

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

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

No. 12-cv-3419 (GBD)

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

No. 15-cv-5844 (GBD)

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**DECLARATION OF VINCENT BRIGANTI**

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

1. I am a member of the Bar of this Court and a shareholder with the law firm Lowey Dannenberg Cohen & Hart, P.C., (“Lowey”), court-appointed Class Counsel for Plaintiffs in the related actions *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD)(“*Laydon*”) and *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*, No. 15-cv-5844 (GBD)(“*Sonterra*”). I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlements with Defendants Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc. (collectively “Citi”), HSBC Holdings plc, HSBC Bank plc (collectively “HSBC”), and R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd. (collectively “R.P. Martin”) and Class Counsel’s Motion for Award of Attorneys’ Fees, Reimbursement of Expenses, and Incentive Awards for Class Representatives from the common fund created by those settlements.

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

2. In July 2011, reports emerged that UBS had 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”), by admitting to anticompetitive conduct involving Yen-LIBOR and Euroyen TIBOR. Lowey conferred with its clients and started researching the market for financial instruments priced, benchmarked and/or settled based on Yen-LIBOR and Euroyen TIBOR (“Euroyen-Based Derivatives”), and assembled a team to work on an initial complaint.

3. This investigation continued as new information was released over the next several months. In December 2011, for example, Japan’s Financial Services Agency became the first government regulator to take administrative action against Defendants UBS Securities Japan Co. Ltd. and Citigroup Global Markets Japan Inc. for making false Yen-LIBOR and Euroyen TIBOR submissions. Two months later, the Swiss COMCO disclosed that it had found evidence of a conspiracy among multiple Defendants to fix the bid and ask prices charged on Euroyen-Based

Derivatives in addition to manipulating Yen-LIBOR and Euroyen TIBOR. The Canadian Competition Bureau also reported around the same time that it found evidence implicating six banks—Citigroup, Inc., Deutsche Bank AG, HSBC Holdings plc, J.P. Morgan Chase & Co., Royal Bank of Scotland Group PLC, and UBS—in an agreement to submit artificial Yen-LIBOR rates.

4. Lowey retained investigators both domestically and abroad, as well as 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.

5. After filing the CAC, Lowey began the lengthy process of serving the complaint upon four Japanese Bank Defendants (Mizuho Bank, Ltd., Resona Bank, Ltd., Mizuho Trust and Banking Co., Ltd., and The Shoko Chukin Bank) who required Plaintiff to follow the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters (“Hague Service Convention”). This required Plaintiff to bear the additional cost of translating the CAC into Japanese before attempting to serve the Japanese Bank Defendants. Once translated, the Court appointed an international process server, at Lowey’s request, to serve Defendants Mizuho Bank, Ltd., Resona Bank, Ltd., Mizuho Trust and Banking Co., Ltd., and The Shoko Chukin Bank via Japan’s Central Authority. *See Laydon*, ECF Nos. 46, 84.

6. Lowey separately negotiated stipulations and scheduling orders with the non-Japanese Bank Defendants, extending their time to answer or otherwise move against the CAC to account for the uncertainty of when service upon the Japanese Bank Defendants would be

completed via the Hague Service Convention. *See, e.g., Laydon*, ECF Nos. 21-23, 32, 57, 85. After approximately four months, all Defendants had been served.

7. While Lowey was working to effectuate service over the Japanese Bank Defendants through the Hague Service Convention, twelve Defendants—Barclays Bank plc, BNP Paribas S.A., Citi, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”), Deutsche Bank AG, HSBC Holdings plc, JPMorgan Chase Bank, National Association, Lloyds Banking Group plc, The Norinchukin Bank, The Royal Bank of Scotland Group plc, Société Générale SA, and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (collectively the “Transfer Defendants”)—filed a letter motion on May 23, 2012 requesting to transfer the *Laydon* action to the Honorable Naomi Reice Buchwald, who was presiding over the *U.S. Dollar LIBOR MDL*, No. 11-md-2262 (S.D.N.Y.).

8. The Transfer Defendants argued that the *Laydon* and *U.S. Dollar LIBOR MDL* actions should be consolidated because they included many of the same Defendants and alleged similar legal theories involving the manipulation of related LIBOR rates. Lowey opposed the transfer, arguing, *inter alia*, that *Laydon* and the *U.S. Dollar LIBOR MDL* involved different misconduct associated with the manipulation of different benchmarks, *i.e.*, Yen-LIBOR and Euroyen TIBOR (*Laydon*) versus *U.S. Dollar LIBOR*. This Court and Judge Buchwald agreed and denied the Transfer Defendants’ motion.

9. Lowey then moved pursuant to FED. R. CIV. P. 23(g) to be appointed as interim lead class counsel. *Laydon*, ECF Nos. 95-96. On August, 29, 2012, the Court entered a pre-trial order granting the request and authorized Lowey to, *inter alia*, (a) make, brief, and argue all motions; (b) assign work to additional Plaintiff’s counsel; (c) request that the Court approve settlements and fee awards; and (d) allocate fees among Plaintiff’s counsel. *Laydon*, ECF No. 99.

### First and Second Amended *Laydon* Complaints

10. Lowey continued to investigate Defendants' alleged manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives after filing the CAC when, in June 2012, Barclays Bank plc became the first Defendant to settle with government regulators. Lowey analyzed Barclays' settlement and retained a leading expert on benchmark manipulation to assist in preparing Laydon's First Amended Class Action Complaint. *Laydon*, ECF No. 124 ("FAC"). Lowey worked closely with this consulting expert, holding multiple in-person meetings and conference calls, to distill complex economic evidence into detailed allegations.

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

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

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

14. Lowey filed the SAC on April 15, 2013. *Laydon*, ECF No. 150. This 337-page complaint incorporated the 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 manipulative communications released in government settlements at that time.

15. Because interdealer brokers ICAP plc and R.P. Martin Holdings Limited were both incorporated in the United Kingdom, Lowey served them in compliance with the Hague Service Convention. Lowey moved quickly to serve these newly-added Defendants, mindful that all Defendants’ responses or answers to the SAC were due on June 14, 2013 pursuant to the Court’s February 25, 2013 scheduling order. *See Laydon*, ECF No. 141. Once each was served, briefing on ICAP plc’s and R.P. Martin Holdings Limited’s motions to dismiss occurred on the same schedule as all of the previously-named Defendants.

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

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

17. Defendants filed their first round of motions to dismiss the SAC on June 14, 2013, including thirteen separate memoranda of law challenging Laydon's claims under the Sherman Antitrust Act, CEA, and state law unjust enrichment claims. *See Laydon*, ECF Nos. 204-06, 208-14, 217-18, 220-21. Lowey dedicated significant resources to analyzing Defendants' positions, researching opposing arguments, and drafting Plaintiff's responses. On August 13, 2013, Lowey filed a 93-page omnibus opposition to Defendants' motions to dismiss. *See Laydon*, ECF No. 226. Defendants filed eleven reply memoranda of law on September 27, 2013. *Laydon*, ECF Nos. 235-43. These reply memoranda raised, for the first time, arguments against Plaintiff's CEA claims based on Judge Buchwald's decision in *In re Libor-Based Fin. Instruments Antitrust Litig.*, 962 F. Supp. 2d 606 (S.D.N.Y. 2013). Lowey petitioned the court for leave to file a sur-reply addressing these new arguments. *See Laydon*, ECF No. 244. The Court granted this request on October 4, 2013 and Lowey filed Plaintiff's sur-reply on October 9, 2013. *Laydon*, ECF Nos. 244-45.

18. Additional Defendants continued to enter regulatory settlements after Lowey filed Plaintiff's sur-reply in opposition to Defendants' motions to dismiss the SAC. For example, on October 29, 2013, Rabobank announced that it had settled with the DOJ, U.S. Commodity Futures Trading Commission ("CFTC") and U.K. Financial Services Authority ("FSA"). In these settlements, Rabobank admitted to participating in a conspiracy to manipulate Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives. The European Commission also revealed that same day that it had uncovered evidence of "Yen Interest Rate Derivatives Cartels" involving Defendants UBS, RBS, Deutsche Bank, JPMorgan, R.P. Martin, and Citigroup, imposing fines on those Bank Defendants while continuing its investigation against Broker Defendant ICAP. Lowey analyzed these new settlements and drafted a letter to the Court emphasizing the significance of these developments. *Laydon*, ECF No. 247.

19. After a full day of oral argument on March 5, 2014, the Court granted-in-part and denied-in-part Defendants' motions to dismiss on March 28, 2014. *See Laydon*, ECF No. 270 (“*Laydon I*”). The Court sustained Plaintiff's claims for manipulation in violation of the CEA and aiding and abetting manipulation in violation of the CEA, but dismissed Plaintiff's antitrust and unjust enrichment claims. *Id.*

20. With the exception of UBS Securities Japan Co., Ltd., all Defendants filed motions for reconsideration of *Laydon I* on April 11, 2014. *See Laydon*, ECF Nos. 275, 277-78, 282. The Defendants' four memoranda of law in support challenged the Court's decision to sustain Plaintiff's claims under the CEA arguing, *inter alia*, that the Court incorrectly interpreted the meaning of actual damages and manipulative intent under the CEA. *See id.* Lowey filed Plaintiff's opposition on May 9, 2014. *Laydon*, ECF No. 290. Defendants filed reply memoranda on May 30, 2014. *Laydon*, ECF Nos. 292-93, 295-96. The Court denied Defendants' motions for reconsideration on October 20, 2014. *Laydon*, ECF No. 398.

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

21. Lowey moved for leave to amend the SAC and to file a Proposed Third Amended Complaint (“PTAC”) on June 17, 2014. *Laydon*, ECF No. 301. The PTAC added four new Defendants—ICAP Europe Limited, Martin Brokers (UK) Ltd., Lloyds Banking Group plc, and Tullett Prebon plc—and new facts based on information revealed in Rabobank, ICAP Europe Limited, and R.P. Martin's government settlements during the year-and-a-half since the SAC was filed. *See id.* The PTAC also proposed two additional named plaintiffs, Oklahoma Police Pension & Retirement System (“OPPRS”) and Stephen Sullivan (“Sullivan”), to cure certain deficiencies identified by the Court in *Laydon I*. *See id.*

22. These new plaintiffs transacted in different Euroyen-Based Derivatives from Laydon; OPPRS, for example, traded over-the-counter Yen foreign exchange forward contracts



directly with Defendants UBS, Citi, Barclays, Deutsche Bank, and JPMorgan, while Sullivan transacted in Yen currency futures contracts on the Chicago Mercantile Exchange (“CME”). Based on Sullivan’s and OPPRS’s transactions in these financial instruments, including OPPRS’s direct dealings with several Defendants, the PTAC included new claims for breach of the implied covenant of good faith and fair dealing, and renewed claims for unjust enrichment and Sherman Act violations.

23. 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.

24. Before opposing Plaintiff’s motion for leave to amend, fourteen Defendants filed nine motions to dismiss the SAC for lack of personal jurisdiction on August 7, 2014, arguing that the Supreme Court’s seven-month old decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), had created a previously-unavailable personal jurisdiction defense. *See Laydon*, ECF Nos. 310, 315, 323, 327, 331, 337, 341, 344. Four of these Defendants, ICAP plc, Mizuho Bank, Ltd., Mizuho Trust & Banking Co., Ltd., and Resona Bank, Ltd., (collectively the “Stipulating Defendants”) moved pursuant to a prior stipulation with Plaintiff preserving their right to challenge personal jurisdiction after the Court ruled on the merits. *See* ¶ 16 *supra* (describing stipulation); *see also Laydon*, ECF Nos. 310, 323, 331. The other ten Defendants—Deutsche Bank AG, The Bank of Tokyo Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., Mitsubishi UFJ Trust and Banking Corporation, Mizuho Corporate Bank, Ltd., The Norinchukin Bank, Shinkin Central Bank, The Shoko Chukin Bank, Ltd., Sumitomo Mitsui Trust Bank, Ltd., and Sumitomo Mitsui Banking Corporation (collectively the “Non-Stipulating Defendants”)—moved to dismiss for lack of personal jurisdiction despite having

failed to preserve their Rule 12(b)(2) defenses in a similar stipulation with Plaintiff. *See Laydon*, ECF Nos. 315, 327, 337, 341, 344.

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

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

27. On September 18, 2014, the California State Teachers' Retirement System ("CalSTRS") retained Lowey to prosecute claims based on, among other things, its direct transactions in Euroyen-Based Derivatives, including Yen foreign exchange forwards, with Defendants UBS, Citi, Deutsche Bank, Royal Bank of Scotland, HSBC, Bank of America, JPMorgan, Barclays, and Société Générale. To avoid a subsequent round of motion to amend briefing, Lowey drafted allegations based on CalSTRS's transactions to be included in the PTAC and submitted them with Plaintiffs' reply memorandum in support of the pending motion for leave to amend on September 22, 2014. *Laydon*, ECF Nos. 387, 388-1.

28. The Court addressed the pending motions to dismiss and Plaintiff's motion for leave to amend the SAC on March 31, 2015. Dealing with the issue of personal jurisdiction in two separate orders, the Court granted the four Stipulating Defendants' motions to dismiss for lack of

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

29. Lowey devoted a significant amount of time to briefing various motions in the months following the Court's March 31, 2015 decisions. First, on April 14, 2015, the ten Non-Stipulating Defendants moved for reconsideration of the Court's decision holding that they had waived their personal jurisdiction defenses. *Laydon*, ECF No. 452-53. Lowey opposed this motion on April 29, 2015. *Laydon*, ECF No. 459. The Non-Stipulating Defendants' filed their reply on May 11, 2015. *Laydon*, ECF No. 468. The Court denied the motion for reconsideration on July 24, 2015. *Laydon*, ECF No. 490.

30. On April 28, 2015, Laydon moved for an order entering final judgment under FED. R. CIV. P. 54(b) as to the dismissal of the four Stipulating Defendants. *Laydon*, ECF No. 457.

31. Finally, on April 30, 2015, Laydon, along with proposed plaintiffs OPPRS and Sullivan, sought leave to file an interlocutory appeal under 28 U.S.C. § 1292(b) for immediate review of the Court's order denying Laydon leave to further amend the complaint to add the RICO claims and proposed plaintiffs OPPRS and Sullivan. *See Laydon*, ECF No. 461. The Court denied both motions on July 24, 2015. *Laydon*, ECF No. 489, 490.

32. Two months after the Court denied the Non-Stipulating Defendants' motion for reconsideration, the Non-Stipulating Defendants filed a petition for writ of mandamus in the U.S. Court of Appeals for the Second Circuit on September 25, 2015. *See In re: Mizuho Corporate Bank*, No.

15-3014 (2d Cir.), ECF No. 1-1. The Second Circuit denied the petition on January 20, 2016. *Id.*, ECF No. 67.

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

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

34. The U.K. criminal trial of former UBS and Citi Yen Trader Tom Hayes began on May 26, 2015. Hayes was arrested in the U.K. on December 11, 2012 and charged with eight counts of conspiracy to defraud, including for manipulating Yen-LIBOR. The trial featured highlights from over 82 hours of recorded interviews that Hayes gave to the U.K. Serious Fraud Office after his arrest. In the recordings, Hayes explained how Defendants' conspiracy operated, which traders and submitters at certain banks were involved, and gave examples of hundreds of new collusive communications among Defendants. Lowey dispatched attorneys to London to attend 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.

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

market for Euroyen-Based Derivatives, involving the same evidentiary sources and legal claims. *See Laydon*, ECF No. 493. Defendants filed a letter opposing the request on August 4, 2015. *Laydon*, ECF No. 494.

36. 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.

37. The U.K criminal trials of six brokers involved in Defendants' conspiracy (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.

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

39. The Court denied CalSTRS's motion to intervene in *Laydon*, instructing CalSTRS to file a separate case to pursue its claims. *Laydon*, ECF No. 525; *see also Laydon* Tr. of Oct. 8, 2015 Conf. at 5. 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. *Id.* The Court agreed and ordered the *Sonterra* Plaintiffs to file an amended complaint by December 1, 2015. *Id.* Laydon was also ordered to file his Third Amended Complaint (“TAC”), adding four new Defendants, by the same date. *Id.*

40. While Lowey worked on amending the *Laydon* and *Sonterra* complaints, CalSTRS filed a timely notice of appeal on November 9, 2015, appealing the Court’s decision to deny intervention to the Second Circuit. *See Laydon*, ECF No. 535. CalSTRS filed its opening appellate brief on February 22, 2016. *See Laydon v. Mizuho Bank Ltd. et al.*, No. 15-3588, ECF No. 151 (2d Cir.). Defendants responded on May 23, 2016. *See Laydon v. Mizuho Bank Ltd. et al.*, No. 15-3588, ECF No. 211 (2d Cir.). CalSTRS voluntarily withdrew its appeal on June 10, 2016. *See Order, Laydon v. Mizuho Bank Ltd. et al.*, No. 15-3588, ECF No. 226 (2d Cir.)

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

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

42. The TAC included new factual allegations based on evidence released during the Hayes trial, broker trials, settlement cooperation provided by R.P. Martin and 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.

43. On January 5, 2016, Defendants filed an undocketed letter motion requesting that the Court strike the TAC because it failed to comply with the Court’s order granting leave to amend by, *inter alia*, including previously-dismissed claims. On January 8, 2016, the Court granted Defendants’ letter motion to strike the TAC and directed Plaintiff to submit a letter request with a new proposed TAC by January 28, 2016. *Laydon*, ECF No. 558. Plaintiff filed a letter request with a new proposed TAC on January 28, 2016. *Laydon*, ECF No. 564. Defendants opposed Plaintiff’s

January 28, 2016 submission on February 18, 2016. *Laydon*, ECF No. 573. The Court granted Plaintiff leave to file the January 28, 2016 PTAC on February 19, 2016. *Laydon*, ECF No. 574.

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

45. On May 16, 2016, Defendants 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 Defendants over the course of four months to avoid the necessity of filing a motion to strike under FED. R. CIV. P. 12(f) over certain deficiencies Plaintiff identified in Defendants' answers. The meet-and-confer process remains ongoing.

46. Defendants ICAP Europe Limited, Tullett Prebon plc, and Lloyds Banking Group plc filed motions to dismiss Laydon's TAC for lack of personal jurisdiction pursuant to FED. R. CIV. P. 12(b)(2) on May 16, 2016. *Laydon*, ECF Nos. 610, 614, 618. Lowey filed its oppositions on July 18, 2016. *Laydon*, ECF Nos. 663-65. The Newly-Added *Laydon* Defendants filed their reply on August 16, 2016. *Laydon*, ECF Nos. 668, 670-71. Oral argument on the Newly-Added *Laydon* Defendants' motion is scheduled for October 25, 2016. *Laydon*, ECF No. 675.

47. On May 16, 2016, the Legacy Defendants filed a motion to partially dismiss Laydon's TAC, arguing that claims during the last six months of the Class Period (*i.e.*, January 1, 2011 through June 30, 2011) were time-barred. *Laydon*, ECF No. 622. Lowey filed its opposition on July 18, 2016. *Laydon*, ECF No. 663. The Legacy Defendants filed their reply on August 16, 2016. *Laydon*, ECF No. 673. Oral argument on the Legacy Defendants' motion is also scheduled for October 25, 2016. *Laydon*, ECF No. 675.

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

48. On February 1, 2016, Defendants filed motions to dismiss the *Sonterra* action pursuant to FED. R. CIV. P. 12(b)(2) and 12(b)(6). *Sonterra*, ECF Nos. 147, 150, 154, 156, 159, 169. On March 18, 2016, Lowey filed its opposition to Defendants' motions to dismiss. *Sonterra*, ECF Nos. 208-09.

49. Also on March 18, Plaintiffs Hayman Capital Management L.P., previously known as Hayman Advisors, L.P. ("Hayman L.P."), and *Sonterra* Capital Master Fund, Ltd., filed a motion under FED. R. CIV. P. 17(a)(3) to substitute Hayman Capital Master Fund, L.P. and Japan Macro Opportunities Master Fund, L.P. as the named party plaintiffs in place of Hayman L.P. *Sonterra*, ECF Nos. 212-13. Defendants did not oppose the motion to substitute. *Sonterra*, ECF No. 216. The Court granted Plaintiffs Hayman L.P. and *Sonterra* Capital Master Fund, Ltd.'s motion on March 29, 2016. *Sonterra*, ECF No. 217. On April 22, 2016, Defendants filed their reply briefs in support of their motion to dismiss the *Sonterra* action. *Sonterra*, ECF Nos. 227-37.

50. 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, et al. v. Bank of America Corporation, et al.* No. 13-3565 (2d Cir. May 23, 2016). The parties submitted letter briefing on the impact of the *Gelboim* decision on the pending motions to dismiss. *Sonterra*, ECF Nos. 249, 256. Defendants' motions to dismiss remain *sub judice*.

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

51. After issuing its ruling in *Laydon I* granting-in-part and denying-in-part Defendants' motions to dismiss the SAC, the Court held a Rule 16 conference on April 24, 2014. At the conference, the Court ordered the parties to prepare a joint discovery plan, set deadlines for the Stipulating Defendants' motions to dismiss for lack of personal jurisdiction and for Plaintiff's motion for leave to amend the SAC. After Lowey filed the motion to amend the SAC, Lowey then



served Plaintiff's First Request for Production of Documents ("First Request") on all Defendants on June 18, 2014. Among other things, the First Request asked for all documents that Defendants had previously produced to government regulators during the course of those regulators' investigations into the manipulation of Yen-LIBOR and Euroyen TIBOR.

52. Over the next month, Lowey and Defendants began to meet and confer 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 were meeting and conferring on the First Request, the parties also negotiated a Protective Order that the Court entered on August 8, 2014. *Laydon*, ECF No. 349. The parties also proposed a Joint Initial Report and discovery plan to the Court. The Court had already stayed discovery until September 2014 while parties were briefing Defendants' motions to dismiss for lack of personal jurisdiction, when the DOJ filed a motion to intervene and for a stay of discovery. *Laydon*, ECF No. 380. The Court granted the DOJ's motion to intervene and ordered a stay of discovery until May 15, 2015. *Laydon*, ECF No. 451. Defendants served their responses and objections to Plaintiff's First Request on December 18, 2014.

53. 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. We began devoting, and continue to devote, substantial resources to reviewing the millions of pages of documents received. To maximize efficiency and cut costs for the Class, Lowey leveraged its in-house technological expertise to locally deploy Relativity, a sophisticated document review platform, rather than relying on expensive outside vendors. In addition to avoiding unnecessary document hosting costs, this afforded Lowey unlimited access to Relativity's powerful analytics engine. Developing an analytics-based workflow enabled Lowey to effectively manage over 2.7

million documents (approximately 10.5 million pages) that Defendants produced by suppressing duplicates and promoting documents involving key custodians, keywords, and other factors gleaned from four-and-a-half years of litigation.

54. Following the lifting of the discovery stay, Magistrate Judge Pitman held a discovery conference on June 25, 2015 and set a briefing schedule for Defendants' discovery objections based on foreign data privacy laws. *Laydon*, ECF No. 483. On August 6, 2015, certain Defendants moved for an order sustaining their discovery objections under the foreign data privacy or bank secrecy laws of the United Kingdom and Japan. *Laydon*, ECF Nos. 495, 501. On September 11, 2015, Lowey filed its opposition, which included an expert declaration, to certain Defendants' motion to sustain their discovery objections under the laws of the United Kingdom. *Laydon*, ECF Nos. 512-13.

55. On September 11, 2015, Lowey and certain other Defendants also notified Magistrate Judge Pitman that they had reached an agreement to table Defendants' motion under the foreign data privacy laws of Japan. *Laydon*, ECF No. 511. On April 29, 2016, Magistrate Judge Pitman overruled certain Defendants' motions for an order sustaining their discovery objections under the foreign data privacy and bank secrecy laws of the United Kingdom. *Laydon*, ECF No. 596. Lowey also negotiated separate discovery issues with Defendants on an individual basis. For example, to avoid briefing the issue of the application of France's data privacy and bank secrecy laws to Plaintiff's discovery requests, Lowey and Defendant Société Générale negotiated a procedure, approved by Magistrate Judge Pitman, which allowed Plaintiff to receive documents immediately, rather than requiring the Court to rule on the objection.

#### **Settlement and Mediation Efforts**

56. 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.

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

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

59. 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.

60. 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.

61. Lowey successfully moved for preliminary approval of the R.P. Martin and Citi settlements on February 1, 2016. *Laydon*, ECF Nos. 565-67 & *Sonterra*, ECF Nos. 187-89. On April 6, 2016, Plaintiffs submitted their supplemental memorandum of law to their preliminary approval motion, outlining the Proposed Notice Program and Proposed Plan of Allocation. *Laydon*, ECF No. 590-91 & *Sonterra*, ECF Nos. 221-22. The Court preliminary approved these settlements on April 7, 2016. *Laydon*, ECF No. 592 & *Sonterra*, ECF No. 223. Lowey then moved for preliminary approval of the HSBC settlement on June 17, 2016, seeking to combine it with the Citi and R.P. Martin settlements pursuant to FED. R. CIV. P. 23 for the purpose of Notice and Distribution to the Settlement Class. *Laydon* ECF Nos. 654-57 & *Sonterra* ECF Nos. 260-63. On June 22, 2016, the

Court granted this motion and issued a superseding order preliminarily approving the Settlements under FED. R. CIV. P. 23(e). *Laydon*, ECF No. 659 & *Sonterra*, ECF No. 264.

62. The Citi, HSBC, and R.P. Martin settlements collectively established a common fund of \$58 million, providing monetary compensation for the Class's otherwise uncompensated injuries, and additional transaction data, communications, and other documents that have greatly assisted (and will continue to greatly assist) Class Counsel in prosecuting the case and developing a data-driven plan of allocation.

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

64. Class Counsel also retained Kenneth Feinberg to oversee the allocation process and ensure a fair and reasonable distribution of settlement funds to Settlement Class Members. As part of this process, Class Counsel appointed separate allocation counsel to represent the interests of Class members that transacted in different types of Euroyen-Based Derivatives, including interest rate swaps and forward rate agreements, Euroyen TIBOR futures contracts, Yen foreign exchange

forwards, and CME Yen currency futures contracts. In August 2016, Mr. Feinberg led a two-day mediation among allocation counsel to determine if any legal discounts should be applied to the value of Settlement Class Members' claims.

### **Attorneys' Fees**

65. The schedule in Exhibit A is a summary reflecting the amount of time spent by the attorneys and professional support staff of Lowey involved in this litigation. The schedule was prepared based upon the daily time records maintained by Lowey.

66. From the initiation of this action through August 31, 2016, Lowey's total compensable time for which it seeks an award of attorneys' fees is 46,709 hours. The total lodestar value of these professional services is \$26,489,840.00

67. The hourly rates for Lowey's attorneys and professional support staff listed in the schedule in Exhibit A are the firm's current hourly rates. Lowey's lodestar figures do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in Lowey's current billing rates. *See* Declaration of Geoffrey M. Horn (detailing Lowey's expenses from the initiation of this action through August 31, 2016).

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

69. I understand from the declaration of Benjamin M. Jaccarino that Lovell Stewart Halebian Jacobson calculates that, from the initiation of this action through August 31, 2016, they expended an additional 3,637.64 hours, totaling an additional \$2,184,487.90 in fees, as well as an additional \$100,674.29 in expenses.

70. I understand from the declaration of Todd A. Seaver that Berman DeValerio calculates that, from the initiation of this litigation through August 31, 2016, they expended an

additional 16,346.32 hours, totaling an additional \$6,749,169.60 in fees, as well as an additional \$42,521.97 in expenses.

71. I understand from the declaration of Jennifer W. Sprengel that Cafferty Clobes Meriwether & Sprengel LLP calculates that, from the initiation of this litigation through August 31, 2016, they expended an additional 2,028.8 hours, totaling an additional \$967,716.50 in fees, as well as an additional \$4,492.50 in expenses.

72. I understand from the declaration of Robert G. Eisler that Grant & Eisenhofer calculates that, from the initiation of this litigation through August 31, 2016, they expended an additional 199.3 hours, totaling an additional \$180,506.50 in fees, as well as an additional \$2,704.54 in expenses.

73. I understand from the declaration of Douglas G. Thompson that Finkelstein Thompson LLP calculates that, from the initiation of this litigation through August 31, 2016, they expended an additional 101.3 hours, totaling an additional \$77,388.50 in fees, as well as an additional \$1,513.16 in expenses.

74. In total, then, Plaintiffs' Counsel have, as of August 31, 2016 expended 69,022.36 hours, the equivalent of \$36,649,109 in pursuing this action.

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

Executed on September 27, 2016

/s/ Vincent Briganti

Vincent Briganti

# **EXHIBIT A**



**Schedule of Attorneys' Rates and Total Hours Billed in the *Laydon and Sonterra* Actions**

<b>Name and Position<sup>1</sup></b>	<b>Rates</b>	<b>Hours</b>	<b>Charges</b>
Richard W. Cohen (S)	\$975	185.50	180,862.50
Barbara Hart (S)	\$900	122.40	110,160.00
Geoffrey M. Horn (S)	\$875	3,855.60	3,373,650.00
Gerald Lawrence (S)	\$875	181.90	159,162.50
Peter D. St. Phillip (S)	\$875	3,910.20	3,421,425.00
Thomas M. Skelton (S)	\$875	1,182.70	1,034,862.50
Vincent Briganti (S)	\$875	5,489.10	4,802,962.50
David C. Harrison (S)	\$800	104.40	83,520.00
Scott V. Papp (A)	\$600	73.50	44,100.00
Deborah Rogozinski (A)	\$600	210.10	126,060.00
John V. D'Amico (A)	\$575	1,078.50	620,137.50
Sitso Bediako (A)	\$550	1,507.80	829,290.00
Frank Strangeman (A)	\$550	539.90	296,945.00
Sung-Min Lee (A)	\$525	110.10	57,802.50
Uriel Rabinovitz (A)	\$525	43.70	22,942.50
Noelle Ruggiero (A)	\$525	62.10	32,602.50
Raymond Girnys (A)	\$500	4,927.60	2,463,800.00
Christian Levis (A)	\$500	2,287.70	1,143,850.00
Ian Sloss (A)	\$500	1,684.00	842,000.00
Lee J. Lefkowitz (A)	\$500	1,085.30	542,650.00
Michelle Conston(A)	\$400	2,425.50	970,200.00
Melissa Cabrera	\$400	1,646.10	658,440.00
Matthew J. Acocella (A)	\$350	1,122.60	392,910.00
Sylvie Bourassa (A)	\$350	373.70	130,795.00
Lee Yun Kim (A)	\$350	2,609.80	913,430.00
Christina McPhaul (A)	\$350	760.20	266,070.00
Roland R. St. Louis, III (A)	\$350	1,662.70	581,945.00
Jennifer Tembeck (A)	\$350	2,151.30	752,955.00
Bonnie Espino	\$350	810.10	283,535.00
Jennifer Risener (A)	\$350	779.00	272,650.00
Samantha L. Breitner (AA)	\$325	336.10	109,232.50

<sup>1</sup> "S" refers to Shareholders and "A" refers to Associates of the Firm. "AA" refers to law graduates who are awaiting admission. PL refers to paralegals. The hourly rates for the shareholders, associate attorneys and professional support staff in my firm included above are the same rates charged for their services in non-contingent matters and/or which have been accepted and approved in other complex class action litigation. *See, e.g., In re London Silver Fixing, Ltd., Antitrust Litigation*, Case No. 1:14-cv-05682-VEC (S.D.N.Y.), ECF No. 43 (November 25, 2014 Order appointing Lowey as co-lead counsel in silver fixing class action finding that Lowey's "hourly rates of the proposed attorneys generally reasonable.").

Garam Choe (AA)	\$325	129.80	42,185.00
Matthew Guarnero (A)	\$325	1,725.90	560,917.50
Yong Kim (A)	\$325	492.50	160,062.50
Katherine Vogel (PL)	\$275	395.90	108,872.50
Stephen Fay (PL)	\$150	142.20	21,330.00
Sylvia Hoffmann (PL)	\$150	60.40	9,060.00
Joanne Mannion (PL)	\$150	73.20	10,980.00
Gregory Santiago (PL)	\$150	130.70	19,605.00
Maribel Valentin-Rodriguez (PL)	\$150	31.00	4,650.00
Elisa Horn	\$150	208.20	31,230.00
<b>TOTALS</b>		<b>46,709.00</b>	<b>\$26,489,840.00</b>