

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FUND LIQUIDATION HOLDINGS LLC as assignee and successor-in-interest to Sonterra Capital Master Fund, Ltd., HAYMAN CAPITAL MASTER FUND, L.P., JAPAN MACRO OPPORTUNITIES MASTER FUND, L.P., and CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

UBS AG, UBS SECURITIES JAPAN CO. LTD., SOCIÉTÉ GÉNÉRALE S.A., NATWEST GROUP PLC, NATWEST MARKETS PLC, NATWEST MARKETS SECURITIES JAPAN LTD, NATWEST MARKETS SECURITIES, INC., BARCLAYS BANK PLC, BARCLAYS PLC, COÖPERATIEVE RABOBANK U.A., LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, NEX INTERNATIONAL LIMITED, ICAP EUROPE LIMITED, TP ICAP PLC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., MERRILL LYNCH INTERNATIONAL, AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-5844
(GBD) (SLC)

**DECLARATION OF BRIAN J. BARTOW IN SUPPORT OF
REPRESENTATIVE PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT WITH SOCIÉTÉ GÉNÉRALE, CLASS COUNSEL'S
MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF
EXPENSES, AND PLAINTIFFS' REQUEST FOR SERVICE AWARDS**

I, Brian J. Bartow, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am General Counsel of the California State Teachers' Retirement System ("CalSTRS"). I joined CalSTRS in 2008 as Assistant General Counsel and served as Acting General Counsel before being appointed to my current role in 2010.

2. I have personal knowledge of the facts set forth in this Declaration, which I make in support of Representative Plaintiffs' Motion for Final Approval of Class Action Settlement with Defendant Société Générale ("SocGen") and Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses and Plaintiffs' Request for Service Awards now before the Court in the above-captioned action (the "Action" or "Litigation").

3. I am the chief legal advisor to CalSTRS' Teachers' Retirement Board, which sets CalSTRS' policies, oversees CalSTRS' investments, and makes rules for the system, in addition to ensuring that members' and beneficiaries' benefits are paid in accordance with law. One of my principal duties in this capacity is to evaluate, recommend, and supervise all complex CalSTRS litigation, including securities and antitrust litigation involving CalSTRS' investment portfolio.

4. **Background:** CalSTRS was established by legislation in 1913 to provide retirement benefits to California's public-school educators from prekindergarten through community college. CalSTRS has grown significantly since its inception and today is the largest educator-only pension fund in the world and the second largest pension fund in the United States, with over 1 million members and beneficiaries and an investment portfolio with a market value of \$331.4 billion as of February 29, 2024.

5. **Retention of Counsel and Negotiated Fee Agreement:** As a fiduciary to its members in the management of their retirement assets, CalSTRS has a strong interest in ensuring that financial markets, including the market for financial instruments priced, benchmarked and/or settled based on Yen-LIBOR and Euroyen TIBOR ("Euroyen-Based Derivatives"), are free from anticompetitive practices and are not being manipulated. When I learned of this Action and the companion case, *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-03419 (S.D.N.Y.) ("*Laydon*"), and alleged wrongdoing in the Euroyen-Based Derivatives market, I recognized that CalSTRS would

have a strong interest in pursuing damages and in helping to ensure that the Euroyen-Based Derivatives market is free from anticompetitive and manipulative behavior, despite the risk of pursuing complex litigation, particularly against well-established financial institutions.

6. In light of this interest, in September 2014 CalSTRS retained Berman Tabacco and Lowey Dannenberg, P.C. (collectively “Counsel”) to prosecute claims related to tens of thousands of Euroyen-Based Derivatives, including those in which CalSTRS transacted directly with several Defendants, including Société Générale.

7. Consistent with CalSTRS’ regular practice in complex cases, I negotiated a contingent fee structure at arm’s-length with Counsel prior to their retention.¹ The fee structure employs a graduated fee scale that provides for a 25% fee on the first \$100 million recovered, 23% on the next \$200 million recovered, 20% on the next \$200 million recovered and a lower fee percentage on any additional sums recovered. It also caps the maximum amount of fees requested by Class Counsel at 3.5 times the value of aggregate lodestar reasonably incurred by all plaintiffs’ counsel in the case.

8. CalSTRS is accustomed to negotiating fee agreements with outside litigation counsel. The fee agreement here was carefully calibrated to capture the unique challenges and substantial risks associated with this specific case, especially as those risks could be measured in 2014. I took into account and discussed with Counsel the posture of the Litigation, its risk profile, CalSTRS’ approach to negotiating legal fees, the historical levels of fees to which CalSTRS has agreed to, and fees for comparable legal services prior to arriving at the negotiated fee structure. This Action is not the kind of litigation, and does not involve the kind of market,

¹ Should the Court request, CalSTRS is prepared to submit its fee agreement with Counsel for *in camera* review.

typically prosecuted by public institutional investors. I was cognizant of that in negotiating what I think is a fair and reasonable contingent-fee agreement.

9. As a fiduciary for over a million current and retired California public school teachers, CalSTRS scrupulously and vigorously protects the rights of its teacher members. For this reason, CalSTRS has one of the toughest corporate governance surveillance programs of any public pension fund. For the same reason, CalSTRS also adheres to strict conflicts-of-interest policies intended to avoid the least suggestion of political or other influence on its operations and discharge of its fiduciary obligations. For example, in addition to the existing legal strictures, CalSTRS has for many years imposed additional strict prohibitions on not accepting vendor gifts including political and other contributions from any of its contracted vendors. CalSTRS requires detailed, annual publicly available filings by each of its vendors confirming compliance. The office of General Counsel at CalSTRS oversees all such compliance.

10. **CalSTRS' Oversight of the Litigation**: Since September 2014 when CalSTRS first became involved, CalSTRS has actively overseen the work of Counsel and has participated in all aspects of litigation, beginning with Plaintiffs' reply brief in support of leave to amend the Second Amended Complaint ("SAC") in *Laydon*, the first time CalSTRS sought to join litigation relating to the manipulation of Euroyen-Based Derivatives. *See Laydon*, ECF No. 387, 388-1 (including allegations regarding CalSTRS' Euroyen-Based Derivative products transactions). CalSTRS' oversight of the Litigation has been described in my previous declarations submitted to the Court. *See* ECF Nos. 280, 373, 411, 652; *Laydon*, ECF No. 993.

11. I have reviewed and approved advance drafts of all significant pleadings in the Litigation and have had numerous telephonic and face-to-face discussions and email communications with Counsel regarding the allegations made and arguments raised in opposition

to Defendants' motions to dismiss, the approach to class certification, expert testimony, and appellate strategy. I also supervised the Office of General Counsel's participation in responding to party discovery.

12. **Discovery:** At my direction, CalSTRS participated in party discovery. Prior to their settlement with the Class, SocGen directed dozens of document requests to CalSTRS, as well as Interrogatories.

13. To comply with requests for production of documents, CalSTRS' Office of General Counsel worked with Counsel to collect and produce CalSTRS' historical transaction data. Efforts of various CalSTRS' in-house portfolio managers were necessary to collect and produce the transaction data, and subsequently they worked with Berman Tabacco to answer comprehensive questions posed by Defendants about the transaction data. At the time the SocGen settlement was reached, CalSTRS had produced over 17,000 pages of documents totaling over 143,000 pages.

14. **Settlement Negotiations:** I played a direct role in Representative Plaintiffs' settlement negotiations with SocGen. I participated in extensive discussions with Counsel regarding the strengths and weaknesses of Representative Plaintiffs' claims, potential defenses and litigation strategy relevant to a potential settlement. I travelled from California to New York and participated in a mediation between Representative Plaintiffs and SocGen before retired Judge Layn Phillips in September 2023. I remained throughout the mediation and participated with Counsel in the settlement negotiation strategy. I ultimately authorized acceptance of the \$35 million settlement with SocGen.

15. **Monitoring of Counsel's Work:** As General Counsel, I insist upon complete hands-on management of any litigation in which CalSTRS becomes involved. In this Litigation,

in addition to the direct involvement described above, I required and received detailed briefings from Counsel on substantive legal issues and litigation and settlement strategy. Indeed, the Berman Tabacco firm has been selected to represent CalSTRS in a number of different matters and is in very frequent, sometimes daily, contact with the office of General Counsel, including discussions of strategy about this Litigation. I personally review the time records of outside attorneys that CalSTRS retains, even those employed, as here, on a percentage contingent fee basis. I review the detailed time records so that I can discharge my supervisory obligations as a plaintiff and putative class representative of the Class and also to monitor litigation activities in which the lawyers are engaged.

16. I received updates regarding the status of the Litigation from Counsel on a frequent basis when the Litigation was highly active, and on a regular basis thereafter. I conferred with Counsel, both in person and telephonically, prior to settlement discussions and important court hearings. I have requested from Counsel and received long-term and short-term litigation management plans, which I required to be updated periodically to better help me monitor this complex Litigation and Counsel's efforts.

17. **CalSTRS Supports the Proposed Settlement and Fee Request:** Throughout this Litigation, I have had numerous discussions with Counsel regarding the scope of potential damages, and the scope of the work of damages experts. Based on my experience overseeing complex securities and antitrust class action litigation for CalSTRS, I understand that constructing a rigorous, data-driven damages model is a challenging process that requires extensive expert work and analysis. I also recognize the risks posed by litigating complex class action cases, like this one, where Representative Plaintiffs must ultimately prove damages on a class-wide basis, through class certification and trial.

18. Given this experience, I consider the settlement obtained here to be an important and valuable step for CalSTRS and the Class. I expect the monetary compensation received in connection with the SocGen settlement will provide an immediate measure of compensation for Class Members' claims. I recognize that the additional non-monetary consideration, most importantly the cooperation provided by SocGen, will aid Counsel in the continued prosecution of the Action in a likely appeal against the remaining Defendants.

19. In light of these factors, CalSTRS supports Representative Plaintiffs' motion for final approval of the settlement.

20. I have also reviewed Class Counsel's motion for an award of attorneys' fees and reimbursement of expenses. The attorneys' fees requested exactly match the fee schedule that is part of the retainer agreement that CalSTRS negotiated with Counsel before becoming involved in this Litigation. Thus, CalSTRS believes that such an award of attorneys' fees is fair and reasonable to the Class.

21. I understand that Counsel will seek a service award to be awarded to CalSTRS and other plaintiffs for their additional time and efforts in litigating this action. As detailed above and in my prior declarations, CalSTRS has been an active litigant in this Action for nearly ten (10) years. During that time, I have actively participated in as well as supervised and approved the work carried out by CalSTRS' attorneys, investment professionals, and staff in aiding the prosecution of this case. While CalSTRS takes most seriously its responsibilities as a class representative, the work required to properly oversee and supervise this Litigation falls primarily on the Office of General Counsel. We perform these duties in addition to all of the regular duties that my office and I, as General Counsel, perform for the organization. The hours

spent on this Litigation is time that we would have otherwise devoted to other professional activities.

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

Executed on April 29, 2024.

Brian J. Bartow
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