court granted the four Stipulating Defendants' motions to dismiss for lack of personal jurisdiction but denied the ten Non-Stipulating Defendants' motions, agreeing with Plaintiff that they had waived their right to assert a personal jurisdiction defense. *See Laydon*, ECF Nos. 446-47. The Court also granted-in-part and denied-in-part Laydon's motion for leave to amend, allowing Plaintiff to add the four new defendants, but not the new plaintiffs or claims. *Laydon*, ECF No. 448. ("*Laydon IP*"). CalSTRS's request to join the action was also denied, but CalSTRS was allowed to renew that application by letter within 30 days.

**CalSTRS's Intervention Motion,  
U.K. Criminal Trials, and the Initial *Sonterra* Complaint**

50. Consistent with the Court's March 31, 2015 order, CalSTRS filed a letter motion to intervene in the *Laydon* action on April 29, 2015. *See Laydon*, ECF No. 460. Defendants opposed this motion on May 13, 2015 and CalSTRS filed its reply on May 26, 2015. *Laydon*, ECF Nos. 471, 475.

51. The U.K. criminal trial of former UBS and Citi Yen Trader Tom Hayes began on May 26, 2015. Hayes was arrested in the U.K. on December 11, 2012 and charged with eight counts of conspiracy to defraud, including for manipulating Yen-LIBOR. The trial featured highlights from over 82 hours of recorded interviews that Hayes gave to the U.K. Serious Fraud Office after his arrest. In the recordings, Hayes explained how Defendants' conspiracy operated, which traders and submitters at certain banks were involved, and gave examples of hundreds of new collusive communications among Defendants. Lowey attorneys attended the eleven week trial and began drafting allegations based on trial evidence for inclusion in any subsequent amended complaint and to shape discovery requests going forward.

52. With CalSTRS's motion to intervene still pending, Lowey initiated the *Sonterra* action on July 24, 2015 on behalf of two U.S.-based investment funds (Sonterra Capital Master Fund, Ltd. ("Sonterra") and Hayman Capital Management, L.P. ("Hayman")) that transacted in over-the-counter Euroyen-Based Derivatives, including Yen-LIBOR based interest rate swaps and Yen foreign exchange forwards, directly with Defendants Barclays, Merrill Lynch, JPMorgan and Deutsche Bank. *See Sonterra*, ECF No. 1. This was the first complaint to contain information released during the then-ongoing Hayes criminal trial. The *Sonterra* action was filed as related to *Laydon* and assigned to this Court on August 5, 2015. On July 29, 2015, Lowey moved to consolidate the two actions because they were based on the same misconduct, by the same defendants, in the same market for Euroyen-Based Derivatives, involving the same evidentiary sources and legal claims. *See Laydon*, ECF No. 493. Defendants filed a letter opposing the request on August 4, 2015. *Laydon*, ECF No. 494.

53. Lowey began negotiating with Defendants regarding service of the *Sonterra* complaint. As a condition of accepting service, Defendants required the *Sonterra* Plaintiffs to first translate the 452-page, 1,078-paragraph complaint into Japanese. *Sonterra*, ECF No. 32. Plaintiffs complied with Defendants' request and all Defendants were served with the Japanese translation by January 25, 2016.

54. The U.K criminal trials of six brokers (Terry Farr and James Gilmour from R.P. Martin, Noel Cryan from Tullett Prebon, and Darrell Read, Colin Goodman and Danny Wilkinson from ICAP) began on October 6, 2015. The broker trials revealed additional facts about Defendants' manipulation of Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives not publicly available before the trial began. Lowey again dispatched attorneys to London and worked with investigators there to remain current on the proceedings. Lowey used this new information to draft allegations for inclusion in a subsequent amended complaint.



55. On October 8, 2015, the Court addressed both CalSTRS's motion to intervene in *Laydon* and the *Sonterra* Plaintiffs' request to consolidate the *Laydon* and *Sonterra* actions. The Court denied, without prejudice, Plaintiffs' request to consolidate the two actions, explaining that it would reconsider the issue of consolidation once all Defendants had either moved or answered in *Laydon* and *Sonterra*. See *Laydon*, ECF No. 524; see also *Laydon*, ECF No. 529, Tr. of Oct. 8, 2015 Conf. at 5.

56. The Court denied CalSTRS's motion to intervene in *Laydon*, instructing CalSTRS to file a separate case to pursue its claims. *Laydon*, ECF No. 525; see also *Laydon*, ECF No. 529, Tr. of Oct. 8, 2015 Conf. at 5-6. To obviate the need for another complaint and subsequent round of briefing, I proposed at the hearing that CalSTRS be added to the *Sonterra* action, where Plaintiffs still had the ability to amend their complaint as of right. *Laydon*, ECF No. 529, Tr. of Oct. 8, 2015 Conf. at 7-8. The Court agreed and ordered the *Sonterra* Plaintiffs to file an amended complaint by December 1, 2015. *Id.* at 9. *Laydon* was also ordered to file his Third Amended Complaint ("TAC"), adding four new Defendants, by the same date. *Id.*

57. After a brief extension, *Laydon* filed his TAC and the *Sonterra* Plaintiffs filed their First Amended Class Action Complaint ("*Sonterra* FAC") on December 18, 2015. *Laydon*, ECF No. 545; *Sonterra*, ECF No. 121.

#### **Defendants' Answers and Rule 12 Motions Against *Laydon*'s TAC**

58. The TAC included new factual allegations based on evidence released during the Hayes trial, broker trials, settlement cooperation provided by R.P. Martin and Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc. (collectively, "Citi"), and the DOJ criminal trial against Rabobank traders and submitters Anthony Allen and Anthony Conti for their roles in manipulating Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives.

59. On January 5, 2016, Defendants filed an undocketed letter motion requesting that the Court strike the TAC for failing to comply with the Court's order granting leave to amend by, *inter alia*, including previously-dismissed claims. On January 8, 2016, the Court granted Defendants' letter motion to strike the TAC and directed Plaintiff to submit a letter request with a new proposed TAC by January 28, 2016. *Laydon*, ECF No. 558. Plaintiff filed a letter request with a new proposed TAC on January 28, 2016. *Laydon*, ECF No. 564. Defendants opposed Plaintiff's January 28, 2016 submission on February 18, 2016. *Laydon*, ECF No. 573. On February 19, 2016, the Court granted Plaintiff leave to file the January 28, 2016 PTAC. *Laydon*, ECF No. 574.

60. On February 29, 2016, Laydon filed a new TAC. *Laydon*, ECF No. 580. Defendants again moved to strike the TAC on March 11, 2016. *Laydon*, ECF No. 582. Laydon filed an opposition letter on March 11, 2016. *Laydon*, ECF No. 583. On March 14, 2016, the Court denied Defendants' motion to strike. *Laydon*, ECF No. 584.

61. On May 16, 2016, 21 Defendants (the "Legacy Defendants")<sup>1</sup> filed sixteen answers to the TAC totaling more than 2,000 pages, in which Defendants also asserted 365 affirmative defenses. *Laydon*, ECF Nos. 623-37, 639. Following the filing of Defendants' answers, Plaintiff met and conferred with Legacy Defendants over the course of four months to avoid the necessity of filing a motion to strike under FED. R. CIV. P. 12(f). As a direct result of the meet-and-confer process, four Defendants filed amended answers to the TAC addressing Plaintiff's identified deficiencies on November 14, 2016. *Laydon*, ECF Nos. 725 (Barclays Bank plc), 726 (Deutsche

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<sup>1</sup> The "Legacy Defendants" are The Bank of Tokyo-Mitsubishi UFJ, Ltd.; Sumitomo Mitsui Trust Bank, Limited; The Norinchukin Bank; Mitsubishi UFJ Trust & Banking Corp.; Sumitomo Mitsui Banking Corp.; Mizuho Corporate Bank, Ltd.; Deutsche Bank AG; The Shoko Chukin Bank, Ltd.; Shinkin Central Bank; UBS AG; UBS Securities Japan Co. Ltd.; The Bank of Yokohama, Ltd.; The Royal Bank of Scotland Group PLC; The Royal Bank of Scotland PLC; RBS Securities Japan Limited; Barclays Bank PLC; Coöperatieve Rabobank U.A. (f/k/a Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.); JPMorgan Chase & Co.; JPMorgan Chase Bank, N.A.; J.P. Morgan Securities plc; and Société Générale. For purposes of answering and discovery, related Defendants (*e.g.*, JPMorgan; The Royal Bank of Scotland Group Plc, The Royal Bank of Scotland Plc, and RBS Securities Japan Limited; and UBS AG, and UBS Securities Japan Co. Ltd.) responded as a single unit.

Bank), 727 (UBS AG and UBS Securities Japan Co., Ltd.), and 728 (RBS Securities Japan Limited, Royal Bank of Scotland plc, and The Royal Bank of Scotland Group plc).

62. Defendants ICAP Europe Limited, Tullett Prebon plc, and Lloyds Banking Group plc (“Newly-Added *Laydon* Defendants”) filed motions to dismiss Laydon’s TAC for lack of personal jurisdiction pursuant to FED. R. CIV. P. 12(b)(2) on May 16, 2016. *Laydon*, ECF Nos. 610, 614, 618. Lowey filed its oppositions on July 18, 2016. *Laydon*, ECF Nos. 663-65. The Newly-Added *Laydon* Defendants filed their reply on August 16, 2016. *Laydon*, ECF Nos. 668, 670-71. After briefing was completed, the Second Circuit decided *Waldman v. Palestine Liberation Org.*, 835 F. 3d 317(2d Cir. 2016). The parties submitted letter briefing on *Waldman*’s impact on the pending motion to dismiss. *Laydon*, ECF Nos. 679-80. The Court held oral argument on the Newly-Added *Laydon* Defendants’ motion on October 25, 2016. *Laydon*, ECF Nos. 675, 717. On March 10, 2017, the Court issued an order granting the Newly-Added *Laydon* Defendants’ motions to dismiss. *Laydon*, ECF Nos. 750.

63. On May 16, 2016, the Legacy Defendants filed a motion to partially dismiss Laydon’s TAC, arguing that claims during the last six months of the Class Period (*i.e.*, January 1, 2011 through June 30, 2011) were time-barred. *Laydon*, ECF Nos. 621-22. Lowey filed its opposition on July 18, 2016. *Laydon*, ECF No. 663. The Legacy Defendants filed their reply on August 16, 2016. *Laydon*, ECF No. 673. The Court held oral argument on the Legacy Defendants’ motion also on October 25, 2016. *Laydon*, ECF Nos. 675, 717. On March 10, 2017, the Court issued an order granting the Legacy Defendants’ motion to partially dismiss claims during the period January 1, 2011 to June 30, 2011.<sup>2</sup> *Laydon*, ECF Nos. 749.

64. On September 29, 2016, the Non-Stipulating Defendants moved for revision and relief from the Court’s March 31, 2015 Order that found they had waived their personal jurisdiction

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<sup>2</sup> Before the Court issued its decision on Legacy Defendants’ motion, Deutsche Bank and JPMorgan withdrew from the motion in light of their binding settlements.

defense, or, alternatively, certification of the March 31, 2015 Order for appeal pursuant to 28 U.S.C. § 1292(b). *Laydon*, ECF Nos. 696-97. On the same day, three other Defendants, Barclays, Rabobank, and Société Générale, filed a similar motion seeking revision or relief from the Court's November 10, 2014 Order denying them leave to move for dismissal based on lack of personal jurisdiction, or certification of the November 10, 2014 Order for appeal. *Laydon*, ECF Nos. 698-99. Lowey filed its opposition briefs on October 12, 2016. *Laydon*, ECF Nos. 702-03. The Non-Stipulating Defendants and Barclays, Rabobank, and Société Générale filed their replies on October 24, 2016. *Laydon*, ECF Nos. 707-08. On May 19, 2017, the Court denied the Non-Stipulating Defendants' and Barclays, Rabobank, and Société Générale's motions in their entirety.<sup>3</sup> *Laydon*, ECF No. 761.

#### **Defendants' Motions to Dismiss *Sonterra***

65. On February 1, 2016, the *Sonterra* Defendants filed their motion to dismiss pursuant to FED. R. CIV. P. 12(b)(1), (2), (5) and/or (6). Defendants filed at least five memoranda of law and more than 30 supporting declarations. *Sonterra*, ECF Nos. 147-51, 154-86. On March 18, 2016, Lowey filed its opposition briefs. *Sonterra*, ECF Nos. 208-11.

66. Also on March 18, Plaintiffs Hayman and Sonterra Capital Master Fund, Ltd., filed a motion under FED. R. CIV. P. 17(a)(3) to substitute Hayman Capital Master Fund, L.P. and Japan Macro Opportunities Master Fund, L.P. as the named party plaintiffs in place of Hayman. *Sonterra*, ECF Nos. 212-13. Defendants did not oppose the motion to substitute. *Sonterra*, ECF No. 216. The Court granted Plaintiffs Hayman and Sonterra Capital Master Fund, Ltd.'s motion on March 29, 2016. *Sonterra*, ECF No. 217.

67. On April 22, 2016, Defendants filed their reply briefs in support of their motion to dismiss the *Sonterra* action. *Sonterra*, ECF Nos. 227-37.

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<sup>3</sup> Before the Court issued its decision on Non-Stipulating Defendants' motion, Deutsche Bank withdrew from the motion in light of its binding settlement term sheet with Plaintiff.

68. On May 5, 2016, the Court held an all-day oral argument on Defendants' motions to dismiss the *Sonterra* complaint. Following the oral argument, the Second Circuit decided *Gelboim v. Bank of America Corporation*, 823 F.3d 759 (2d Cir. 2016). The parties submitted letter briefing on *Gelboim's* impact on the pending motion. *Sonterra*, ECF Nos. 249, 256. The Court granted Defendants' motion to dismiss on March 10, 2017, finding that Plaintiffs failed to plead facts that supported their Article III standing to bring federal claims based on Defendants' alleged manipulation of Yen-LIBOR and Euroyen TIBOR and declining to exercise supplemental jurisdiction.<sup>4</sup> *Sonterra*, ECF No. 314. The Court entered judgment on the same day and closed the case. *Sonterra*, ECF No. 315.

69. Plaintiffs filed their Notice of Appeal of the Court's March 10, 2017 Order on April 3, 2017. *Sonterra*, ECF No. 317. On May 2, 2017, the Second Circuit notified the parties that the appeal had been placed on the Expedited Calendar, with Plaintiffs' briefing due June 6, 2017. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF No. 126 (2d Cir.).

70. The dismissal of the *Sonterra* action in its entirety and subsequent appeal created uncertainty as to the Court's ability to entertain a motion to approve the Deutsche Bank and JPMorgan settlements. Accordingly, while Lowey drafted Plaintiffs' Second Circuit appellate brief, Lowey also drafted Plaintiffs' motion on consent to amend the March 10, 2017 Judgment pursuant to FED. R. CIV. P. 60(a) and 60(b) and for an indicative ruling under FED. R. CIV. P. 62.1, which was filed on May 22, 2017. *Sonterra*, ECF Nos. 322-23. The Court granted this motion and issued its indicative ruling on May 24, 2017. *Sonterra*, ECF No. 324. On May 25, 2017, Lowey then filed a motion with the Second Circuit, pursuant to FED. R. APP. P. 12.1(b), to remand the case to this Court to amend the March 10, 2017 judgment to exclude Deutsche Bank and JPMorgan from that judgment, and to retain and exercise jurisdiction over Deutsche Bank and JPMorgan in order to

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<sup>4</sup> Before the Court issued its decision on Defendants' motion, Deutsche Bank and JPMorgan withdrew from the motion in light of their binding settlement term sheets with Plaintiffs.

consider approval of their proposed settlements. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF No. 140 (2d Cir.). On June 13, 2017, the Second Circuit granted the motion to remand, enabling this Court to amend the *Sonterra* judgment entered on March 10, 2017 to exclude Deutsche Bank and JPMorgan from the judgment, and retain and exercise jurisdiction over Deutsche Bank and JPMorgan in order to consider approval of their settlements. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF No. 151 (2d Cir.). The *Sonterra* appeal was stayed pending the Court's consideration of the Deutsche Bank and JPMorgan settlements, and continues to be stayed pending consideration of the BTMU and MUTB Settlement. As ordered, Plaintiffs have provided the Second Circuit a status of this Court's proceedings in writing every 30 days consistent with the indicative ruling. *See Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF Nos. 155-56, 159-62, 170-72, 176-80 (2d Cir.).

71. On December 7, 2017, the Court entered a final order and final judgment approving the settlements with Deutsche Bank and JPMorgan. ECF No. 390.

#### **Earlier Discovery Efforts in *Laydon***

72. After issuing its ruling in *Laydon I* granting-in-part and denying-in-part Defendants' motions to dismiss the SAC, the Court held a Rule 16 conference on April 24, 2014. At the conference, the Court ordered the parties to prepare a joint discovery plan, set deadlines for the Stipulating Defendants' motions to dismiss for lack of personal jurisdiction and for Plaintiff's motion for leave to amend the SAC. After Lowey filed the motion to amend the SAC, Lowey served Plaintiff's First Request for Production of Documents ("First Request") on all Defendants on June 18, 2014. Among other things, the First Request asked for all documents that Defendants had previously produced to government regulators during the course of those regulators' investigations into the manipulation of Yen-LIBOR and Euroyen TIBOR.

73. Over the next month, Lowey and Defendants met and conferred regarding Defendants' joint objections to Plaintiff's First Request. Defendants, among other things, raised objections under thirteen countries' foreign data privacy laws and argued that government regulators would not allow them to produce the requested documents at the risk of inhibiting their ongoing regulatory investigations. While the parties met and conferred on the First Request, the parties also negotiated a Protective Order that the Court entered on August 8, 2014. *Laydon*, ECF No. 349. The parties also proposed a Joint Initial Report and discovery plan to the Court. The Court had already stayed discovery until September 2014 while parties were briefing Defendants' motions to dismiss for lack of personal jurisdiction, when the DOJ filed a motion to intervene and for a stay of discovery. *Laydon*, ECF No. 380. The Court granted the DOJ's motion to intervene and ordered a stay of discovery until May 15, 2015. *Laydon*, ECF No. 451. Defendants served their responses and objections to Plaintiff's First Request on December 18, 2014.

74. The discovery stay was lifted on May 15, 2015. Some Defendants, as a result of the parties' meet and confer efforts, began producing documents on a rolling basis in the summer of 2015.

75. Magistrate Judge Pitman held a discovery conference on June 25, 2015 and set a briefing schedule for Defendants' discovery objections based on foreign data privacy laws. *Laydon*, ECF No. 483. On August 6, 2015, Defendants HSBC Holdings plc and HSBC Bank plc (collectively, "HSBC"), JPMorgan, Société Générale, Sumitomo Mitsui Banking Corporation, Mizuho Corporate Bank, Ltd., and Deutsche Bank AG (collectively, the "UK Data Privacy Objectors") moved for an order sustaining their discovery objections under the foreign data privacy or bank secrecy laws of the United Kingdom. *Laydon*, ECF No. 495. On the same date, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., JPMorgan, Mitsubishi UFJ Trust and Banking Corporation, Mizuho Corporate Bank, Ltd., The Norinchukin Bank, Shinkin Central Bank,

The Shoko Chukin Bank, Ltd., Société Générale, Sumitomo Mitsui Banking Corp. and Sumitomo Mitsui Trust Bank, Ltd. (collectively, the “Japan Data Privacy Objectors”) moved for an order sustaining objections based on Japanese data privacy laws. *Laydon*, ECF No. 501. On September 11, 2015, Lowey filed its opposition, which included an expert declaration, to the UK Data Privacy Objectors’ motion. *Laydon*, ECF Nos. 512-14.

76. On September 11, 2015, Lowey and the Japan Data Privacy Objectors notified Magistrate Judge Pitman that they had reached an agreement to table the Japan Data Privacy Objectors’ motion under the foreign data privacy laws of Japan. *Laydon*, ECF No. 511. On April 29, 2016, Magistrate Judge Pitman overruled the UK Data Privacy Objectors’ motions for an order sustaining their discovery objections under the foreign data privacy and bank secrecy laws of the United Kingdom. *Laydon*, ECF No. 596. Lowey also negotiated separate discovery issues with Defendants on an individual basis. For example, to avoid briefing the issue of the application of France’s data privacy and bank secrecy laws to Plaintiff’s discovery requests, Lowey and Defendant Société Générale negotiated a procedure, approved by Magistrate Judge Pitman on January 15, 2016, which allowed Plaintiff to receive documents immediately through the consent procedures of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, March 18, 1970, T.I.A.S. No 7444, 28 U.S.T. 2555, rather than requiring the Court to rule on the objection. *Laydon*, ECF No. 562.

77. Plaintiff served his Second Request for Production of Documents (“Second Request”) on Barclays on March 31, 2016, on the Bank of Tokyo Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., Mitsubishi UFJ Trust and Banking Corporation, Shinkin Central Bank, The Shoko Chukin Bank, Ltd., and Sumitomo Mitsui Trust Bank, Ltd. on June 6, 2016, and on the remaining Defendants on July 14, 2016. All Defendants served their responses and objections to the Second Request by August 18, 2016.



78. Lowey began meeting and conferring with the 16 Legacy Defendants on the Second Request in August 2016. At least 75 meet-and-confers have been held with the Legacy Defendants, either jointly or individually, over the last 21 months to address various responses and objections to the Second Request, including certain Defendants' objections based on the Japanese Act on the Protection of Personal Information, Act No. 57 of 2003 ("APPI") covering data privacy, and to pursue the production of documents responsive to the Second Request, such as documents from certain Defendants' employees who engaged in the trading of Euroyen-Based Derivatives ("Euroyen-Based Derivatives traders"). Lowey proposed a comprehensive set of search terms, translated into Japanese, to certain Defendants and negotiated with those Defendants to find an agreeable set of search terms to facilitate the production of documents from employees involved in each Defendant's Yen-LIBOR and/or Euroyen TIBOR daily submissions.

79. On August 4, 2017, Lowey sought a pre-motion conference in advance of moving to compel six Defendants, Sumitomo Mitsui Trust Bank, Limited, The Shoko Chukin Bank, Ltd., The Bank of Tokyo-Mitsubishi UFJ, Ltd., Mitsubishi UFJ Trust and Banking Corporation, The Bank of Yokohama, Ltd., and Shinkin Central Bank, (collectively, the "Objecting Defendants") to produce documents from their Euroyen-Based Derivatives traders. *Laydon*, ECF No. 783. The Objecting Defendants responded to Plaintiff's request on August 11, 2017. *Laydon*, ECF No. 785. Magistrate Judge Pitman heard the parties' arguments on September 19, 2017 and issued an order from the bench, later reduced to writing on September 27, 2017, requiring the Objecting Defendants to produce the non-privileged documents and communications that are responsive to Plaintiff's document requests from 10% of each Defendants' Euroyen-Based Derivatives traders, without prejudice to Plaintiff's right to compel the production of additional documents from these and other Euroyen-Based Derivatives traders. *Laydon*, ECF No. 802.

#### **Prior Settlement and Mediation Efforts with Other Defendants**

80. Settlement discussions began with R.P. Martin in September 2014 after Lowey learned that R.P. Martin was facing insolvency, which would potentially impact access to relevant documents and information.

81. In September and October 2014, R.P. Martin and Plaintiffs exchanged numerous communications to discuss settlement terms. In November 2014, my partner Geoffrey Horn and I traveled to London to meet with representatives of R.P. Martin, including its Chairman and CEO, Stephen Welch. During this meeting, on November 5, 2014, R.P. Martin described the results of its internal investigation into the firm's role in manipulating Yen-LIBOR, Euroyen TIBOR and the prices of Euroyen-Based Derivatives.

82. Following the November 5, 2014 meeting, R.P. Martin and Lowey exchanged drafts of a proposed settlement agreement providing for extensive cooperation, including thousands of emails, instant messages, and audio files of recorded phone calls uncovered during R.P. Martin's internal investigation of Yen-LIBOR and Euroyen TIBOR manipulation. In addition, R.P. Martin agreed to produce its "BOSS" transaction database containing millions of transactions brokered by the firm over a ten year period. After several rounds of negotiations, R.P. Martin and Plaintiffs agreed on the final language and executed the R.P. Martin Settlement on December 3, 2014. Document production began shortly thereafter on a rolling basis. However, the materials were not reviewed until the discovery stay expired on May 15, 2015.

83. Settlements with Citi and HSBC were likewise reached after months of arm's-length negotiation, involving multiple phone calls and in-person meetings at which counsel for both sides presented the strengths and weaknesses of their respective claims and defenses. Negotiations with Citi spanned approximately four months, from early April 2015 through August 2015, when a settlement with Citi was formally executed. Following initial phone calls with Citi's counsel during the first week of April 2015, Lowey and Citi met on April 9, 2015. At the April 9 meeting, Lowey

presented to Citi's counsel and a Citi representative what Lowey perceived to be the strengths and weaknesses of the litigation as well as Citi's litigation exposure. The April 9 meeting did not result in a settlement. Over the next several weeks, Lowey and counsel for Citi had numerous phone calls and continued to discuss the perceived strengths and weaknesses of the litigation. On May 26, 2015, Lowey and counsel for Citi signed a Memorandum of Understanding, which led to the August 11, 2015 Settlement Agreement.

84. The negotiations with HSBC took place over eight months starting approximately in October 2015 and continuing until the HSBC Settlement was executed in June 2016. Following initial phone calls with HSBC's counsel in October 2015, Lowey and HSBC met in person on October 21, 2015. At the October 21 meeting, Lowey and HSBC discussed the respective strengths and weaknesses of each other's claims and defenses, as well as HSBC's potential litigation exposure. The October 21 meeting did not result in a settlement. Over the next several months, Lowey and counsel for HSBC held numerous phone calls and continued to present to each other the perceived strengths and weaknesses of the litigation, but the parties reached an impasse. On May 2, 2016, Lowey, CalSTRS, and a representative of HSBC, together with HSBC's counsel, participated in an all-day mediation session before Gary McGowan at the New York offices of HSBC's counsel, Locke Lord LLP. At the May 2 mediation, Plaintiffs and HSBC reached an agreement in principle to settle.

85. Lowey successfully moved for preliminary approval of the R.P. Martin and Citi settlements on February 1, 2016. *Laydon*, ECF Nos. 565-67 & *Sonterra*, ECF Nos. 187-89. On April 6, 2016, Plaintiffs submitted their supplemental memorandum of law to their preliminary approval motion, outlining the Proposed Notice Program and Proposed Plan of Allocation. *Laydon*, ECF No. 590-91 & *Sonterra*, ECF Nos. 221-22. The Court preliminarily approved these settlements on April 7, 2016. *Laydon*, ECF No. 592 & *Sonterra*, ECF No. 223. Lowey then moved for preliminary approval of the HSBC settlement on June 17, 2016, seeking to combine it with the Citi and R.P. Martin

settlements pursuant to FED. R. CIV. P. 23 for the purpose of Notice and Distribution to the Settlement Class. *Laydon* ECF Nos. 654-57 & *Sonterra* ECF Nos. 260-63. On June 22, 2016, the Court granted this motion and issued a superseding order preliminarily approving the Settlements under FED. R. CIV. P. 23(e). *Laydon*, ECF No. 659 & *Sonterra*, ECF No. 264.

86. On November 10, 2016, the Court granted Plaintiffs' motion for final approval of the settlements with R.P. Martin, Citi, and HSBC and the Plan of Allocation (*Laydon*, ECF No. 720; *Sonterra*, ECF No. 298) and entered a final judgment and order dismissing R.P. Martin, Citi, and HSBC from the Actions with prejudice. *Laydon*, ECF No. 721; *Sonterra*, ECF No. 299. The Court also awarded Class Counsel attorneys' fees of \$14,500,000 (*Laydon*, ECF No. 723; *Sonterra*, ECF No. 296), and reimbursement of expenses, as well as incentive awards for the class representatives. *Laydon*, ECF No. 724; *Sonterra*, ECF No. 298.

87. The attorneys' fees awarded represented only 39.56% of the aggregate lodestar of \$36,649,109 for the 69,022.36 hours spent by Plaintiffs' Counsel working on *Laydon* and *Sonterra* through August 31, 2016. See *Sonterra*, ECF No. 279 ¶¶ 65-74.

88. Settlements with Deutsche Bank and JPMorgan were reached after almost two years of arm's-length negotiations, involving multiple phone calls and in-person meetings at which counsel for both sides presented the strengths and weaknesses of their respective claims and defenses. Plaintiffs' settlements with Deutsche Bank and JPMorgan benefited from the knowledge Class Counsel gained from settlement cooperation materials received from R.P. Martin, Citi and HSBC, the discovery produced in *Laydon*, government settlements and public accounts of the manipulation involving Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives, Class Counsel's own investigation, industry and expert analysis of Yen-LIBOR, Euroyen TIBOR and the Euroyen-Based Derivatives market, and information shared by Deutsche Bank and JPMorgan during the course of settlement negotiations.

89. Negotiations with Deutsche Bank occurred over 20 months, and started in November 2015. After an initial phone call, Plaintiffs met with Deutsche Bank's counsel for preliminary discussions which did not result in a settlement. Settlement discussions continued through early 2016 but reached a pause by June 2016. On August 30, 2016, Lowey and Deutsche Bank's counsel resumed settlement discussion that continued through a combination of in-person meeting and phone calls through December 2016. In December 2016, the parties reached an impasse and agreed to mediation before the Honorable Daniel Weinstein. On January 9, 2017, Class Counsel, the general counsel for CalSTRS, counsel for Deutsche Bank, and Deutsche Bank's Global Head of Litigation and Regulatory Enforcement participated in an all-day mediation session at the New York office of Deutsche Bank's counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP. At the end of the January 9 mediation, Plaintiffs and Deutsche Bank reached an impasse. The mediator then made a mediator's proposal, which was ultimately accepted by Plaintiffs and Deutsche Bank. The parties signed a binding term sheet on January 26, 2017.

90. Negotiations with JPMorgan also began in November 2015 with a preliminary settlement discussion following an initial phone call. Plaintiffs' discussions with JPMorgan continued through early 2016, but ceased by June 2016. Following a call by JPMorgan's counsel, the parties resumed settlement discussions on November 10, 2016. Plaintiffs and JPMorgan met again on December 2, 2016, December 19, 2016 and via a series of phone calls, resulting in an agreement in principle reached on January 23, 2017. The parties executed a binding term sheet on January 26, 2017.

91. Over the next several months, Plaintiffs conferred with Deutsche Bank and JPMorgan separately to negotiate the precise language to be used in each settlement agreement. After the Court issued its March 10, 2017 Order and Judgement in *Sonterra* and Plaintiffs appealed the decision, Class Counsel also undertook efforts to resolve any uncertainty as to the Court's ability

to entertain a motion seeking approval of the Deutsche Bank and JPMorgan settlements. Upon the Court's issuance of its indicative ruling on May 24, 2017 and the Second Circuit's remand of the action on June 13, 2017, Plaintiffs finalized the terms of settlement with Deutsche Bank and JPMorgan, culminating with the execution of the settlements on July 21, 2017.

92. On July 21, 2017, Lowey moved for preliminary approval of the Deutsche Bank and JPMorgan settlements. *Laydon*, ECF No. 773-76 & *Sonterra*, ECF No. 336-39. On August 3, 2017, the Court granted this motion and issued an order preliminarily approving of the settlements under FED. R. CIV. P. 23(e). *Laydon*, ECF No. 782 & *Sonterra*, ECF No. 345. To accommodate JPMorgan's timeline for the production of the names and addresses of its U.S.-based counterparties to Euroyen-Based Derivatives transactions for notice purposes, Lowey moved for a superseding preliminary approval order. *Laydon*, ECF No. 794 & *Sonterra*, ECF No. 351. This Court granted to motion and issued a superseding order preliminarily approving of the settlements on September 14, 2017. *Laydon*, ECF No. 796 & *Sonterra*, ECF No. 355.

93. On December 7, 2017, the Court granted final approval of the settlements with Deutsche Bank and JPMorgan, *Laydon*, ECF No. 838 & *Sonterra* ECF No. 389, and entered a final judgment and order dismissing Deutsche Bank and JPMorgan from the Actions with prejudice. *Laydon*, ECF No. 839 & *Sonterra*, ECF No. 390. The Court awarded Class Counsel attorneys' fees of \$34,880,000. *Laydon*, ECF No. 837 & *Sonterra* ECF No. 388.

94. The total attorneys' fees awarded from the common fund created by the Deutsche Bank, JPMorgan, Citi and HSBC settlements represented 91% of the aggregate lodestar of \$54,532,316.55 for the 105,775.61 hours that Plaintiffs' Counsel spent working on *Laydon* and *Sonterra* from inception through September 30, 2017. *See Laydon*, ECF No. 816 at 24; *Sonterra* ECF No. 371 at 24.

95. The Deutsche Bank, JPMorgan, Citi, and HSBC settlements collectively established a common fund of \$206,000,000, providing partial 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.

96. Lowey has worked with expert Dr. Craig Pirrong to develop the Plan of Allocation, which was posted on the Settlement website on or about August 5, 2016 and previously approved by this Court as part of final approval of the Citi and HSBC settlements. *Sonterra*, ECF No. 298 ¶ 20. As more fully described in Dr. Pirrong's declaration (*Laydon*, ECF No. 657-1; *Sonterra*, ECF No. 263-1), the Plan of Allocation is based on Euroyen market data reflecting what Defendants paid to borrow Yen in the interbank market during the Class Period. To facilitate this data-driven Plan of Allocation, Lowey developed proprietary software to extract the relevant transactional information from R.P. Martin's trade database and deployed a separate team to isolate additional transaction records from the Non-Settling Defendants' productions in *Laydon* using Relativity's advanced analytics engine. This team then converted those documents from images and PDFs into machine-readable form by manually entering the necessary data into a database. Lowey has also engaged with potential Class Member questions via phone and email since the time the settlements were reached and preliminarily approved.

97. Class Counsel also retained Kenneth Feinberg, Esq. to oversee the allocation process and ensure a fair and reasonable distribution of settlement funds to Settlement Class Members. As part of this process, Class Counsel appointed separate allocation counsel to represent the interests of Class members that transacted in different types of Euroyen-Based Derivatives, including interest rate swaps and forward rate agreements, Euroyen TIBOR futures contracts, Yen foreign exchange forwards, and CME Yen currency futures contracts. 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 Settlement Class Members' claims. *See Laydon*, ECF No. 683 & *Sonterra*, ECF No. 275.

**Negotiations with State Attorneys General to Protect Settlement Class's Interests**

98. On August 8, 2016, 44 state attorneys general announced a \$100 million settlement with Barclays (the "Barclays AG Settlement") for claims of fraudulent and anticompetitive conduct between January 1, 2005 and December 31, 2009 involving the manipulation of various global benchmark interest rates, including Yen-LIBOR and Euroyen TIBOR. The release in the Barclays AG Settlement foreclosed all eligible counterparties who participated in the Barclays AG Settlement from making claims against Barclays in private "IBOR" actions. Eligible counterparties were defined as any "(i) not-for profit entity; (ii) municipality, state, state agency, political subdivision or substate entity . . . and (iii) pension funds and credit unions affiliated with any of the foregoing that purchased, sold, held, or otherwise obtained, maintained or disposed of one or more Benchmark Interest Rate Financial Instruments."

99. After analyzing the Barclays AG Settlement, Class Counsel recognized that the settlement release language disadvantaged class members in "IBOR" cases where there was already an existing settlement. To benefit from the settlements by the attorneys general, eligible Class Members were required to waive some or all rights to obtain compensation from any existing recoveries in private class action cases.

100. To remedy the impact for class members of "IBOR" cases, Class Counsel negotiated with the state attorneys general and Barclays for many months over the scope of the release to protect class members in "IBOR" cases where certain settlements had been reached. Eventually, Class Counsel successfully negotiated an amendment to the settlement release language that would permit class members to participate in the Barclays AG Settlement and any then-existing private settlement in an "IBOR" case.



101. This groundwork Class Counsel laid by negotiating the scope of the Barclays release proved fruitful for the Class Members in these Actions. In 2017, after reaching a settlement with Plaintiffs, Deutsche Bank entered into a settlement agreement with the state attorneys general. The release of claims in Deutsche Bank's settlement with the state attorneys general did not require eligible Class Members to release their claims in these Actions. As a result, Class Counsel ensured the ability of eligible Class Members to participate in both Deutsche Bank settlements.

### **III. Attorneys' Fees and Expenses**

102. The schedule in Exhibit A is a summary reflecting the amount of time spent by Lowey's attorneys and professional support staff involved in this litigation from inception to April 30, 2018 and also from October 1, 2017 through April 30, 2018, reflecting the period since Class Counsel's previous motion seeking an award of attorneys' fees in these actions. The schedule was prepared based upon the daily time records maintained by Lowey.

103. From the initiation of these actions through April 30, 2018, Lowey's total compensable time for which it seeks an award of attorneys' fees is 79,475.00 hours, which includes 9,148.50 hours spent from October 1, 2017 through April 30, 2018. The total lodestar value of these professional services based on current rates is \$42,840,430.00, which includes \$4,110,063.75 of lodestar value for professional services provided from October 1, 2017 through April 30, 2018.

104. The hourly rates for Lowey's attorneys and professional support staff listed in the schedule in Exhibit A are the firm's current hourly rates. Lowey's lodestar figures do not include charges for expense items.

105. The statements herein are true to the best of my personal knowledge, information and belief, based on Lowey's books and records and information received from Lowey's attorneys and staff.

106. I understand from the declaration of Benjamin M. Jaccarino that Lovell Stewart Halebian Jacobson calculates that, from the initiation of these actions through April 30, 2018, they expended an additional 7,539.84 hours totaling \$4,793,418.60 in fees, which includes 397.95 hours for professional services provided from October 1, 2017 through April 30, 2018 at a lodestar value of \$320,208.25.

107. I understand from the declaration of Patrick T. Egan that Berman Tabacco calculates that, from the initiation of these actions through April 30, 2018, they expended an additional 25,331.02 hours totaling \$10,872,664.90 in fees, which includes 150.20 hours for professional services provided from October 1, 2017 through April 30, 2018 at a lodestar value of \$98,031.00.

108. In total, all Plaintiffs' Counsel have, as of April 30, 2018, expended 115,468.66 hours, the equivalent of \$60,124,044.50, in pursuing these actions. This total includes the lodestar of additional firms who worked on these actions and previously filed declarations. *See* ECF *Laydon*, ECF Nos. 689-95, 817, 820-24 & *Sonterra*, ECF Nos. 282-87, 372, 375-79. Of this amount, Plaintiffs' Counsel worked 9,696.65 hours from October 1, 2017 through April 30, 2018, reflecting a lodestar of \$4,528,303.00. To date, Plaintiffs' Counsel have been awarded \$49,380,000, or approximately 82.1% of the total lodestar value of their professional services.

109. Expense items are billed separately and such charges are not duplicated in Lowey's current billing rates. *See* Declaration of Geoffrey M. Horn. Lowey incurred \$178,324.42 in expenses from October 1, 2017 through April 30, 2018.

110. I understand that Lovell Stewart Halebian Jacobson incurred an additional \$5,333.68 in expenses from October 1, 2017 through April 30, 2018.

111. I understand that Berman Tabacco incurred an additional \$1,910.82 in expenses from October 1, 2017 through April 30, 2018.

112. These expenses have been paid or will be paid from the litigation expense fund established by this Court's prior order approving settlements with Citi and HSBC. *See Laydon*, ECF No. 724 & *Sonterra*, ECF No. 297 ¶ 3. A total of \$62,693.73 will remain in this fund and Class Counsel is seeking an award of \$500,000 to replenish this fund to pay for, among other things, upcoming deposition and expert discovery costs.

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

Executed on June 4, 2018

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*/s/ Vincent Briganti*

Vincent Briganti