

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

JEFFREY LAYDON, on behalf of himself and all others
similarly situated,

Docket No. 12-cv-3419
(GBD)

Plaintiff,

- against -

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., THE
SUMITOMO TRUST AND BANKING CO., LTD., THE
NORINCHUKIN BANK, MITSUBISHI UFJ TRUST AND
BANKING CORPORATION, SUMITOMO MITSUI
BANKING CORPORATION, J.P. MORGAN CHASE & CO.,
J.P. MORGAN CHASE BANK, NATIONAL
ASSOCIATION, J.P. MORGAN SECURITIES PLC,
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., SOCIETE
GENERALE SA, THE ROYAL BANK OF SCOTLAND
GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC,
RBS SECURITIES JAPAN LIMITED, BARCLAYS BANK
PLC, CITIBANK, NA, CITIGROUP, INC., CITIBANK,
JAPAN LTD., CITIGROUP GLOBAL MARKETS JAPAN,
INC., COOPERATIEVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A., HSBC HOLDINGS PLC, HSBC
BANK PLC, LLOYDS BANKING GROUP PLC, ICAP
EUROPE LIMITED, R.P. MARTIN HOLDINGS LIMITED,
MARTIN BROKERS (UK) LTD., TULLETT PREBON PLC,
AND JOHN DOE NOS. 1-50,

Defendants.

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)

DECLARATION OF VINCENT BRIGANTI IN SUPPORT OF (A) REPRESENTATIVE PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS; AND (B) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

Pursuant to 28 U.S.C. § 1746, I, Vincent Briganti, hereby declares as follows:

1. I am a member of the Bar of this Court and the Chairman and a shareholder of the law firm Lowey Dannenberg, P.C. (“Lowey” or “Class Counsel”), counsel for Representative Plaintiffs¹ in *Laydon* and *Sonterra* (together, the “Actions”), and Court-appointed class counsel. I have personal knowledge of the matters set forth herein, based on my active supervision of and participation in the prosecution and settlement of the claims asserted in the Actions. The statements herein are true and accurate to the best of my personal knowledge, information and belief based on the documents and information referenced herein, and information from Lowey attorneys. If called upon and sworn as a witness, I could competently testify thereto.

2. I submit this Declaration in support of (A) Representative Plaintiffs’ Motion for Final Approval of Class Action Settlements with (1) Defendants Barclays Bank PLC, Barclays Capital Inc., and Barclays PLC (collectively, “Barclays”); (2) Defendants Nex International Limited (f/k/a ICAP plc) and ICAP Europe Limited (collectively, “ICAP”); and (3) Defendant TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc) (“Tullett Prebon,” and together with Barclays and ICAP, the “Settling Defendants”) and (B) Class Counsel’s Motion for Award of Attorneys’ Fees and Reimbursement of Expenses and Request for Service Award (the “Fee and Expense Application”).

¹ Representative Plaintiffs are Plaintiffs Jeffrey Laydon, the California State Teachers’ Retirement System (“CalSTRS”), Fund Liquidation Holdings, LLC, individually and as assignee and successor-in-interest to Sonterra Capital Master Fund, Ltd., Hayman Capital Master Fund, L.P., and Japan Macro Opportunities Fund, L.P. Unless otherwise indicated, ECF citations herein are to the docket in *Laydon v. The Bank of Tokyo-Mitsubishi UFJ, Ltd., et al.* (*Laydon v. Mizuho Bank, Ltd.*), No. 12-cv-3419 (GBD) (S.D.N.Y.) (“*Laydon*”), and internal citations and quotation marks are omitted. “*Sonterra*” refers to *Fund Liquidation Holdings LLC, et al. v. UBS AG, et al.* (*Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.*), No 15-cv-5844 (GBD) (S.D.N.Y.). Unless otherwise defined, capitalized terms herein have the same meaning as in the Barclays, ICAP and Tullett Prebon Settlement Agreements (collectively, the “Settlement Agreements”). See ECF Nos. 609-1, 609-2, 609-3.

I. INTRODUCTION

3. To resolve these Actions against them, Barclays has agreed to pay \$17,750,000, ICAP \$2,375,000, and Tullett Prebon \$2,375,000 for the benefit of the Settlement Class. Each Settling Defendant has also agreed to provide non-monetary cooperation for use in the prosecution of these Actions. The Settlements are the product of arm's length negotiations between Class Counsel and counsel for Settling Defendants, each of which was represented by respected attorneys from leading law firms in the United States. When the respective Settlements were reached, Representative Plaintiffs and Class Counsel were fully aware of the strengths and weaknesses of the claims asserted in the Action.

4. Based on the work and investigation performed in the Actions, I believe that the Settlements constitute an excellent result for the Settlement Class in light of the substantial litigation risks, and that all three Settlements should be approved. Should these Settlements be approved, Class Counsel will have recovered for the benefit of the Class a total of \$329,500,000 from eleven settlements.

5. As to the Fee and Expense Application, the Class Notice informed the Settlement Class that Class Counsel would apply for an award of attorneys' fees of up to \$4,500,000, which is 20% of the \$22,500,000 common fund created by these Settlements, payment of litigation expenses not to exceed \$250,000, interest on such attorneys' fees and litigation expenses, and \$500,000 to replenish the litigation expense fund. The Class Notice also advised that the Representative Plaintiffs may seek service awards totaling, in the aggregate up to \$450,000.

6. Consistent with the Notice, Class Counsel respectfully move for an attorneys' fee award of \$4,500,000 and payment of \$108,554.45 for expenses incurred from the inception of the Action through the present, plus interest on such attorneys' fees and litigation expenses. Class Counsel also moves for \$500,000 to replenish the litigation expense fund.

7. Class Counsel believe the requested attorneys' fee award is reasonable based on Class Counsel's efforts, the significant risk they undertook, the complexity and magnitude of the case, and the results they achieved. Class Counsel have litigated the antitrust and Commodity Exchange Act ("CEA") claims in these Actions against over 40 different financial institutions for more than ten years, generating over 1,600 docket entries in this Court alone. The requested payment for litigation expenses should also be approved because the expenses were reasonably and necessarily incurred during the prosecution of the Actions. In addition, Representative Plaintiff Japan Macro Opportunities Master Fund, L.P. ("JMOF") requests a supplemental service award of \$428,691.95 to offset certain costs JMOF incurred in continuing to serve as a class representative.

8. This Declaration is organized as follows. Section II describes Class Counsel's work to prosecute these Actions since the 2019 settlements with The Bank of Yokohama, Ltd. ("The Bank of Yokohama"), Shinkin Central Bank ("Shinkin"), The Shoko Chukin Bank, Ltd. ("Shoko Chukin"), Sumitomo Mitsui Trust Bank, Ltd. ("Sumitomo"), and Resona Bank, Ltd. ("Resona,"), and with Mizuho Bank, Ltd., Mizuho Corporate Bank, Ltd. and Mizuho Trust & Banking Co., Ltd. (collectively, "Mizuho"), The Norinchukin Bank ("Norinchukin"), and Sumitomo Mitsui Banking Corporation ("SMBC") (collectively, the "2019 Settlements"), including the work that directly led to obtaining the three Settlements with Barclays, ICAP and Tullett Prebon. Section III provides a summary of Class Counsel's earlier efforts in the Action, much of which has also been reported in earlier declarations. *See* ECF Nos. 687, 814, 871, 992. Section IV sets forth Class Counsel's and additional Plaintiffs' Counsel's total fee-compensable hours invested in prosecuting the Actions along with the related lodestar, and the litigation expenses incurred since October 31, 2019, in furtherance of prosecuting the Actions.

II. CLASS COUNSEL’S WORK ON BEHALF OF REPRESENTATIVE PLAINTIFFS AND THE SETTLEMENT CLASS SINCE OCTOBER 2019

A. The *Laydon* Action

9. On September 27, 2019, Plaintiff Laydon filed a motion for class certification and appointment of class counsel (ECF Nos. 976-78). On the same day, Defendants Barclays Bank PLC, Coöperatieve Rabobank U.A. (“Rabobank”), RBS Securities Japan Limited, Royal Bank of Scotland PLC, and The Royal Bank of Scotland Group PLC (collectively, “RBS”), Société Générale, and UBS AG and UBS Securities Japan Co., Ltd. (collectively, UBS and, together with Barclays Bank PLC, Rabobank, RBS and Société Générale, the “Rule 12(c) Defendants”) filed a motion for judgment on the pleadings. ECF Nos. 974-75. The Court stayed briefing on the motion for class certification and discovery in the case pending the outcome of the Rule 12(c) motion. ECF No. 984. On November 1, 2019, Laydon filed his opposition to Defendants’ motion. ECF No. 987.

10. The Court held oral argument for the Rule 12(c) Defendants’ motion on December 19, 2019. ECF No. 984, 1021. Class Counsel prepared at length for the argument, devoting hundreds of hours researching the novel issues presented by the Defendants’ motion, and forcefully countered the arguments raised by the Defendants. After oral argument, Lowey attorneys updated the Court on relevant new case law developments and responded to supplemental authority letters filed by the Defendants. *See* ECF Nos. 1024-26.

11. On August 27, 2020, the Court granted Defendants’ motion for judgment on pleadings and dismissed the Third Amended Complaint (“August 27 Order”). ECF No. 1032. The Court entered a judgment in favor of the Defendants on September 25, 2020. ECF No. 1033. Class Counsel timely filed a notice of appeal from August 27 Order and all previous orders in *Laydon*. ECF No. 1035. On October 30, 2020, Barclays Bank PLC, Rabobank, and Société Générale

(“Société Générale,” and together with Barclays and Rabobank, the “Appellees-Cross-Appellants”) also filed a notice of cross-appeal. ECF No. 1036.

12. Class Counsel engaged one of the top appellate firms in the country—Goldstein & Russell, P.C. (“Goldstein”) and spent many hours discussing the procedural history, claims and strengths and weaknesses of the case with Goldstein. Class Counsel and Goldstein then spent months preparing the appellate brief to be filed with the Second Circuit, extensively researching the relevant law and analyzing documents in the record. On February 19, 2021, Plaintiff-Appellant filed its 73-page opening appellate brief and the special appendix. *Laydon v. Cooperatieve Rabobank U.A.*, No. 20-3626(L) (“*Laydon Appeal*”), ECF No. 128 (2d Cir. Feb. 19, 2021). On May 21, 2021, Defendants-Appellees UBS AG and UBS Securities Japan Co., Ltd. (together, “UBS”), The Royal Bank of Scotland plc, The Royal Bank of Scotland Group plc, and RBS Securities Japan Ltd. (“RBS”), ICAP, Tullett Prebon, and Lloyds Banking Group PLC and Appellees-Cross-Appellants Barclays Bank, PLC, Rabobank, and Société Générale filed three responsive briefs totaling 119 pages. *Laydon Appeal*, ECF Nos. 190-91, 194 (2d Cir. May. 21, 2021). Class Counsel again spent hundreds of hours studying the arguments and researching the relevant law in light of the arguments made in Defendants-Appellees’ and Appellees-Cross-Appellants’ briefs. On August 23, 2021, Plaintiff-Appellant filed his two briefs totaling 81 pages. *Laydon Appeal*, ECF Nos. 231, 233. After briefing was completed, Class Counsel worked with Goldstein to prepare for oral argument, which occurred on May 24, 2022.

13. On October 18, 2022, the Second Circuit issued an opinion affirming the judgment and orders of the District Court and dismissed the cross-appeal. *Laydon Appeal*, ECF No. 362 (2d Cir. Oct. 18, 2022). After further considering the available options in light of the opinion, Class Counsel and Goldstein filed a petition for rehearing *en banc* on behalf of Plaintiff Laydon. *Laydon*

Appeal, ECF No. 379 (2d Cir. Nov. 22, 2022). The U.S. Commodity Futures Trading Commission (“CFTC”) then filed an *amicus curae* brief supporting Class Counsel’s request for reconsideration of certain issues addressed in the Second Circuit’s opinion. *Laydon Appeal*, ECF No. 383 (2d Cir. Nov. 29, 2022). The Second Circuit *sua sponte* amended its October 18, 2022 opinion on December 8, 2022. *Laydon Appeal*, ECF No. 387 (2d Cir. December 8, 2022). Class Counsel and Goldstein filed a new petition for rehearing and rehearing *en banc* of the amended opinion on January 12, 2023 (*Laydon Appeal*, ECF No. 399, (2d Cir. Jan. 12, 2023), and again the CFTC filed an *amicus curae* brief in support. (*Laydon Appeal*, ECF No. 403, (2d Cir. Jan. 19, 2023). The petition remains pending before the Second Circuit.

B. The *Sonterra* Action

14. After the issues for appeal were fully briefed in 2019 in connection with the dismissal of *Sonterra*, the Second Circuit held oral argument on February 5, 2020. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944 (“*Sonterra Appeal*”), ECF No. 383 (2d Cir. Feb. 5, 2020). On April 1, 2020, the Second Circuit reversed this Court’s March 10, 2017 decision dismissing the *Sonterra* action for failure to allege Article III standing and remanded *Sonterra* back to this Court. ECF No. 458.

15. On May 14, 2020, the *Sonterra* Plaintiffs² and Defendants The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, Resona Mizuho, Norinchukin, and SMBC jointly moved to dismiss all claims against those Defendants in light of the 2019 Settlements that had been reached and approved in the *Laydon* action. *Sonterra*, ECF Nos. 460-62. On November 17, 2020, the Court

² The “*Sonterra* Plaintiffs” are Fund Liquidation Holdings LLC (“FLH”), 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 *CalSTRS*.

issued a final judgment and order of dismissal of the Defendants involved in the 2019 Settlements. ECF No. 539.

16. Class Counsel and the remaining Defendants negotiated a schedule to file an amended *Sonterra* complaint and any motions by Defendants to either oppose the amendment of the complaint or dismiss the amended complaint, which the Court endorsed. *See* ECF Nos. 471, 477, 487.

17. Class Counsel filed the *Sonterra* Plaintiffs' 412-page Second Amended Class Action Complaint ("SAC") on August 24, 2020. *Sonterra*, ECF No. 489. The SAC included, among other things, additional significant facts that Class Counsel had uncovered during their continuing investigation and prosecution, including from cooperation materials received pursuant to previous settlements.

18. On October 9, 2020, Defendants filed a motion to dismiss the SAC for lack of subject matter jurisdiction and failure to state a claim, and for a lack of personal jurisdiction, which included three memoranda of law totaling 110 pages and 18 declarations. ECF Nos. 505-27.

19. On November 30, 2020, the *Sonterra* Plaintiffs filed two comprehensive memoranda totaling 94 pages opposing the motion to dismiss the SAC. *Sonterra*, ECF Nos. 542-44. On December 21, 2020, the remaining Defendants filed three reply memoranda further supporting their motion. *Sonterra*, ECF Nos. 546-48.

20. The Court held oral argument on Defendants' motion, and during the weeks prior to the hearing, Class Counsel spent hours updating their research, developing a comprehensive presentation and preparing for the argument. After the Court held oral argument on February 9, 2021, Class Counsel continued tracking new legal developments that impacted the motion; when relevant case decisions were issued, Class Counsel informed the Court of the supplemental

authority supporting the *Sonterra* Plaintiffs' arguments and responded to supplemental authority presented by Defendants. *Sonterra*, ECF Nos. 556, 558, 560.

21. On September 30, 2021, the Court issued a Memorandum Decision & Order granting in part and denying in part the *Sonterra* Defendants' motions to dismiss the SAC (the "September 30 Order"). *Sonterra*, ECF No. 570.

22. After thoroughly analyzing the September 30 Order, Class Counsel conferred with UBS and Société Générale, and they jointly requested an extension of time to file motions for reconsideration of the Court's September 30 Order, which the Court granted on October 14, 2021. *Sonterra*, ECF No. 573. The Court also set a deadline of November 15, 2021 for the remaining parties to file a proposed case management plan. *Id.* On October 21, 2021, CalSTRS filed a motion for reconsideration of the Court's September 30 Order. *Sonterra*, ECF Nos. 578-79. UBS and Société Générale also filed motions for reconsideration and/or clarification of the Court's September 30 Order. *Sonterra*, ECF Nos. 574-77.

23. On December 3, 2021, Class Counsel on behalf of CalSTRS, UBS, and Société Générale filed reply briefs in further support of their respective motions for reconsideration and/or clarification. *Sonterra*, ECF Nos. 587-89.

24. While the motions for reconsideration were pending, Class Counsel negotiated a protocol for the production of documents and electronically stored information ("ESI protocol") and a protective order with UBS and Société Générale, which were filed and approved by the Court on February 23, 2022. *Sonterra*, ECF Nos. 598-99. The parties also served initial document requests.

25. On August 30, 2022, the Court issued an order granting UBS's and Société Générale's motion for reconsideration and denying CalSTRS' motion. *Sonterra*, ECF No. 615.

26. After the Court issued its order on the motions for reconsideration, Class Counsel negotiated the case management plan and a fact deposition protocol with Société Générale and continued to meet-and-confer with Société Générale on discovery. *Sonterra*, ECF No. 622. Discovery in *Sonterra* is ongoing.

C. Settlement Negotiations

27. At the time the Settlement Agreements were being negotiated with Barclays, ICAP, and Tullett Prebon, Class Counsel were experienced in prosecuting claims under the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.* Class Counsel serve as lead or co-lead counsel in at least seven actions, including these Actions, bringing antitrust and/or Commodity Exchange Act (“CEA”) claims for the manipulation of global benchmark rates. *See Fund Liquidation Holdings LLC, et al., v. Citibank, N.A., et al.*, No. 1:16-cv-5263 (SIBOR and SOR); *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (“Euribor”); *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (Swiss franc LIBOR); *Dennis et al., v. JPMorgan et al.*, No. 16-cv-06496 (LAK) (SDNY) (BBSW); *Sonterra Capital Master Fund Ltd., et al. v. Barclays Bank PLC, et al.*, No. 15-cv-03538 (VSB) (S.D.N.Y.) (Sterling LIBOR); *see* ECF No. 1049-8 (firm resume).

28. I have more than twenty-five years of experience in developing and leading the prosecution of federal commodity manipulation, antitrust, and securities litigation matters on behalf of some of the nation’s largest pension funds and institutional investors. This experience includes recently obtaining, as court-appointed lead or co-lead counsel, over \$1,000,000,000 in settlements in cases involving similar benchmark manipulation and other antitrust actions, with additional settlements pending. *See, e.g., Fund Liquidation Holdings LLC, et al., v. Citibank, N.A., et al.*, No. 1:16-cv-5263 (\$155,458,000 in total settlements related to manipulation of SIBOR and

SOR); *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y) (settlements totaling \$546.5 million to date for alleged Euribor manipulation); *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (JSR) (S.D.N.Y.) (settlements totaling \$386.5 million relating to the alleged manipulation of unsecured bonds issued by U.S. government sponsored entities).

29. Before reaching the Settlements, Class Counsel were well informed regarding the legal risks, factual uncertainties, potential damages and other aspects of the strengths and weaknesses of Representative Plaintiffs' claims. Lowey extensively reviewed and analyzed available documents and information, including: (i) regulatory investigation disclosures and related settlements, concerning Yen-LIBOR, Euroyen TIBOR and the prices of Euroyen-Based Derivatives; (ii) publicly available information relating to the conduct alleged in Representative Plaintiffs' complaints; (iii) expert and industry research regarding Yen-LIBOR, Euroyen TIBOR and the prices of Euroyen-Based Derivatives; (iv) numerous motions to dismiss and other pleadings filed by Defendants; and (v) prior decisions of this Court and others deciding similar issues.

30. In addition, Class Counsel: (a) conducted an extensive investigation into the facts and legal issues in this action; (b) engaged in extensive negotiations with the Settling Defendants; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims. Class Counsel's research and investigation included procuring and understanding documents from a number of foreign jurisdictions.

31. The negotiations leading to the Settlement Agreements were entirely non-collusive and strictly arm's-length, hard-fought and deliberative, with each side raising issues and arguments that represented the interests of their clients. I was involved in all material aspects of the settlement negotiations on behalf of Representative Plaintiffs. In addition, Settling Defendants were each

represented by large, leading international law firms that have significant experience defending federal class action claims arising under antitrust laws and the CEA.

32. **Settlement Negotiations with Barclays:** The negotiations with Barclays took place over the course of seven years, starting approximately in January 2015. Initial settlement discussions between Representative Plaintiffs and Barclays in January 2015 did not advance. Settlement discussions resumed several years later, in May 2020, but those settlement discussions also did not progress further. Class Counsel resumed settlement discussions with counsel for Barclays in November 2021, with the Parties sharing their updated views on the case. After significant negotiations, the Parties reached an agreement in principle on March 4, 2022. The Parties formalized and executed the Barclays Settlement Agreement on July 22, 2022.

33. The Barclays Settlement Agreement was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations and before any demand or counter-offer was ever made, I was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims against Barclays.

34. Lowey Dannenberg believes that the consideration that Barclays agreed to provide—a payment of \$17,750,000 for the benefit of the Class and cooperation—is within the range of that which may be found to be fair, reasonable, and adequate.

35. **Settlement Negotiations with ICAP:** The settlement negotiations with ICAP started in about January 2021 and took more than a year. The discussions between the Parties included the exchange of views on factual and legal issues as well as potential amount of damages. After the initial discussions did not result in an agreement, the Parties resumed their negotiations in January 2022, which led the Parties to reach an agreement in principle on May 17, 2022. After

several more months of negotiations, the Parties executed a Settlement Agreement on July 20, 2022.

36. Lowey believes that the consideration that ICAP agreed to provide—a payment of \$2,375,000 for the benefit of the Class and cooperation—is within the range of that which may be found to be fair, reasonable, and adequate.

37. **Settlement with Tullett Prebon:** The Parties commenced their settlement talks in April 2022 and continued until the Settlement Agreement was executed on July 20, 2022. The settlement talks lasted four months and at all times, the settlement talks were at arm’s-length and adversarial.

38. Lowey believes that the consideration that Tullett Prebon agreed to provide—a payment of \$2,375,000 for the benefit of the Class and cooperation—is within the range of that which may be found to be fair, reasonable, and adequate.

39. **Reaction of the Class to Date to the Settlements:** As detailed in the Declaration of Steven J. Straub on behalf of A.B. Data, Ltd. (“Straub Decl.”) filed herewith, pursuant to the Court-approved notice program, A.B. Data mailed a total of 133,797 copies of the Notice of Proposed Class Action Settlement, March 14, 2023 Fairness Hearing Thereon and Class Members’ Rights (the “Mailed Notice”) and the Proof of Claim and Release (together, the “Notice Packet”), via first-class mail, to potential Settlement Class Members. *See* Straub Decl. ¶ 18. Additionally, A.B. Data posted the Mailed Notice, Publication Notice, and Claim Form, along with other relevant documents, on the website developed for this Settlement, www.euroyensettlement.com, and has caused the Publication Notice to be published as described in the Class Notice Plan. *Id.* at ¶¶ 20-26. Further, certain Settling Defendants distributed the Mailed Notice to its counterparties using a third-party noticing agent. In total Settling Defendants mailed a total of 23,433 copies of

the Mailed Notice to potential Settlement Class Members. *See* Declaration of Rust Consulting Inc. ¶ 5; Declaration of The Bank of Tokyo-Mitsubishi UFJ, Ltd. (n/k/a MUTF Bank, Ltd.) and Mitsubishi UFJ Trust and Banking Corporation ¶ 5; Declaration of Ajmal Choudry ¶ 5; Declaration of Derek Smith ¶ 5; Declaration of Jason Rabe ¶ 5, filed herewith.

40. To date, there have been no objections to the Settlement or to the attorneys' fees, expense payment, and service award amounts described in the Class Notice, and only one request for exclusion. Straub Decl. ¶¶ 32, 34.

III. CLASS COUNSEL'S EARLIER WORK PROSECUTING THE ACTIONS ON BEHALF OF REPRESENTATIVE PLAINTIFFS AND THE CLASS

41. Class Counsel has previously reported on the work they have undertaken in prosecuting the Actions and incorporates those earlier declarations by reference. *See* ECF Nos. 687, 814, 871, 992. Below is a brief summary of the work Class Counsel has performed on behalf of Representative Plaintiffs and the Class since the inception of the Actions.

Case Investigation, the Initial Pleading, and Service

42. Following reports in July 2011 that 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.

43. 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.

44. After filing the CAC, Lowey began the lengthy and costly process of serving the complaint upon four Japanese Bank Defendants (Mizuho Bank, Ltd., Resona, Mizuho Trust and Banking Co., Ltd., and Shoko Chukin) 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, Mizuho Trust and Banking Co., Ltd., and Shoko Chukin via Japan's Central Authority. *See* ECF Nos. 46, 84.

45. Twelve Defendants—Barclays, BNP Paribas S.A., Citi, Rabobank, Deutsche Bank, HSBC Holdings plc, JPMorgan Chase Bank, National Association, Lloyds Banking Group plc, Norinchukin, The Royal Bank of Scotland Group plc, Société Générale, and BTMU (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.). Lowey opposed the request, and this Court and Judge Buchwald denied the Transfer Defendants' motion.

46. Upon Plaintiff's motion, on August 29, 2012, the Court entered a pre-trial order appointing Lowey as interim lead class counsel. *Laydon*, ECF No. 99.

First and Second Amended *Laydon* Complaints

47. 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 ("FAC"). The FAC, filed December 3, 2012 (ECF No. 124), 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.

48. Lowey filed the SAC on April 15, 2013. 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.

49. After filing the SAC, Lowey negotiated two stipulations with Defendants Mizuho Bank, Ltd., Mizuho Trust & Banking Co., Ltd., Resona, 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* ECF Nos. 160, 194.

Defendants' First Rule 12 Motion to Dismiss the SAC

50. 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* ECF Nos. 204-21. On August 13, 2013, Lowey filed a 93-page omnibus opposition to Defendants' motions to dismiss. *See* ECF No. 226-27. Defendants filed eleven reply memoranda of law on September 27, 2013. ECF Nos. 232-43. 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. ECF No. 244. The Court granted this request on October 4, 2013 and Lowey filed Plaintiff's sur-reply on October 9, 2013. ECF Nos. 244-45.

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

52. All Defendants except UBS Securities Japan Co., Ltd. filed motions for reconsideration of *Laydon I* on April 11, 2014. *See* 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. Lowey filed Plaintiff's opposition on May 9, 2014. ECF No. 290. Defendants filed reply memoranda on May 30, 2014. ECF Nos. 292-96. The Court denied Defendants' motions for reconsideration on October 20, 2014. ECF No. 398.

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

53. Lowey moved for leave to amend the SAC and to file a Proposed Third Amended Complaint ("PTAC") on June 17, 2014. 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. 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.*

54. 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.

55. 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* ECF Nos. 310-12, 315-29, 331-33, 337-39, 341-42, 344-46. Four of these Defendants, ICAP plc, Mizuho Bank, Ltd., Mizuho Trust & Banking Co., Ltd., and Resona, (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* ¶ 50 *supra* (describing stipulation). The other ten Defendants—Deutsche Bank, BTMU, The Bank of Yokohama, MUTB, Mizuho Corporate Bank, Ltd., Norinchukin, Shinkin, Shoko Chukin, Sumitomo, and SMBC (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.

56. 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* ECF No. 361.

57. Lowey filed Laydon's opposition to the Stipulating and Non-Stipulating Defendants' motions to dismiss for lack of personal jurisdiction on August 29, 2014. *See* 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* ECF Nos. 375-79, 381-84. The Court heard oral arguments on September 30, 2014.

58. On September 18, 2014, 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, RBS, 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. ECF Nos. 387, 388-1.

59. 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* 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. ECF No. 448. ("*Laydon II*"). 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**

60. 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* ECF No. 460. Defendants opposed this motion on May 13, 2015 and CalSTRS filed its reply on May 26, 2015. ECF Nos. 471, 475.

61. Also on May 26, 2015, the U.K. criminal trial of former UBS and Citi Yen Trader Tom Hayes began. 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.

62. 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 and Hayman Capital Management, L.P. ("HCM"))³ 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

³ Hayman Capital Master Fund, L.P. and Japan Macro Opportunities Master Fund, L.P. were later substituted for HCM. *Sonterra*, ECF No. 217.

on August 5, 2015. On July 29, 2015, Lowey moved to consolidate the two actions. *See* ECF No. 493. Defendants filed a letter opposing the request on August 4, 2015. ECF No. 494.

63. 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.

64. 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.

65. 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* ECF No. 524; *see also* Tr. of Oct. 8, 2015 Conf. at 5, ECF No. 529.

66. The Court denied CalSTRS's motion to intervene in *Laydon*, instructing CalSTRS to file a separate case to pursue its claims. ECF No. 525; *see also* Tr. of Oct. 8, 2015 Conf. at 5-6, ECF No. 529. 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. Tr. of Oct. 8, 2015 Conf. at 7-8, ECF No. 529. 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”) by the same date. *Id.*

67. 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. ECF No. 545; *Sonterra*, ECF No. 121.

Defendants’ Answers and Rule 12 Motions Against Laydon’s TAC

68. The *Laydon* TAC and *Sonterra* FAC 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.

69. 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. ECF No. 558. Plaintiff filed a letter request with a new proposed TAC on January 28, 2016. ECF No. 564. Defendants opposed Plaintiff’s submission on February 18, 2016. ECF No. 573. On February 19, 2016, the Court granted Plaintiff leave to file the January 28, 2016 PTAC. ECF No. 574.

70. On February 29, 2016, Laydon filed a new TAC. ECF No. 580. Defendants again moved to strike the TAC on March 11, 2016. ECF No. 582. Laydon filed an opposition letter on

March 11, 2016. ECF No. 583. On March 14, 2016, the Court denied Defendants' motion to strike. *Laydon*, ECF No. 584.

71. On May 16, 2016, 21 Defendants (the "Legacy Defendants")⁴ 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 Bank), 727 (UBS), and 728 (RBS).

72. 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. ECF Nos. 610-20. Lowey filed its oppositions on July 18, 2016. ECF Nos. 664-65. The Newly-Added *Laydon* Defendants filed their reply on August 16, 2016. ECF Nos. 668-71. 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. ECF No. 717. On March 10, 2017, the Court issued an order granting the Newly-Added *Laydon* Defendants' motions to dismiss. *Laydon*, ECF Nos. 750.

⁴ The "Legacy Defendants" are BTMU; Sumitomo; Norinchukin; MUTB; SMBC; Mizuho Corporate Bank, Ltd.; Deutsche Bank; Shoko Chukin; Shinkin; UBS AG; UBS Securities Japan Co. Ltd.; The Bank of Yokohama; The Royal Bank of Scotland Group PLC; The Royal Bank of Scotland PLC; RBS Securities Japan Limited; Barclays; Rabobank; 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.

73. 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. ECF Nos. 621-22. Lowey filed its opposition on July 18, 2016. ECF No. 663. The Legacy Defendants filed their reply on August 16, 2016. ECF No. 673. The Court held oral argument on the Legacy Defendants' motion also on October 25, 2016. ECF No. 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, 2011.⁵ ECF No. 749.

74. 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 defense, or, alternatively, certification of the March 31, 2015 Order for appeal pursuant to 28 U.S.C. § 1292(b). 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. ECF Nos. 698-99. Lowey filed its opposition briefs on October 12, 2016. ECF Nos. 702-03. The Non-Stipulating Defendants and Barclays, Rabobank, and Société Générale filed their replies on October 24, 2016. 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.⁶ ECF No. 761.

⁵ Before the Court issued its decision on Legacy Defendants' motion, Deutsche Bank and JPMorgan withdrew from the motion in light of their binding settlements.

⁶ 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 Representative Plaintiffs.

Defendants' Motion to Dismiss *Sonterra*

75. 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). ECF Nos. 147-51, 154-86. On March 18, 2016, Lowey filed its opposition briefs. *Sonterra*, ECF Nos. 208-11.

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

77. 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.⁷ *Sonterra*, ECF No. 314. The Court entered judgment on the same day and closed the case. *Sonterra*, ECF No. 315.

78. Plaintiffs filed their Notice of Appeal of the Court's March 10, 2017 Order on April 3, 2017. *Sonterra*, ECF No. 317. As described above, the Second Circuit reversed the Court's March 10, 2017 Order and remanded the case for further proceedings.

Discovery Efforts in *Laydon*

79. After Lowey filed the motion to amend the *Laydon* 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

⁷ 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.

produced to government regulators during the course of those regulators' investigations into the manipulation of Yen-LIBOR and Euroyen TIBOR.

80. 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. ECF No. 349. The parties also proposed a Joint Initial Report and discovery plan to the Court. Defendants served their responses and objections to Plaintiff's First Request on December 18, 2014.

81. In connection with Defendants' motion to dismiss for lack of personal jurisdiction, the Court stayed discovery until September 30, 2014 or until further order of the Court. *See* ECF No. 362. In September 2014, while parties were briefing Defendants' motions to dismiss for lack of personal jurisdiction, the DOJ filed a motion to intervene and for a stay of discovery. ECF No. 380. The Court granted the DOJ's motion to intervene and ordered a stay of discovery until May 15, 2015. ECF No. 451.

82. 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.

83. 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. ECF No. 483. On August 6, 2015, Defendants HSBC Holdings plc and HSBC Bank plc (collectively, "HSBC"), JPMorgan, Société Générale, SMBC, Mizuho Corporate Bank, Ltd., and Deutsche Bank

(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. ECF No. 495-98. On the same date, BTMU, The Bank of Yokohama, JPMorgan, MUTB, Mizuho Corporate Bank, Ltd., Norinchukin, Shinkin, Shoko Chukin, Société Générale, SMBC and Sumitomo (collectively, the “Japan Data Privacy Objectors”) moved for an order sustaining objections based on Japanese data privacy laws. ECF Nos. 501-04. On September 11, 2015, Lowey filed its opposition, which included an expert declaration, to the UK Data Privacy Objectors’ motion. ECF Nos. 512-14.

84. 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. 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. ECF No. 596.

85. 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 Evidence Convention, rather than requiring the Court to rule on the objection. ECF No. 562.

86. Plaintiff served his Second Request for Production of Documents (“Second Request”) on Barclays on March 31, 2016, on BTMU, The Bank of Yokohama, MUTB, Shinkin,

Shoko Chukin, and Sumitomo 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.

87. Lowey began meeting and conferring with the 16 Legacy Defendants on the Second Request in August 2016. At least 75 meet-and-confers were held with the Legacy Defendants, either jointly or individually, over at least 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.

88. On August 4, 2017, Lowey sought a pre-motion conference in advance of moving to compel six Defendants, Sumitomo, Shoko Chukin, BTMU, MUTB, The Bank of Yokohama, and Shinkin (collectively, the "Objecting Defendants") to produce documents from their Euroyen-Based Derivatives traders. ECF No. 783. The Objecting Defendants responded to Plaintiff's request on August 11, 2017. 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. ECF No. 802.

Class Counsel Prepared a Thorough and Rigorous Motion for Class Certification in *Laydon* Supported by Considered and Reliable Expert Opinions

89. A primary focus of Class Counsel in *Laydon* was the preparation of their motion for class certification and expert reports in support of the motion. Class Counsel engaged leading commodities manipulation experts to dissect the Yen money market and Euroyen-Based Derivatives data produced by Defendants. The data was used to assess potential class-wide damages and market artificiality, and to develop economic models of these effects. Class Counsel worked closely with the experts to identify, collect, and understand the data produced, and 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 received relevant data, Plaintiff's experts undertook the tremendous task of normalizing the data collected from the Class Period and constructing relevant tables and regression models.

90. Using the information gathered from their early investigations, review of government settlements, and discovery and settlement cooperation, Class Counsel ramped up their efforts with respect to the class certification motion and the supporting expert reports in June 2018. After conferring with their experts and developing their initial class certification strategy, Class Counsel identified information that would support their motion as well as additional information to be obtained and analyzed. During at least 100 discovery meet and confers with Defendants, Class Counsel pressed for documents and additional data that had not yet been produced. Class Counsel regularly met with their experts to discuss new documents and information, and to determine what adjustments, if any were to be made to the class certification strategy.

91. In the months preceding service of the opening report of Plaintiff's experts, Class Counsel and Defendants negotiated over the terms of a stipulation and proposed order that would govern the terms of expert discovery (the "Expert Discovery Stipulation"). The negotiations over the Expert Discovery Stipulation were lengthy and highly technical, as each side fought to define the parameters of what was and was not properly within the scope of discoverable materials. After several weeks of back-and-forth negotiations and exchanges of draft proposals, the Expert Discovery Stipulation was executed by the parties on March 6, 2019 and so ordered by the Court on March 8, 2019. ECF No. 928.

92. After several months of work, Plaintiff's experts, assisted by Class Counsel, produced their opening expert report in March 2019. In May 2019, Defendants noticed the deposition of Plaintiff's experts for June 2019. Once agreement was reached on the deposition dates, Class Counsel immediately began preparing their experts on the likely lines of inquiry. Class Counsel spent several days preparing the experts for their testimony and defended the experts at the depositions.

93. Following these depositions, Defendants produced their expert reports on July 12, 2019. For the next several weeks, Class Counsel prepared to depose Defendants' experts while their experts examined the reports and developed responses to the alleged criticisms of the class-wide damages models. Class Counsel and their experts developed questions to pursue at the depositions and formulated a strategy to rebut Defendants' alleged criticism. Defendants' two experts were deposed by Class Counsel over the course of two days in August 2019. After analyzing the deposition transcripts and providing their experts with additional relevant information developed during the depositions, Class Counsel served the rebuttal report on September 13, 2019.

94. Class Counsel spent the final two weeks of September refining its class certification motion. On September 27, 2019, Class Counsel filed their Motion for Class Certification and Appointment of Class Counsel in the *Laydon* action. ECF Nos. 976-78. The motion and supporting materials were the result of seven years of work, including more than a year's-worth of intensive investigation, research, drafting and coordination among Class Counsel and their experts to show on a class-wide basis that Defendants violated the customs, standards, and practices designed to prevent manipulation in the financial markets and that a class-wide model can be developed to (a) show for each Class Member what Yen-LIBOR and Euroyen TIBOR would have been in the absence of (or "but for") Defendants' widespread, admitted manipulation, and (b) calculate damages using a formulaic, class-wide approach.

Class Counsel Engaged in 30(b)(6) Discovery to Obtain Additional Evidence from Defendants

95. In July 2018, Class Counsel issued their Rule 30(b)(6) Notice containing the topics on which they sought to depose Defendants' corporate representatives. The Rule 30(b)(6) Notice covered topics relevant to class certification, liability and damages questions. Most Defendants served their responses and objections to the Rule 30(b)(6) Notice by late September 2018. For the next several months, Class Counsel engaged in an ongoing series of meet and confers with twelve different Defendants concerning objections to and the scope of the Rule 30(b)(6) Notice, mechanisms to avoid foreign data privacy law concerns (including the use 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 ("Hague Evidence Convention")), and alternative means to respond to the Rule 30(b)(6) Notice, including through additional productions and other writings. Upon reaching settlements in principle with certain Defendants, Class Counsel focused its attention on causing the remaining five non-settling Defendants to satisfy their obligations under

the Rule 30(b)(6) Notice. After at least ten meet-and-confers with RBS, Class Counsel traveled to London, England to take the Rule 30(b)(6) deposition of RBS' corporate representatives. Non-settling Defendants Société Générale and Class Counsel agreed on the terms of a motion, which the Court so-ordered, to use the Hague Evidence Convention to exchange documents and writings in response to the Rule 30(b)(6) Notices. ECF No. 948. Depositions scheduled with non-settling Defendants Barclays Bank plc ("Barclays") and Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., now known as Coöperatieve Rabobank ("Rabobank") for early summer 2019 were postponed due to the unavailability of the designated corporate representatives and rescheduled for Fall 2019 prior to the entry of a stay of discovery in *Laydon*.

96. Class Counsel devoted a tremendous amount of attorney time to develop a strategy and prepare for Rule 30(b)(6) depositions and other fact depositions. Attorneys re-canvassed the key discovery and cooperation materials received and the public information that was available to identify Yen traders and submitters who were active participants in the alleged manipulation, prepared timelines of critical events, and developed various theories and themes about the alleged manipulation. In addition, Class Counsel engaged in ongoing communication and negotiation with the DOJ concerning its investigations concerning the manipulation of Yen-LIBOR, Euroyen TIBOR and the prices of Euroyen-Based Derivatives. The DOJ had concerns that Class Counsel's efforts to depose the corporate representatives, former employees and current employees from a certain Defendant could interfere with its investigation. Class Counsel ultimately resolved the DOJ's concerns through narrowing the scope of some of its topics.

Negotiation and Approval of Prior Settlements

97. In addition to the three Settlements before this Court for approval, Class Counsel spent considerable time and effort negotiating and gaining Court approval of eight prior settlements in these Actions.

98. **R.P. Martin**: 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.

99. In September and October 2014, R.P. Martin and Lowey 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.

100. 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 Lowey 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.

101. **Citi and HSBC**: 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.

102. 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, and the parties executed the HSBC Settlement Agreement on June 16, 2016.

103. 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 (ECF No. 720) and entered a final judgment and order dismissing R.P. Martin, Citi, and HSBC from the Actions with

prejudice. ECF No. 721. The Court also awarded Class Counsel attorneys' fees of \$14,500,000 (ECF No. 723), and reimbursement of expenses, as well as incentive awards for the class representatives. ECF No. 724.

104. **Deutsche Bank and JPMorgan:** The 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. The 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.

105. Negotiations with Deutsche Bank occurred over 20 months, beginning 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 meetings 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.

106. Negotiations with JPMorgan also began in November 2015 with a preliminary settlement discussion following an initial phone call. Class Counsel's 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.

107. 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 Judgment 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.

108. On December 7, 2017, the Court granted final approval of the settlements with Deutsche Bank and JPMorgan (ECF No. 838) and entered a final judgment and order dismissing Deutsche Bank and JPMorgan from the Actions with prejudice. ECF No. 839. The Court awarded Class Counsel attorneys' fees of \$34,880,000. ECF No. 837.

109. **BTMU and MUTB**: 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. After an initial phone call from BTMU and MUTB's counsel, Lowey 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. Counsel for BTMU and MUTB contacted Lowey again on October 4, 2017 to resume settlement discussions. 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.

110. 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. 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. On March 8, 2018, the Court preliminarily approved the Settlement. ECF No. 854; *Sonterra*, ECF No. 402.

111. On July 12, 2018, the Court granted final approval of the settlements with BTMU and MUTB (*Laydon*, ECF No. 891) and entered a final judgment and order dismissing BTMU and

MUTB from the Actions with prejudice. ECF No. 890. The Court awarded Class Counsel attorneys' fees of \$6,900,000. ECF No. 889.

112. **Mizuho, Norinchukin, and SMBC; The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona:** The negotiations with Mizuho, Norinchukin, and SMBC took place over a number of years starting approximately in June 2016 and continuing until the Stipulation and Agreement of Settlement was executed in August 2019.

113. Lowey met with counsel for SMBC in June 2016, but the resulting settlement discussions were unsuccessful. Lowey made an initial settlement proposal to counsel for Mizuho in fall 2017, but the parties were unable to reach a settlement at that time. Lowey also met with counsel for Norinchukin in March 2018, but those settlement discussions did not advance. In July and August 2018, Lowey and counsel for certain Defendants, including Mizuho, Norinchukin, and SMBC discussed a potential settlement, but were unable to reach an agreement. In January 2019, Class Counsel and counsel for Mizuho, Norinchukin, and SMBC agreed to revisit whether a settlement could be reached. These discussions were ultimately successful, culminating in the execution of a settlement agreement in August 2019.

114. The negotiations with The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona took place over several years starting approximately in December 2014 and continued until the Amended Stipulation and Agreement of Settlement was executed in September 2019.

115. Initial settlement discussions in December 2014 did not advance, and settlement discussions did not resume again until May 2017, after the Court issued an order denying certain Defendants' request for reconsideration of the Court's earlier personal jurisdiction decision.

116. Lowey met with counsel for The Bank of Yokohama, Shinkin, Shoko Chukin, and Sumitomo in July 2017, but those settlement discussions also did not progress further. Lowey and

counsel for certain defendants, including The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona, discussed settlement in July and August 2018, but these discussions were also unsuccessful. In fall 2018, Class Counsel and counsel for The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona agreed to revisit whether a settlement could be reached. These discussions proved to be successful, culminating with the execution of a settlement agreement in March 2019 and an amended settlement agreement on September 5, 2019.

117. On December 19, 2019, the Court entered orders granting final approval of the Settlements with The Bank of Yokohama, Shinkin, Shoko Chukin, Sumitomo, and Resona, and with Mizuho, Norinchukin, and SMBC and entered final judgments dismissing the settling defendants. ECF Nos. 1013-16. The Court awarded Class Counsel attorneys' fees of \$16,120,000, reimbursement of expenses, and \$750,000 for the litigation fund established in the case from the common fund created by the two settlements. ECF Nos. 1011-12.

IV. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

118. The Class Notice advised the Settlement Class that Class Counsel would apply for an award of attorneys' fees in an amount not to exceed \$4,500,000 (20% of the \$22,500,000 common fund created by the Settlements), plus no more than \$250,000 for payment of litigation expenses and costs, and interest on such attorneys' fees and litigation expenses and costs, and reimbursement of the litigation expense fund up to \$500,000.

119. Class Counsel respectfully request that this Court award attorneys' fees in the amount of \$4,500,000, \$108,554.45 for unreimbursed costs and expenses incurred by Plaintiffs' Counsel in the Action, and \$500,000 to replenish the litigation expense fund established in these Actions. The Fee and Expense Application submitted herewith is fully consistent with Class Counsel's agreement with CalSTRS and the Class Notice.

120. In further support of the Fee and Expense Application, Plaintiffs' Counsel have submitted exhibits and declarations summarizing the work performed by counsel involved in these Actions, the number of hours worked and the corresponding lodestar of that work, and the expenses incurred in prosecuting these Action. *See infra* and Ex. A; *see also* Declaration of Vincent Briganti in Support of Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses ("Briganti Expense Decl."); Declaration of Patrick T. Egan ("Egan Decl."); Declaration of Benjamin M. Jaccarino ("Jaccarino Decl."), filed herewith. In total, Class Counsel and additional Plaintiffs' Counsel have performed 157,345.28 hours in these Actions, with a corresponding lodestar value of \$86,818,785.25. This includes 9,462.35 hours of work performed in these Action since the Class Counsel's last Fee and Expense Application, at a lodestar value of \$7,776,109.00. Each firm's declaration includes a schedule of the hours and lodestar for the firm from inception of this Action through December 31, 2022 and also from October 1, 2019 through December 31, 2022, reflecting the period since Class Counsel's previous motion seeking an award of attorneys' fees in these Actions. To the extent a certain Plaintiffs' Counsel did not accrue additional hours or lodestar between October 1, 2019 and December 31, 2022, Class Counsel relies on such Plaintiffs' Counsel's prior declarations submitted in this Action. *See* ECF Nos. 689, 693, 874, 821, 822, 996. Lodestar calculations for the time incurred from October 1, 2019 through December 31, 2022 are based on the firm's current hourly rates and, as each declaration states, were prepared based upon daily time records maintained by attorneys and professional support staff at the firm. The lodestar for the work performed prior to October 1, 2019 is based on the rates at the time of Class Counsel's prior submission to the Court and has not been adjusted to factor in any hourly rate changes. Lodestar figures do not include charges for expense items. Each firm

audited the time and lodestar for accuracy, necessity and reasonableness. As a result of this review, where appropriate, time and lodestar were reduced in the exercise of billing judgment.

121. If the attorneys' fee request of \$4,500,000 is granted, the risk multiplier in connection with lodestar value of the work done since the last fee application (\$7,776,109.00) will be 0.58, a negative multiplier. In total, Class Counsel will have been awarded \$76.9 million in fees since the inception of the Actions. The lodestar multiplier of all of Class Counsel's fee awards in light of the total lodestar incurred in the Actions (\$86,818,785.25) will be 0.89. *See* Mem. in Support of Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses at Argument, Part I.B.1. (filed herewith).

122. The following chart summarizes the aggregate hours and lodestar of Class Counsel and additional Plaintiffs' Counsel, as set forth in more detail in the separate firm declarations.

| Firm Name | Total lodestar inception through 12/31/22 | Total hours inception through 12/31/22 | Lodestar 10/1/19 through 12/31/22 | Hours 10/1/19 through 12/31/22 |
|---------------------------|---|--|-----------------------------------|--------------------------------|
| Lowey Dannenberg | \$67,173,114.30 | 118,261.42 | \$7,277,465.75 | 8,864.70 |
| Lovell Stewart | \$5,930,348.05 | 8,738.24 | \$24,891.25 | 26.15 |
| Berman Tabacco | \$11,879,516.90 | 26,598.32 | \$473,752.00 | 571.50 |
| Other Plaintiffs' Counsel | \$1,835,806.00 | 3,747.30 | \$0 | 0 |
| Total: | \$86,818,785.25 | 157,345.28 | \$7,776,109.00 | 9,462.35 |

123. As their resumes indicate (*see* ECF No. 1049-8, Egan Decl. Ex. A; Jaccarino Decl. Ex. A), Plaintiffs' Counsel are skilled and accomplished litigators in the antitrust and commodities litigation fields, among others, with successful track records in some of the largest class actions throughout the country.

124. Lowey bore the risk of litigating and funding this Action entirely on a contingent basis. There have been numerous contingency fee cases in which counsel have contributed thousands of hours of service to the Class' claims and advanced substantial sums of money, only to receive no compensation for their work.

125. Notwithstanding the risk of non-payment, Class Counsel fully devoted substantial attorney time and resources to the prosecution of the Action. Recognizing the complexities of the claim, Class Counsel also enlisted expert resources, which further increased the financial risk they undertook. Expert/Consultant Fees totaled \$609,960.35, or 71% of the expenses incurred since Class Counsel's last Fee and Expense Application. The expenditure of these and other litigation costs were reasonably necessary to effectively litigate the Actions and are further evidence of Class Counsel's commitment.

126. In total, Plaintiffs' Counsel spent \$858,554.45 in expenses in pursuing these Actions since the last Fee and Expense Application.

| Firm Disbursements | |
|---|----------------------|
| Expense Category | Amount |
| Experts/Consultants Court Costs | \$ 609,960.35 |
| Document Review, IT and Maintenance | \$ 209,198.52 |
| Photocopies – in House Federal Express | \$ 5,517.80 |
| Computer Research/Data | \$ 11,494.83 |
| Travel | \$ 20,351.26 |
| Telephone/Telecopier | \$ 332.73 |
| Service and Filing Fees | \$ 705.00 |
| Postage, Mailing and Messenger/Delivery | \$ 163.86 |
| Outside Photocopies | \$ 830.10 |
| | |
| Total: | \$ 858,554.45 |

However, Class Counsel only seeks reimbursement of \$108,554.45 for reimbursed litigation expenses, as the \$750,000 litigation fund authorized pursuant to the Court's prior award of fee and

expenses was primarily utilized to pay for the expenses. As that litigation fund is fully depleted, Class Counsel ask that the Court award \$500,000 to replenish the litigation fund for purposes of ongoing expenses. The categories of expenses, the amount incurred and disbursed by each firm, and the basis for the reasonableness of each firm's expenses are set forth in the respective concurrently filed individual declarations.

V. CONCLUSION

127. For the reasons set forth above, in the accompanying memoranda of law, and the record in this Action, I respectfully submit that: (i) the Settlements are fair, reasonable, and adequate and should be approved; (ii) the Distribution Plan is fair and reasonable and should be applied to these Settlements; and (iii) the Fee and Expense Application is reasonable, supported by the facts and law, and should be granted.

I declare under penalty of perjury that the foregoing is true and correct to the best of my personal knowledge, information and belief.

Dated: January 24, 2023

/s/ Vincent Briganti
Vincent Briganti