UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEPHEN SULLIVAN, WHITE OAK FUND LP, CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT PARTNERS TRADING FUND, L.P., AND FRONTPOINT AUSTRALIAN OPPORTUNITIES TRUST on behalf of themselves and all others similarly situated, Plaintiffs, - against - BARCLAYS PLC, BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., BNP PARIBAS S.A., CITIGROUP, INC., CITIBANK, N.A., COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., CRÉDIT AGRICOLE S.A., CRÉDIT AGRICOLE CIB, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, HSBC HOLDINGS PLC, HSBC BANK PLC, ICAP PLC, ICAP EUROPE LIMITED, J.P. MORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., THE ROYAL BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE SA, UBS AG AND JOHN DOE NOS. 1-50, Defendants.	Docket No. 13-cv-02811 (PKC) ECF Case

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Pursuant to this Court's July 5, 2017 Order,[1] Court-appointed Class Counsel respectfully move pursuant to Rule 23(h) of the Federal Rules of Civil Procedure for an award of attorneys' fees and reimbursement of litigation expenses from the $309,000,000 common fund established by Plaintiffs'[2] settlements with Barclays,[3] Deutsche Bank,[4] and HSBC[5] (collectively, the "Settlements").

INTRODUCTION

The results achieved by Class Counsel in this Action represent a victory for the Class in the face of immense legal risk and uncertainty. When Plaintiffs first filed this action, there were substantial risks that the manipulation of a benchmark interest rate, such as Euribor, did not give rise to antitrust injury or a private antitrust claim. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 688 (S.D.N.Y. 2013) ("*LIBOR I*") ("[E]ven if we were to credit plaintiffs' allegations that defendants subverted this cooperative process by conspiring to submit artificial estimates . . . , it would not follow that plaintiffs have suffered antitrust injury.").[6]

There were even greater risks that some of the Defendants were not subject to personal jurisdiction in the United States for claims related to Euribor manipulation. *See, e.g., In re Libor-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (NRB), 2015 WL 4634541, at *15 (S.D.N.Y. Aug. 4, 2015) ("*LIBOR IV*") (dismissing claims against foreign banks that manipulated LIBOR for

[1] Order Preliminarily Approving Proposed Settlements with Deutsche Bank AG and DB Group Services (UK) Ltd., Scheduling Hearing for Final Approval of Proposed Settlements with Barclays plc, Barclays Bank plc, Barclays Capital Inc., HSBC Holdings plc, HSBC Bank plc, Deutsche Bank AG, and DB Group Services (UK) Ltd., and Approving the Proposed Form and Program of Notice to the Class (S.D.N.Y. Jul. 5, 2017), ECF No. 364.

[2] "Plaintiffs" are Stephen Sullivan, White Oak Fund LP, California State Teachers' Retirement System ("CalSTRS"), Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., and FrontPoint Australian Opportunities Trust ("FrontPoint Australian"). Unless otherwise defined, capitalized terms herein have the same meaning as in the Barclays Settlement Agreement, Deutsche Bank Settlement Agreement and HSBC Settlement Agreement (collectively, the "Settlement Agreements"). ECF Nos. 218-1; 360-1; 276-1.

[3] "Barclays" means Barclays plc, Barclays Bank plc and Barclays Capital Inc.

[4] "Deutsche Bank" means Deutsche Bank AG and DB Group Services (UK) Ltd.

[5] "HSBC" means HSBC Holdings plc, and HSBC Bank plc. Together, Barclays, Deutsche Bank and HSBC are referred to as the "Settling Defendants."

[6] *See also Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD), 2014 WL 1280464, at *8 (S.D.N.Y. Mar. 28, 2014); *Mayfield v. British Bankers' Ass'n*, No. 14-cv-4735 (LAP), 2014 WL 10449597, at *2-3 (S.D.N.Y. Jul. 22, 2014); *7 W. 57 Street Realty Co. v. Citigroup, Inc.*, No. 13-cv-981 (PGG), 2015 WL 1514539, at * 15-20 (S.D.N.Y. Mar. 31, 2015).

lack of personal jurisdiction). Each of the so-called "Foreign Defendants," including two Settling Defendants, made Rule 12(b)(2) motions. *See* ECF Nos. 197, 200. It was Class Counsel's skillful work in reaching the Settlements that led to HSBC's and Deutsche Bank's motions being withdrawn *before* the Court granted Defendants' motion to dismiss for lack of personal jurisdiction. *See Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC), 2017 WL 685570, at *37-49 (S.D.N.Y. Feb. 21, 2017).

Likely because of these and other substantial risks, there was no spate of "follow-on" class actions after Plaintiffs filed their initial complaint. Class Counsel alone shouldered the risk of working tirelessly on behalf of the Class for more than five years without compensation. *See* Joint Declaration of Vincent Briganti and Christopher Lovell ("Joint Decl."). Class Counsel now request the Court award a fair and reasonable fee of $68,710,000—22.24% of the $309,000,000 common fund created by the Settlements—to provide compensation for their professional services.

Further, the significance to the litigation and the results achieved by the addition of CalSTRS as a named plaintiff cannot be overstated. CalSTRS is the second largest public pension fund in the United States with over $224 billion under management and the largest educator-only public pension fund in the world. The Office of General Counsel (and specifically its current General Counsel, Brian Bartow) insists upon a hands-on role in any litigation where CalSTRS is involved. As detailed in his declaration, Mr. Bartow is regularly and extensively engaged in settlement strategy and participated directly in negotiations with Settling Defendants on behalf of CalSTRS and the Class. *See* Declaration of Brian J. Bartow ("Bartow Decl").

The fee request is objectively fair and reasonable because it follows the graduated fee scale that Plaintiff CalSTRS negotiated with Class Counsel before joining this case. *See* Part I.A. *infra*; *see also Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections,* 522 F.3d 182, 184 (2d Cir. 2008) (explaining that a "reasonable" fee reflects "what a reasonable, paying client would be willing to pay" for counsel's services). Courts give great weight to negotiated fee

agreements, recognizing a rebuttable "presumption of correctness" where the terms are negotiated by a "sophisticated benefits fund"—such as CalSTRS—"with fiduciary obligations to its members and . . . a sizeable stake in the litigation." *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *16 (S.D.N.Y. April 26, 2016) ("*CDS Litig.*") (quoting *Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Employees Ret. Sys.*, 814 F.3d 652, 659 (2d Cir. 2016)); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001). The request is also qualitatively reasonable because it satisfies all six *Goldberger* factors used to evaluate attorneys' fees in this Circuit (*see* Part I.C-D *infra*) and is consistent with other similarly complex class actions. *See* Part I.B *infra*.

Additionally, Class Counsel seeks reimbursement for $1,600,000 in out-of-pocket expenses incurred since the inception of the case. These expenses, described in the accompanying declarations of Geoffrey M. Horn ("Horn Decl."), Christopher M. McGrath ("McGrath Decl."), and those of additional Plaintiffs' Counsel,[7] were incurred for the Class's benefit and predominantly consisted of expert work, mediation, and discovery-related costs.

THE WORK UNDERTAKEN BY CLASS COUNSEL

A. Case Investigation and Initial Complaint

Class Counsel began investigating manipulative conduct in the Euribor-based derivatives market almost six years ago, after Barclays revealed that it received conditional leniency from the Department of Justice's ("DOJ") under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108-237 ("ACPERA"). Joint Decl. ¶¶ 3-4. Lowey quickly started working with a leading expert on benchmark rate manipulation to analyze economic evidence of misconduct in the Euribor rate-setting process. Lowey also retained investigators in Europe to develop additional facts that would assist in drafting an initial complaint. *Id.* ¶ 4. While Lowey's investigation continued,

[7] "Plaintiffs' Counsel" includes Class Counsel and Berman Tabacco; Glancy Prongay & Murray LLP ("Glancy"); Kirby McInerney LLP ("Kirby"); Cafferty Clobes Meriwether & Sprengel LLP ("Cafferty"); and Nussbaum Law Group ("NLG"). The Declarations of Todd A. Seaver (Berman Tabacco); Lee Albert (Glancy); David E. Kovel (Kirby); Jennifer W. Sprengel (Cafferty); and Linda Nussbaum (NLG) accompany this motion.

Defendants UBS and RBS reached settlements with the DOJ, Commodity Futures Trading Commission ("CFTC"), and U.K. Financial Services Authority ("FSA"), for claims related to their respective involvement in the Euribor manipulation. *Id.* ¶ 6.

Lowey filed the initial Class Action Complaint ("CAC") on behalf of Stephen Sullivan and a proposed class on February 12, 2013 in the United States District Court for the Northern District of Illinois. ECF No. 1. The CAC asserted claims against Barclays, UBS AG and RBS under the Sherman Antitrust Act, 15 U.S.C. § 1, and common law. Joint Decl. ¶ 6.[8]

B. ACPERA and Plaintiffs' First Three Amended Complaints.

Soon after filing the CAC, Class Counsel contacted Barclays to negotiate the scope of its ACPERA cooperation. *Id.* ¶ 16. Barclays initially refused to cooperate with Plaintiffs and negotiations continued for months. *Id.* Meanwhile, new information about Defendants' conspiracy continued to emerge. *Id.* ¶¶ 17-18. In October 2013, Defendant Rabobank paid more than $1 billion in fines and penalties to settle rate manipulation charges, including for Euribor, with the DOJ, CFTC, and FSA. *Id.* ¶¶ 19-20. Public reports also identified several of Defendants' traders, including Deutsche Bank's Christian Bittar, HSBC's Didier Sander, and Credit Agricole's Michael Zrihen, whose names were obscured in government settlement documents. *Id.* ¶ 20.

Class Counsel spent significant effort analyzing these settlements and reports before filing an Amended Class Action Complaint ("ACA") [ECF No. 75] in November 2013. The ACA added Deutsche Bank, HSBC, Société General, Credit Agricole CIB, and Rabobank as Defendants, a new Plaintiff White Oak Fund, and claims under the Commodity Exchange Act ("CEA"). Except for Rabobank, none of these Defendants had settled with government regulators at that time. *Id.* ¶ 21. The ACA also disclosed that Barclays agreed to provide Plaintiffs with cooperation connection with

[8] Barclays, UBS and RBS moved to transfer the Action to the U.S. District Court for the Southern District of New York on April 1, 2013. On April 5, 2013, Judge Shadur granted the motion to transfer. Joint Decl. ¶ 11.

the prosecution of their claims. *See* ACA ¶ 5. This was significant. ACPERA cooperation is not guaranteed and defendants frequently refuse to cooperate.[9]

One month after Class Counsel filed the ACA, the European Commission ("EC") fined Defendants Deutsche Bank, Société Générale, Barclays, and RBS for participating in a "Euro Interest Rate Derivatives Cartel." Joint Decl. ¶ 22. The EC also identified Defendant Credit Agricole, JPMorgan, and HSBC as a member of the same conspiracy. *Id.*

Class Counsel continued to meet and confer with Barclays regarding ACPERA cooperation while analyzing these new settlements and developing additional econometric evidence. *Id.* ¶ 24. In May 2014, Plaintiffs filed their Second Amended Class Action Complaint ("SAC") ECF No. 109, which included detailed analyses showing a direct relationship between Euribor and the prices of futures contracts traded on the NYSFE LIFFE and Chicago Mercantile Exchange ("CME"). SAC ¶¶ 114-27. The SAC also identified examples of when Defendants' conspiracy caused the prices of those contracts to be artificial. SAC ¶¶ 129-141. Additionally, the SAC named JPMorgan, Citibank, and Credit Agricole SA as Defendants based on the EC's findings and public reports. Joint Decl. ¶ 24.

Barclays contemporaneously informed Class Counsel that the DOJ would permit full ACPERA cooperation to proceed in June 2014. *Id.* ¶25. Class Counsel immediately sought and were granted leave to file a Third Amended Complaint ("TAC") by July 31, 2014. *Id.* ¶ 25. However, two days before the deadline, on July 29, 2014, Barclays notified Class Counsel that the DOJ had changed its mind. *Id.* ¶ 26. The DOJ intervened shortly thereafter, requesting a stay of ACPERA cooperation until May 12, 2015 to prevent interference with its investigation. *Id.* ¶ 28.

[9] *See, e.g.*, *In re Aftermarket Automotive Lighting Prods. Antitrust Litig.*, No. 09 MDL 2007-GW(PJWx), 2013 WL 4536569, at *5 (C.D. Cal. Aug. 26, 2013) (finding that defendant forfeited its claim to ACPERA benefits by failing to provide satisfactory cooperation to plaintiffs.); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 618 F. Supp. 2d 1194, 1195 (N.D. Cal. 2009).

Notwithstanding the stay, Class Counsel continued to press their investigation and leverage information obtained from Barclays. For example, Class Counsel worked extensively with experts to model damages based on instances of Euribor manipulation that Barclays disclosed. *Id.* ¶ 31. Attorneys dispatched to London monitored the ongoing U.K. criminal trials regarding Defendants' related manipulation of the LIBOR benchmark, sending reports back to the United States each day with valuable information about, *inter alia*, the structure of the OTC derivatives market and role of interdealer brokers. *Id.* ¶ 33. Class Counsel also continued working with investigators to identify additional evidence regarding the scope of the Euribor manipulation conspiracy. *Id.* ¶ 32.

With the investigation continuing, CalSTRS retained Class Counsel to prosecute claims based on its Euribor-based interest rate swaps and FX forward transactions with multiple Defendants. *Id.* ¶ 29. CalSTRS negotiated a graduated fee schedule with Class Counsel before joining the case. *See* Bartow Decl. ¶ 7; *see also* Joint Decl. ¶ 29. This fee agreement limited Class Counsel's fee to 3.5 times the aggregate lodestar of all Plaintiffs' Counsel. *See* Bartow Decl. ¶ 7.

Class Counsel drafted detailed allegations, including examples of how Defendants' misconduct impacted CalSTRS's transactions. Joint Decl. ¶ 30. These allegations were included in the TAC, ECF No. 139, along with several other Plaintiffs (Sonterra Capital Master Fund, FrontPoint Trading Fund, L.P., and FrontPoint Australian Opportunities Trust) that transacted in OTC Euribor-based derivatives. *Id.* ¶ 30. The TAC also included claims for breach of the implied covenant of good faith and fair dealing against Plaintiffs' direct counterparties. *Id.* ¶ 30.

C. Barclays' Settlement and Plaintiffs' Fourth Amended Complaint.

Class Counsel continued to meet and confer with Barclays after filing the TAC and agreed to explore a potential settlement. *Id.* ¶ 37. With discussion in process, the DOJ notified the parties on May 12, 2015, that it no longer objected to Barclays cooperating with Plaintiffs. *Id.* ¶ 38. Class Counsel immediately arranged for full ACPERA cooperation to begin. *Id.* ¶ 39. Over several days,

Barclays disclosed significant details about the Euribor manipulation, including specific dates of misconduct, the Euribor tenors involved, and Barclays' co-conspirators for each instance. *Id.* ¶ 39.

Class Counsel spent weeks analyzing this new information and working with several economists in preparation for a mediation with Barclays before Kenneth R. Feinberg. *Id.* ¶ 40. The mediation was an intensive process that occurred over three full days. *Id.* ¶ 40. The first day was devoted to presentations regarding the merits (and defenses) of the case. *Id.* ¶ 40. Next, the experts for each side made economic presentations, including calculations of potential damages caused by the Euribor manipulation. *Id.* ¶ 40. The third and final day of mediation was spent trying to reach agreement on the possible financial terms of a settlement. *Id.* ¶ 40. Here, the parties reached an impasse and adjourned without a deal on June 25, 2015. *Id.* ¶ 40.

Mr. Feinberg continued to work with Class Counsel and Barclays to reach a resolution via telephone over the next two weeks, emphasizing the substantial risks faced by each side if the litigation went forward. *Id.* ¶ 43. While negotiations were still in progress, Barclays began producing documents to Plaintiffs pursuant to their ACPERA obligations. *Id.* ¶ 43. Barclays' initial production included more than 3,700 pages of documents depicting conversations among traders directly involved in manipulating Euribor. *Id.* ¶ 43.

Class Counsel then worked on two tracks. One team of attorneys focused on analyzing Barclays' documents and drafting allegations for a Fourth Amended Class Action Complaint ("FAC"), while another simultaneously engaged in direct negotiations with Barclays to craft a memorandum of understanding ("MOU"). *Id.* ¶ 44. CalSTRS' general counsel participated extensively in this process. *See* Bartow Decl. ¶ 13. The parties executed an MOU on August 11, 2015. Joint Decl. at ¶ 48. Plaintiffs' filed the FAC, reflecting Barclays' initial ACPERA production on August 13, 2015. *Id.* ¶ 50. It would take two more months of hard-fought negotiations with Barclays before the final settlement agreement was executed on October 7, 2015. *Id.* ¶ 51.

The value of the Barclays' settlement cannot be overstated. As a key member of Defendants' conspiracy, Barclays produced more than 184,000 documents, 312 gigabytes (approximately 460 hours) of audio recordings, and lines of transactions data that, once analyzed and assembled, offered a glimpse into the inner workings of one of the most significant price-fixing cartels in history. These documents were instrumental in achieving settlements with HSBC and Deutsche Bank, two of Barclay's main co-conspirators, and continue to assist the ongoing prosecution of Plaintiffs' claims against JPMorgan and Citi. *Id.* ¶ 101.

D. Defendants' Rule 12 Motion and the Proposed Fifth Amended Complaint.

Defendants moved to dismiss the FAC under FED. R. CIV. P. 12(b)(1), (b)(2), and (b)(6), submitting twelve separate declarations and four exhibits in support of those motions. *Id.* ¶ 55. Defendants' relied heavily on Judge Buchwald's opinion in the U.S. dollar LIBOR case to argue, *inter alia*, that Plaintiffs did not have antitrust claims because the alleged coordination of Euribor submissions did not cause any harm to competition (an argument the Second Circuit rejected in *Gelboim v. Bank of America Corp.*, 823 F.3d 759, 770 (2d Cir. 2016)). *Id.* ¶ 56. Defendants also challenged Plaintiffs' standing, arguing they failed to plausibly allege that Euribor affected the financial instruments they traded. *Id.* ¶ 56. Additionally, the self-styled "Foreign Defendants" argued there was no personal jurisdiction because the Euribor manipulation occurred entirely abroad. *Id.* ¶ 56. Class Counsel responded to these motions on December 4, 2015 with two opposition briefs and a declaration attaching sixteen exhibits. *Id.* ¶ 58. After motions were fully briefed, Class Counsel drafted or responded to 14 separate supplemental authority letters, reflecting 66 single-spaced pages of additional analysis on decisions relevant to jurisdictional and merits issues in this case. *Id.* ¶ 66.

On February 21, 2017, the Court granted in part and denied in part Defendants' motion to dismiss the FAC. *Id.* ¶ 73, 75. The Court sustained Plaintiffs CalSTRS's and FrontPoint Australian's Sherman Act claim against all Defendants, Plaintiffs' CEA claims against UBS and Rabobank and

certain of CalSTRS's and FrontPoint's state law claims. The Court dismissed Plaintiffs' RICO claims, and found that it lacked personal jurisdiction over the "Foreign Defendants." *Id.* ¶¶ 73, 75.

Following this decision, Plaintiffs sought leave to amend to address the specific personal jurisdiction deficiencies identified by the Court with a Proposed Fifth Amended Class Complaint ("PFAC") including new allegations regarding Defendants' Euribor-based derivatives sales and marketing activities in the United States. *Id.* ¶ 76. After a full round of briefing, the Court denied Plaintiffs' motion on April 17, 2017. *Id.* ¶ 76.

E. The HSBC and Deutsche Bank Settlements.

While Defendants' Rule 12 motions were pending, Class Counsel explored settlement opportunities with other Defendants to minimize risk and maximize gains for the Class. For example, negotiations with HSBC began shortly after Defendants' motions to dismiss were filed in in October 2015. *Id.* ¶ 60. Over the next fourteen months, counsel on both sides presented the strengths and weaknesses of their claims and defenses. *Id.* ¶ 60, 62. The process culminated with a mediation before Gary McGowan in May 2016 during which both sides presented their views on the merits of the case and possible damages. *Id.* ¶ 62. CalSTRS' general counsel traveled from California to attend the mediation and delivered a powerful statement on behalf of the Class. *Id.* ¶ 61. After reaching an impasse, following hours of intense negotiations, the parties accepted the mediator's proposal of $45 million. *Id.* ¶ 62. Class Counsel quickly went to work drafting an MOU with HSBC's counsel. *Id.* ¶ 62. The MOU executed on May 4, 2016 included the right for Class Counsel to conduct confirmatory discovery, further minimizing the risk to the Class, in addition to receiving substantial non-monetary cooperation. *Id.* ¶ 64. Class Counsel spent several months negotiating the terms of a settlement agreement with HSBC, which was signed on December 27, 2016. *Id.* ¶ 68.

Obtaining discovery and cooperation from HSBC was difficult because many of the documents relevant to the Euribor manipulation were kept in France by a local HSBC affiliate and

arguably subject to foreign data privacy laws. *Id.* ¶ 65. Class Counsel spent several weeks negotiating with HSBC regarding how these documents would be produced. *Id.* ¶65. Having litigated (and won) data privacy issues in other cases, Class Counsel were well informed about the risks and uncertainty associated with seeking discovery from a foreign country. *Id.* ¶ 65; *see also Laydon v. Mizuho Bank, Ltd.*, 183 F. Supp. 3d 409 (S.D.N.Y. 2016). After careful analysis informed by Class Counsel's prior experience, the parties agreed to use the voluntary procedures of The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters ("Hague Convention"), which had proved successful in other actions. Joint Decl. ¶ 65.

This Court granted the parties' Joint Motion of Issuance of a Request for International Judicial Assistance ("Hague Order") on April 7, 2017. Class Counsel, at its own expense, hired a French commissioner to facilitate the document production and obtained a certified translation of The Hague Order for service on the relevant French authorities. *Id.* ¶ 80. Class Counsel then coordinated with HSBC and the commissioner to receive rolling productions of the French documents. *Id.* ¶ 80. To date, HSBC has produced more than 79,000 pages of documents and data and 13,000 audio files, including materials outside The Hague Order. *Id.* ¶ 84.

Plaintiffs' settlement with Deutsche Bank was similarly achieved after more than 22 months of arm's-length negotiations beginning in July 2015. *Id.* ¶ 45. After months without success, the parties agreed to mediate before the Honorable Daniel Weinstein. *Id.* ¶ 69. Class Counsel prepared a detailed mediation statement outlining the evidence known about Deutsche Bank's role in the Euribor manipulation from Barclays' cooperation. *Id.* ¶ 70. Deutsche Bank likewise submitted a detailed report about the strength of its defenses in the Action. *Id.* ¶ 70. Again, CalSTRS's general counsel Brian Bartow attended the mediation to represent the Class. Bartow Decl. ¶ 15. After a full day of negotiations, the parties accepted the mediator's $170 million proposal. Joint Decl. ¶ 70.

Class Counsel then spent weeks crafting an MOU with Deutsche Bank's counsel, which the

parties executed on January 24, 2017. *Id.* ¶ 71. The parties finalized the Deutsche Bank Settlement Agreement on May 10, 2017. *Id.* ¶ 71. Significantly, Deutsche Bank Settlement Agreement provided for substantial non-monetary cooperation. *Id.* ¶ 86. To date, Class Counsel has received over 253,000 pages of documents and 100 audio files from Deutsche Bank. *Id.* ¶ 86. Deutsche Bank's cooperation obligations remain ongoing.

F. Negotiations with States Attorneys General.

Class Counsel also undertook significant efforts outside the litigation to protect Class members' interest in the settlements. Joint Decl. ¶ 89-90. On August 8, 2016, 44 state attorneys general ("AGs") announced a $100 million settlement with Barclays (the "Barclays AG Settlement"). *Id.* ¶ 88. The settlement provided monetary compensation for certain Class members—not-for-profit organizations, government agencies, and municipal and state-affiliated pension funds and credit unions—that transacted interest rate derivatives with Barclays and were affected by its manipulation of USD LIBOR. *Id.* ¶ 88. However, to receive payment from the Barclays AG Settlement, these Class members were required to release Barclays from claims in *all* "IBOR" cases, including this Action, without additional compensation. *Id.* ¶ 88. Class Counsel quickly realized that the Barclays AG Settlement threatened Class members' rights and engaged Barclays' counsel and the New York Attorney General's office to modify the release language. *Id.* ¶ 89-90. Class Counsel negotiated for additional notice so that eligible Class members covered would be aware of the risk that claiming from the Barclays AG Settlement posed to their claims in this Action. *Id.* ¶ 90.

Class Counsel's work ensured that subsequent settlements reached by the AGs would not affect Class members' rights to participate in the Settlements. *Id.* ¶ 90. For example, when Deutsche Bank reached a similar $220 million deal with the AGs in 2017 that settlement allowed Class members to participate without waiving any recovery rights in this Action. *Id.* ¶ 91.

G. Discovery Efforts.

Since first obtaining discovery materials, Class Counsel have devoted substantial resources to reviewing more than one million pages of documents, tens of thousands of audio files and other data received from Settling Defendants, Citi and JPMorgan. *Id.* ¶ 93. Class Counsel have held dozens of meet-and-confers concerning documents and data production, including negotiating access to transaction data essential for class certification. Class Counsel continues to negotiate with Citi and JPMorgan for documents beyond materials provided to government regulators.

To maximize savings for the Class, Lowey leveraged in-house technological expertise to locally deploy Relativity, a sophisticated document review platform. 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 layer several techniques simultaneously to greatly cut down the manhours required for review. *Id.* ¶ 93. For example, Class Counsel used layering techniques to prioritize more than 24,000 audio files for review, targeting phone calls between co-conspirators around dates where other communications indicated manipulation before hitting dates where econometric evidence indicated misconduct. *Id.* ¶ 94.

Audio review presented a unique challenge in this case. Not only did Class Counsel need to analyze trader jargon used in these phone calls, but had to overcome accents and foreign language issues. *Id.* ¶ 96. Class Counsel relied on a specialized team of attorneys with foreign language skills to review these documents and identify which required further translation. *Id.* ¶ 96.

Lovell employed technological assisted document review software to leverage and exploit potential key terms through smart searches, "relational searching" and other analytic tools. These tools identified pertinent documents, followed themes and dates of conversations, and cross referenced and matched them to individuals. Using these tools, Lovell identified more than 1,400

potential instances of agreement or manipulation, more than 400 instances of potential admissions of manipulation, and more than 100,000 relevant documents. *See Id.* ¶95.

Finally, Class Counsel issued subpoenas to third parties such as the Chicago Mercantile Exchange ("CME") to identify those individuals and entities that may have been harmed by Euribor manipulation. To the extent produced, the contact information of potential counterparties has been provided to the Settlement Administrator to facilitate the widest distribution of the Class Notice.

H. Expert Work and Development of Plan of Distribution.

As described in the Joint Declaration (¶¶ 18, 102) and Plaintiffs' Motion for Preliminary Approval of Plan of Distribution of Settlements with Defendants Barclays, HSBC, and Deutsche Bank (ECF Nos. 382-383), Class Counsel worked with several experts to analyze Defendants' transaction data and develop a plan of distribution based on actual Euribor market transactions.

Class Counsel also retained Kenneth Feinberg to oversee the allocation process and ensure a fair and reasonable distribution of settlement funds to Class members. *See* Declaration of Kenneth R. Feinberg ("Feinberg Dec.") ¶¶ 2-3, 18 (ECF No. 382-2). As part of this process, Class Counsel appointed separate allocation counsel to represent the interests of settlement Class members that transacted in different types of Euribor-based derivatives. Joint Decl. ¶ 104. In November 20, 2017, Mr. Feinberg held a full day mediation among allocation counsel to determine if any legal discounts should be applied to the value of Class members' claims. *Id.* ¶ 104. Those discounts are reflected in the Plan of Distribution.

ARGUMENT

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

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also CDS Litig.*, 2016 WL 2731524, at *16 (quoting *Victor v.*

Argent Classic Convertible Arbitrage Fund L.P., 623 F.3d 82, 86 (2d Cir. 2010)). Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method" although "the trend in this Circuit is toward the percentage method." *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)). Class Counsel's attorneys' fee request is reasonable under either approach because it: (1) is consistent with the fee schedule CalSTRS negotiated at arm's-length when it first retained Class Counsel; (2) is within the range of "percentage method" fee awards made in this Circuit; and (3) satisfies all six *Goldberger* factors, including the lodestar "cross-check." *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

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

The touchstone of "reasonableness" when evaluating attorneys' fees is "what a reasonable, paying client would be willing to pay" for counsel's services. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections*, 522 F.3d 182, 184 (2d Cir. 2008); *see also Goldberger*, 209 F.3d at 52 ("market rates, where available, are the ideal proxy for [class counsel's] compensation."). Consistent with this measure, courts give great weight to negotiated fee agreements between lead plaintiffs and class counsel because they typically reflect actual market rates. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("In many cases, the agreed-upon fee will offer the best indication of a market rate."). For example, there is "a well-recognized rebuttable 'presumption of correctness' given to the terms of an *ex ante* fee agreement between class counsel and lead plaintiffs" applied in antitrust cases where the fee was negotiated by a "sophisticated benefits fund with fiduciary obligations to its members and where that fund has a sizeable stake in the litigation." *CDS Litig.*, 2016 WL 2731524, at *16 (quoting *Flanagan*, 814 F.3d at 659); *see also Cendant*, 264 F.3d at 282.

The attorneys' fees requested are calculated directly from the retainer agreement that

CalSTRS negotiated with Class Counsel before joining the Action in September 2014. *See* Bartow Decl. ¶ 21. CalSTRS is a "sophisticated benefits fund" with an investment portfolio of approximately $224 billion in investments. *Id.* ¶ 4. It is the second-largest pension fund in the United States and the largest educator-only pension fund in the world. *Id.* CalSTRS's national reputation for protecting the rights of its members is legendary. This duty not only motivated CalSTRS to negotiate at arm's-length a fair and reasonable fee arrangement with Class Counsel, but also to remain an active participant in the litigation. For example, CalSTRS's general counsel was directly involved in settlement discussions with Barclays, HSBC, and Deutsche Bank and traveled to New York to participate in the mediation sessions leading to the latter two settlements. *Id.* ¶ 14-15. CalSTRS's high level of involvement is commensurate with its "sizable stake in the litigation," having engaged in thousands of Euribor-based derivatives transactions directly with Defendants. Bartow Decl. ¶ 6. CalSTRS's *ex ante* judgment about the attorneys' fees in this case, therefore, satisfies the factors identified by the *CDS* court and is entitled to a presumption of reasonableness here.

Moreover, CalSTRS supports the fee request based on its active monitoring of Class Counsel's work and the results Class Counsel achieved. *Bartow Decl.* at ¶ 20. As a result of its involvement in the case, CalSTRS has an intimate understanding of the complexity and difficulty of this litigation. Its *ex post* support of this fee request demonstrates that it is fair and reasonable.

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

The reasonableness of the requested fee is confirmed by cases applying the "percentage method" of fee calculation favored in this Circuit. *See Wal-Mart Stores*, 396 F.3d at 121 ("The trend in this Circuit is toward the percentage method"); *see also In re Beacon Assoc. Litig.*, No. 09 Civ. 777(CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) (explaining that "percentage of recovery" is "the preferred method of calculating the award for class counsel in common fund cases"). Courts prefer the "percentage method" because it is easy to administer and avoids the "dubious merits of the

lodestar approach." *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008) (noting that it absolves district courts from taking on the cumbersome task of computing a lodestar); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 485 (S.D.N.Y. 1998) ("*NASDAQ III*") (noting that the percentage method is easy to administer). It also "aligns the interests of the class and its counsel" while incentivizing "the efficient prosecution and early resolution of litigation." *Hall v. Children's Place Retail Stores Inc.*, 669 F. Supp. 2d 399, 401 (S.D.N.Y. 2009) (citation omitted).

Pursuant to the graduated fee structure with CalSTRS, Class Counsel requests 22.24% of the $309,000,000 common fund, reflecting the blended average of a 23% fee award on the first $100 million of the common fund, 22% on the next $200 million, and 19% on remaining $9 million comprising the common fund. This percentage is well within the range of reasonable attorneys' fees approved in other complex class actions in this Circuit, including other "IBOR" cases.[10] It is particularly significant that the fee here is a lesser percentage than many of the approved fees in complex common fund class actions where "courts have sometimes awarded contingency fees exceeding 30% of the overall fund." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 447 n.11 (E.D.N.Y. 2014) ("*Interchange Fee Litig.*").[11]

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

The requested fees are supported by the application of the six-factor reasonableness test set

[10] *See, e.g.*, Order Granting Class Counsel's Motion for Award of Attorneys' Fees, *Laydon v. Mizuho Bank, Ltd., et al.,* No. 12-cv-3419 (GBD) (S.D.N.Y Dec. 7, 2017), ECF No. 388 ("*Laydon* Fee Order") and Order Granting Class Counsel's Motion for Award of Attorneys' Fees, *Sonterra Capital Master Fund, Ltd., et al, v. UBS AG et al.*, No. 15-cv-5844 (GBD) (S.D.N.Y Dec. 7, 2017), ECF No. 837 ("*Sonterra* Fee Order") (awarding 23.57% of the common fund in cases settling manipulation claims relating to Yen-LIBOR and Euroyen TIBOR); *City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *10-12 (S.D.N.Y. May 9, 2014) (awarding 33% in attorneys' fees in a securities fraud class action); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding 30% attorneys' fees in a complex CEA class action); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999) (awarding 27.5% attorneys' fees in complex class action).

[11] A recent study collecting empirical evidence of attorneys' fees in class action settlements likewise supports the requested fee. *See* Eisenberg, Miller & Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 952 (2017) (finding that in 19 antitrust settlements between 2009 and 2013 with a mean recovery of $501.09 million and a median recovery of $37.3 million, the mean and median fee percentages were 27% and 30%).

forth in *Goldberger*.[12] The first factor, the time and labor expended by Class Counsel, is detailed above and in the supporting declarations; factors 2 through 6 are addressed below.

1. The Risk of the Litigation

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

Risk of Prosecuting the Case as Class Counsel: When this Action was initiated, there were many risks to the claims. These included the personal jurisdiction risks relating to "Foreign Defendants" (all but two Defendants), and the risks that no private right of action was available under the antitrust laws. The personal jurisdiction risks were realized by the dismissal of all "Foreign Defendants" *except* for the three Settling Defendants from this Action. *Sullivan v. Barclays plc*, 2017 WL 685570, at *37. The risks of dismissal of the antitrust claims were realized in multiple cases shortly after the filing of this case. *See LIBOR I*, 931 F. Supp. 2d at 688; *see also* note 6, *supra.*

Plaintiffs antitrust claims only survived here because the Second Circuit's intervening decision in *Gelboim*, 823 F.3d at 771-75, vacated the prior consensus in this District that private plaintiffs did not have antitrust claims for benchmark rate manipulation. *See Sullivan,* 2017 WL 685570, at *13. While *Gelboim* constituted a dramatic change in the prospects of this case, it occurred

[12] Courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation. . .; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger,* 209 F.3d at 50.

only **after** Class Counsel had already been prosecuting these claims in *high risk conditions for thirty-nine months*. *Gelboim* did nothing to ameliorate the other risks to the claims, including the personal jurisdiction risks, or the risk of litigating against some of the world's largest financial institutions with the financial resources and ability to prolong this case for years at the trial and appellate levels.

Due to these high risks and despite the presence of an ACPERA applicant, no companion or tag along class actions were filed by any of the many members of the antitrust bar or other law firms. As a direct result, Class Counsel assumed all of the foregoing high risks alone, bearing the costs and potential loss on a contingent basis. *See In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 (FSH), 2005 WL 3008808, at *14 (D.N.J. Nov. 9, 2005) (identifying "the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in an antitrust case are extremely high" as risks in an antitrust class action.).

Risk of Establishing Liability: As set forth above, there were serious existential risks that this case would be dismissed during the pleadings, preventing Plaintiffs from even having the chance to establish liability. Because those risks were realized as to all foreign Defendants (except the Settling Defendants), Class Counsel have a chance to establish liability against only two Defendants. The inherent complexities of prosecuting these antitrust claims involving foreign conduct leave intact many risks of establishing liability. Such risks include finding adequate factual support for liability as to the two remaining Defendants. Beyond that, arguments during the Settlement process focused on the absence of impact on Euribor of the alleged manipulative conduct.

The legal risks to establishing liability were coupled with substantial risks to finding the factual support for liability. Class Counsel invested substantial time and resources to search through ACPERA materials and other evidence to identify Defendants and link them to the conspiracy. Class Counsel also had to parse technical financial language, identify patterns and campaigns used to manipulate Euribor, involving multiple banks over extended time periods.

Risk of Establishing Damages: One Settling Defendant argued that the total damages in the case applicable to the conduct for which it was jointly and severally liable was a small fraction of the settlement payment which it ultimately agreed to make. There were also risks associated with establishing a class-wide damages model. *See In re Platinum and Palladium Commodities Litig.,* No. 10 CV 3617, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). For example, Plaintiffs' case depended on showing what Euribor would have been absent manipulation. While Euribor is intended to reflect the cost of borrowing Euros in the interbank money market, data reflecting Defendants' funding transactions is not public and was unavailable at the start of the litigation. Class Counsel developed the data through settlements and discovery. *See supra* at 7-12.

Despite these risks, Class Counsel took this case on a fully-contingent basis, devoting more than 100,000 hours and a substantial percentage of Class Counsel's resources litigating this case for over five years. As Judge Gleeson aptly noted: "Counsel should be rewarded for undertaking [the above noted risks] and for achieving substantial value for the class. If not for the attorneys' willingness to endure for many years the risk that their extraordinary efforts would go uncompensated, the settlement would not exist." *Interchange Fee Litig.*, 991 F. Supp. 2d at 441.

2. The Magnitude and Complexity of the Case

"Class actions have a well deserved reputation as being most complex," *NASDAQ III*, 187 F.R.D. at 477, with antitrust and commodities cases standing out as some of the most "'complex, protracted, and bitterly fought.'" *Meredith Corp.*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (citations omitted); *see also In re Platinum and Palladium Commodities Litig.,* 2014 WL 3500655 at *12 (noting that commodities cases are "complex and expensive" to litigate); *In re Vitamin C Antitrust Litig.*, No. 06 Md. 1738 (BMC)(JO), 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012). This case is no exception.

Complexity: This case involves a conspiracy among multiple banks and interdealer brokers to fix Euribor and Euribor-based derivatives prices over a Class Period of five years and nine months through multiple means, including, *inter alia*: (1) making false Euribor submissions; (2) "pushing cash" with manipulative transactions; (3) "spoofing" the market with false bids and offers; and (4) sharing proprietary information including client names, pricing curves, and trading positions. FAC ¶ 18; *see Wal-Mart Stores*, 396 F.3d. at 122 (finding case involving nearly every U.S. bank to be complex). Defendants used multiple means to achieve the goal of their conspiracy. *See*, *e.g.*, FAC ¶¶ 200-249 (describing Defendants' long-term campaigns to rig Euribor). The amount of work required to understand the inner workings of a cartel with this level of sophistication was "extraordinary" in both its "complexity and scope" and required Class Counsel to master the properties of complex financial instruments and markets by working with seasoned experts. *See In re Holocaust Victim Assets Litig.*, No. CV 06-0983 (FB)(JO), 2007 WL 805768, at *46 (E.D.N.Y. Mar. 15, 2007).

Magnitude: This is a massive case. Over the course of five years of litigation involving 20 Defendants, the parties have produced hundreds of docket entries associated with four amended complaints and motions to transfer venue, reconsider orders, amend the Complaint, and issue a request to obtain documents via The Hague Convention. The motion to dismiss briefing involved a total of 6 memoranda of law, 19 declarations, numerous exhibits, and 14 letter briefs discussing decisions issued after the motion had been fully briefed. There have been hundreds of thousands of documents, spreadsheets and audio files produced to Plaintiffs pursuant to ACPERA cooperation, settlement cooperation and discovery. Discovery remains ongoing with Defendants Citi and JPMorgan. The global nature, duration, size of the case, complexity of the financial instruments, and sophistication and the depth of the conspiracy weigh heavily in favor of approving the requested fee.

3. Quality of Representation

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

Results Obtained: The settlements reached so far provide significant value to the Class. $309,000,000 in monetary compensation has been obtained from Barclays, Deutsche Bank and HSBC, an extraordinary result by Class Counsel. These funds will provide Class members with an immediate recovery and will also ensure funding of the litigation so that Class Counsel can continue to pursue claims against Citi, JPMorgan and potentially other Defendants in the future.

Beyond monetary compensation, Class Counsel also secured significant cooperation from the Settling Defendants. *See supra* at 8, 10-11. Documents obtained as ACPERA cooperation from Barclays played a crucial role in Class Counsel's negotiations and the eventual mediation with Deutsche Bank and HSBC, allowing Class Counsel to present a compelling case on liability at the mediation that would have been impossible using only publicly-available documents. The Settlements also produced valuable transaction data, which so far have helped in the development of a class-wide damages model and Plan of Allocation. *See supra* at 12-13.

Background of Lawyers Involved: Class Counsel has extensive experience prosecuting some of the largest commodities manipulation cases, including what were at the time, the first, second, third, and fourth largest class action recoveries in the history of the CEA.[13] This includes specific expertise in benchmark manipulation as demonstrated by Class Counsel's current tenure as lead counsel in cases alleging anticompetitive and manipulative conduct for several "IBOR" rates

[13] *See* Horn Decl. (attaching Lowey's firm resume); McGrath Decl. (attaching Lovell's firm resume).

and the London Silver Fix.[14] Additional examples of Class Counsel's more than 50 years of experience with complex litigation are detailed in Class Counsel's resumes.

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

4. The Fee is Reasonable in Relation to the Settlements

Courts evaluate the requested fee in relation to the settlement by looking to "comparable cases" for "guideposts." *See Interchange Fee Litig.*, 991 F. Supp. 2d at 443-44 (evaluating a fee request in case where a class of merchants alleged that large credit card companies and banks conspired to fix certain rules and fees against other "large class cases with court-set fees"). This approach prevents "unwarranted disparities in outcomes" and provides greater predictability for counsel. *Id.* 446-47. The fee requested here is reasonable in relation to the settlement for at least two reasons:

First, Class Counsel's request for a blended average of 22.24% of the common fund comes directly from the graduated fee scale that CalSTRS negotiated before joining the action. *See* Bartow Decl. ¶ 7. This satisfies a key legal "guidepost" that Judge Gleeson identified in large class action cases—that "the percentage of the fund awarded should scale back as the size of the fund

[14] *See e.g.*, *Sonterra Capital Master Fund Ltd. et al. v. Credit Suisse Group AG et al.*, No. 15-cv-871 (SHS) (S.D.N.Y.) (Swiss franc LIBOR); *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD); and *In re: London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573 (VEC) (S.D.N.Y.).

increases"—and supports Class Counsel's request. *See Interchange Fee Litig.*, 991 F. Supp. 2d at 444.

Second, the graduated fee CalSTRS negotiated is less than what was approved in the recent *Laydon* and *Sonterra* settlements. *See Laydon* Fee Order ¶ 3; *Sonterra* Fee Order ¶ 3. Other courts in this District have approved fee awards in large antitrust class cases based on a graduated fee scale. *See CDS Litig.*, 2016 WL 2731524, at *17 n.24; *Interchange Fee Litig.*, 991 F. Supp. 2d at 445. The fee agreement approved in *Interchange Fee Litig.* awarded counsel an average percentage fee of 22.52% for the first $309,000,000 recovered, greater than the blended average fee of 22.24% requested here. The requested fee is reasonable in relation to the settlement achieved here and compares favorably to other concrete "guideposts" such as the fees awarded in analogous cases.

5. Public Policy Supports Approval

Had Class Counsel not taken on the risk of this lawsuit in February 2013, the Class of investors in Euribor Products would have been left without recompense for their losses. Despite the subsequent government investigations and certain Defendants' admissions of wrongdoing, many investors who were harmed by Defendants' conspiracy would not have received any money at all. *See, e.g.*, *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014) ("providing lawyers with sufficient incentive to bring common fund cases . . . serve[s] the public interest") (citations omitted). None of the regulator's fines or settlements were allocated to private investors.

Public policy encourages enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws."). Awarding a reasonable percentage of the common fund further ensures that Class Counsel retains the ability and incentive to pursue antitrust violations through trial, at their own expense even when recovery is uncertain. *See*

Goldberger, 209 F.3d at 51 ("There is . . . commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.").

D. The Lodestar Cross-Check Supports the Requested Fee

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

First, in negotiating a graduated fee scale, CalSTRS capped any fee request by Class Counsel to 3.5 times the aggregate lodestar incurred by Plaintiffs' Counsel in the case. As with the percentage fee method, this negotiated rate should be given great weight in evaluating attorneys' fees. *Alderman v. Pan Am World Airways*, 169 F.3d 99, 103 (2d Cir. 1999) ("[A] court should seek to enforce the parties' intentions in a contingent fee agreement, as with any contract."). Plaintiffs' Counsel have spent 107,778.98 hours working on *Sullivan* as of February 28, 2018, for an aggregate lodestar of $50,477,797.25. *See* Joint Decl. ¶¶ 108-15. Thus, the 22.24% or $68,710,000 million fee only compensates Plaintiffs' Counsel for approximately 136% of their aggregate lodestar and does not engage the 3.5 times multiplier cap in CalSTRS's fee agreement, demonstrating that the full fee will not result in an "unwarranted windfall."

Second, the 3.5 times multiplier CalSTRS negotiated is reasonable because it is consistent with the range of multipliers approved in this and other circuits.[15] The Court should approve the

[15] *See, e.g.*, *CDS Litig.*, 2016 WL 2731524, at *17 (approving a lodestar multiplier of "just over 6" in a complex antitrust class action); *Beckman v. KeyBank N.A.,* 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (approving a multiplier of 6.3 in class action, explaining that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Maley*, 186 F. Supp. 2d at 371 (holding that a 4.65 lodestar multiplier is modest, fair, and reasonable); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (listing nationwide class action settlements where the lodestar multiplier ranged up to 8.5).

requested fee as the parties intended a lodestar multiplier of no more than 3.5 and this intended multiplier is lower than that in similarly complex class action cases.

II. CLASS COUNSEL'S EXPENSES ARE REASONABLE

"An attorney who has created a common fund . . . is entitled to reimbursement of reasonable litigation expenses from that fund." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 12 cv 1609, 2015 WL 965696 at *11 (W.D. La. March 3, 2015); *see also In re Arakis Energy Corp. Sec. Litig.*, No. 95 CV 3431(ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). As detailed in the accompanying declarations, Plaintiffs' Counsel incurred $1,611,459.28 in expenses prosecuting this case through February 28, 2018. *See* Joint Decl. ¶¶ 108-15. However, as Class Counsel advised in the Court-approved notice sent to settlement Class members, they seek no more than $1.6 million. *See* ECF No. 384-1 at 18.

These costs and expenses were "incidental and necessary to the representation of the [C]lass," and should be reimbursed. *See Beckman*, 293 F.R.D. at 482. The majority of the expenses incurred related to expert work, settlement mediation, discovery costs, and travel expenses relating to Class Counsel's investigations and for the meetings and mediations that resulted in settlement. Thus, there is "no reason to depart from the common practice in this circuit of granting expense requests." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 (E.D.N.Y. 2003) (granting $18.7 million expense request for "experts and consultants, . . . document imaging and copying, deposition costs, online legal research, and travel expenses").

CONCLUSION

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

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LOWEY DANNENBERG, P.C.

By: */s/ Vincent Briganti*
Vincent Briganti
Geoffrey M. Horn
Peter D. St. Phillip
44 South Broadway, Ste. 1100
White Plains, New York 10601
Tel.: 914-997-0500
Fax: 914- 997-0035
vbriganti@lowey.com
ghorn@lowey.com
pstphillip@lowey.com

LOVELL STEWART HALEBIAN JACOBSON LLP

By: */s/ Christopher Lovell*
Christopher Lovell
Gary S. Jacobson
Ian T. Stoll
61 Broadway, Suite 501
New York, NY 10006
Tel.: 212-608-1900
Fax: 212-719-4677
clovell@lshllp.com
gsjacobson@lshllp.com
istoll@lshllp.com

Class Counsel

Joseph J. Tabacco, Jr.
Todd A. Seaver
BERMAN TABACCO
44 Montgomery Street, Ste. 650
San Francisco, CA 94104
Tel.: 415-433-3200
Fax: 415-433-6282

Patrick T. Egan
BERMAN TABACCO
One Liberty Square
Boston, MA 02109
Tele.: 617-542-8300
Fax: 617-542-1194

Brian P. Murray
Lee Albert (pro hac vice to be filed)

GLANCY PRONGAY & MURRAY LLP
122 East 42nd Street, Suite 2920
New York, NY 10168
Tel.: 212-682-5340
Fax: 212-884-0988

David E. Kovel
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
Tel.: 212-371-6600
Fax: 212-751-2540

Additional Counsel for Plaintiffs