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

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| 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,<br><br>Plaintiffs,<br><br>- against -<br><br>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,<br><br>Defendants. | Docket No. 13-cv-02811 (PKC)<br><br>ECF Case |

**JOINT DECLARATION OF VINCENT BRIGANTI AND CHRISTOPHER LOVELL**

Vincent Briganti and Christopher Lovell, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. We, Vincent Briganti and Christopher Lovell, are members of the Bar of this Court and, respectively, are a shareholder with the law firm Lowey Dannenberg, P.C. ("Lowey") and a partner with the law firm Lovell Stewart Halebian Jacobson LLP ("Lovell" and with Lowey, "Class Counsel"). Class Counsel represent Plaintiffs the California State Teachers' Retirement System ("CalSTRS"), Stephen Sullivan, White Oak Fund LP, Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., and FrontPoint Australian Opportunities Trust and are the court-appointed Class Counsel of the Settlement Class in the above-captioned action ("Action"). We have personal knowledge of the matters set forth herein involving our respective firms, based on our active supervision of and participation in the prosecution and settlement of the claims asserted in this Action.

2. We submit this Joint Declaration in support of Plaintiffs' Motion for Final Approval of the Class Action Settlements ("Settlements") with Defendants Barclays plc, Barclays Bank plc, and Barclays Capital Inc., (collectively, "Barclays"), Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, "Deutsche Bank"), and HSBC Holdings plc and HSBC Bank plc (collectively, "HSBC" and together with Barclays and Deutsche Bank, "Settling Defendants") and Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses from the common fund created by those Settlements.

**Case Investigation, Initial Pleading and Motion to Transfer**

3. In June 2012, reports emerged that Barclays had entered into settlements with the U.S. Department of Justice ("DOJ"), U.S. Commodity Futures and Trading Commission ("CFTC") and U.K. Financial Services Authority ("FSA"),[1] paying more than $450 million relating to its

[1] On April 1, 2013, the Financial Conduct Authority ("FCA") took over the regulatory functions of the FSA.

unlawful conduct in, among others, the Euribor-based derivatives market. The Antitrust Division of the DOJ, pursuant to Antitrust Criminal Penalty Enhancement and Reform Act (Pub. L. No. 108-237, tit. II, 118 State. 661, 665, extended by Pub. L. No. 111-190, 124 Stat. 1275) ("ACPERA"), granted Barclays conditional leniency for alleged anticompetitive conduct relating to Euribor and Euribor-based derivatives. In the wake of the settlements, Barclays' chairman and chief executive resigned and at least 13 employees were disciplined.

4. During Spring 2012, Lowey began to investigate this case. Lowey also engaged European-based investigators to develop facts regarding the nature and scope of Euribor manipulation.

5. Lowey conferred with its clients, performed additional research on the market for Euribor-based derivatives, and assembled a team to work on an initial complaint.

6. Based on its continuing investigation, Lowey filed an initial Class Action Complaint ("CAC") on February 12, 2013 in the United States District Court for the Northern District of Illinois on behalf of Plaintiff Stephen Sullivan and a proposed class comprised of all other U.S. investors who purchased or sold relevant instruments during the period of at least June 1, 2005, through at least June 30, 2010. *See* ECF No. 1. The CAC alleged violations of the Sherman Antitrust Act, 15 U.S.C. § 1, and common law by Barclays, UBS, RBS and unknown Euribor contributor banks, interdealer brokers and other co-conspirators referenced in the Barclays, UBS and RBS settlements with government regulators.

7. At the time of that filing, there were substantial risks that there was no antitrust injury and no private antitrust claim for manipulation of a benchmark interest rate. Shortly after this filing, the first Court to rule on this issue granted multiple motions to dismiss antitrust claims in three different cases. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 720 (S.D.N.Y. 2013) ("*LIBOR I*"). The Court held that there was no antitrust injury and no private

antitrust claim in the context of a benchmark interest rate manipulation because there was no harm to competition. *Id.*

8. Also at the time of the original filings of this Action, there were substantial risks that U.S. courts lacked personal jurisdiction over foreign Defendants for their manipulation of Euribor.

9. During March 2013, Lowey brought the Lovell firm into this case.

10. On April 1, 2013, Barclays, UBS and RBS filed a motion to transfer the case to the United States District Court for the Southern District of New York, arguing that the action had no meaningful connection to the Northern District of Illinois and asserting that the Southern District of New York had become the center of benchmark interest rate-related litigation in the United States. ECF Nos. 32-34. Lowey and Lovell opposed the transfer motion, arguing the Northern District of Illinois had a substantial connection to the litigation because it is the locus of commodity futures trading, and that it was an appropriate forum to hear this litigation. ECF Nos. 41-42.

11. On April 5, 2013, the Honorable Milton I. Shadur ordered that the action be transferred to the U.S. District Court for the Southern District of New York ("S.D.N.Y."). ECF No. 44. On April 25, 2013, the action was transferred to the S.D.N.Y. and assigned to the Honorable P. Kevin Castel. ECF No. 46.

12. Although public reports indicated that Barclays had received conditional leniency from the United States Department of Justice for alleged anticompetitive conduct relating to Euribor, there was no spate of class actions filed to join Lowey and Lovell in the prosecution of these claims. Indeed, contrary to the situation that frequently follows the filing of a solid antitrust claim, there were no new filings whatsoever.

13. We have reason to believe that this absence of filings was due to the high risks of prosecution of a private antitrust claim in the benchmark interest rate context (*see LIBOR I* in ¶ 7 above) and the personal jurisdiction risks mentioned above.

14. Thus, on July 3, 2013, Plaintiff Sullivan and Defendants Barclays, UBS and RBS jointly proposed a schedule for the amendment of the CAC and the deadline for Defendants to respond and/or move, which the Court "so ordered" on July 10, 2013. ECF No. 73.

**ACPERA and Plaintiffs' First Three Amended Complaints**

15. To receive the full benefits of conditional leniency under ACPERA, Barclays had (and has) an obligation to provide "a full account . . . of all facts known to [Barclays] that are potentially relevant to the civil action" alleging a Sherman Act § 1 violation based on the conduct covered by the leniency agreement. ACPERA also required Barclays to furnish "all documents or other items potentially relevant to the civil action that are in [Barclays'] possession, custody or control" and use "its best efforts to secure and facilitate from cooperating individuals covered by the agreement the cooperation" described above. P.L. 108-237, § 213(b), 118 Stat. 665, 667 (2004). Under ACPERA, the DOJ may seek a stay or protective order in a civil action to prevent a leniency applicant from providing cooperation if such disclosure would impair or impede a DOJ investigation. P.L. 108-237, § 214, 118 Stat 665, 667 (2004).

16. Soon after filing the CAC, Class Counsel engaged in early and regular communications with Barclays about providing cooperation materials pursuant to ACPERA. While Barclays was interested in cooperating, it initially resisted because it questioned whether cooperation was appropriate at that stage of the litigation. Class Counsel negotiated with Barclays for months to support their contention that cooperation was appropriate. By late October 2013, Class Counsel and Barclays had reached an agreement to cooperate. But the DOJ held the view that any cooperation should be deferred to avoid interference with the DOJ's ongoing investigations. *See* ECF No. 74. Class Counsel conferred regularly with both Barclays' counsel and the DOJ on the scope of Barclays' cooperation, which was initially limited.

17. While negotiating for cooperation with Barclays, Class Counsel pressed on with their

investigation as to other banks and institutions involved in the alleged conspiracy to manipulate Euribor and Euribor Products.

18. Class Counsel continued to work with experts to perform a variety of pattern analyses of Euribor submissions, investigate the Euribor-based derivatives market, and uncover evidence in support of the claims. This work produced numerous insights into potential dates of manipulation and potential manipulators.

19. Class Counsel analyzed additional information obtained from government reports or settlements including government settlements with Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A., now known as Coöperatieve Rabobank, U.A. ("Rabobank") arising out of benchmark interest rate misconduct including making false Euribor submissions to benefit Rabobank's Euribor-based derivatives positions. We continued to develop indications of manipulation and collusion. The statement of facts accompanying the Rabobank settlements also indicated that unidentified banks colluded with Rabobank to manipulate Euribor. Following announcement of the settlement, Rabobank's CEO resigned.

20. Public reports provided Class Counsel additional information as to the identity of the banks conspiring with Barclays, UBS, RBS and Rabobank to manipulate Euribor and the prices of Euribor-based derivatives. Several banks, including HSBC, Deutsche Bank, Société Générale, Crédit Agricole S.A. and Crédit Agricole CIB were reportedly under investigation for, among other conduct, manipulating Euribor. News of potential settlements by Deutsche Bank and other banks seeking to resolve these inquiries also circulated. Employees for Deutsche Bank, HSBC, Crédit Agricole, Barclays and Rabobank were reported to have been disciplined or fired for participation in the scheme to manipulate Euribor. The names of specific individuals fired or disciplined, including Deutsche Bank trader Christian Bittar, HSBC trader Didier Sander and Crédit Agricole's Michael Zrihen, were matched to the individuals whose identities were obscured in government settlements.

21. As a result of Class Counsel's continuing investigation as well as additional reports of governmental investigations of other banks for Euribor manipulations, Plaintiffs filed on November 2, 2013 an Amended Class Action Complaint ("ACA") on behalf of Sullivan and White Oak Fund, LP, newly-added as a named plaintiff. The ACA added several defendants, including Deutsche Bank AG, HSBC, Société Générale, Crédit Agricole CIB, and Rabobank, and claims for violations of the Commodity Exchange Act, 7 U.S.C. § 1 *et seq*. ECF No. 75. Plaintiffs also disclosed that Barclays had agreed to provide cooperation in connection with Plaintiffs' prosecution of the Action. *Id.* ¶ 5. Of the newly-added defendants, only Rabobank had settled with government regulators when Class Counsel filed the ACA.

22. On December 4, 2013, less than one month after the ACA was filed, the European Commission ("EC") announced fines against Barclays, Deutsche Bank, Société Générale, and RBS for participating in a "cartel" to manipulate Euribor and Euribor-based derivatives. The EC also announced that it opened investigations against JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, "JPMorgan"), Crédit Agricole, and HSBC for allegedly participating in the same conspiracy. Until this announcement, JPMorgan had not been identified as a bank potentially manipulating Euribor.

23. On March 28, 2014, the second decision in this District concerning antitrust injury and a private antitrust claim in the context of a benchmark interest rate manipulation was released. *Laydon v. Mizuho Bank, Ltd.*, No. 12-CV-3419 GBD, 2014 WL 1280464, at *7 (S.D.N.Y. Mar. 28, 2014) ("*Laydon*") (granting such a motion to dismiss). Once again, the holding was that there was no antitrust injury and no private antitrust claim. *Id.*

24. Class Counsel continued to confer with Barclays regarding ACPERA cooperation. We worked with our experts to develop econometric analyses of the Euribor conspiracy's impact on prices for Euribor-based derivatives. Based on the additional information and analyses, on May 2,

2014, Class Counsel filed a Second Amended Class Action Complaint ("SAC"). ECF No. 109.[2] The SAC incorporated the findings of the EC and other public reports, and added JPMorgan, Crédit Agricole S.A., Citigroup Inc. and Citibank, N.A. (collectively, "Citi") as Defendants. The SAC added a claim for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* It also expanded the allegations linking Defendants' conduct to the Euribor-based derivatives trades by Plaintiffs.

25. Soon after the SAC was filed, Barclays advised Class Counsel that it would shortly be in a position to provide full cooperation pursuant to its ACPERA obligations. *See* ECF No. 127. In June 2014, Plaintiffs sought and were granted leave to file a third amended complaint on or before July 31, 2014, intending to incorporate the information provided by Barclays. ECF No. 129.

26. However, on July 29, 2014, Barclays informed Class Counsel that the DOJ declined Barclays' request for permission to provide a full and complete proffer to Plaintiffs.

27. Plaintiffs sought additional time to file their amended complaint. ECF No. 130. On July 30, 2014, this Court granted Plaintiffs' request and set the new deadline for September 9, 2014. ECF No. 133.

28. In August 2014, the DOJ filed under seal a motion to intervene and for a limited stay of discovery in the case, including any cooperation to be provided by Barclays. On September 11, 2014, the Court granted the DOJ's motion staying of discovery until May 12, 2015. ECF No. 136. The Court also allowed Plaintiffs to file a third amended complaint no later than October 3, 2014 and to seek leave to file a fourth amended complaint after the discovery stay was lifted. *Id.*

29. In September 2014, CalSTRS engaged Class Counsel. CalSTRS negotiated a graduated fee schedule to govern contingency payments to Class Counsel and other Plaintiffs'

[2] A corrected version of the SAC was filed on May 5, 2014. ECF No. 113.

counsel from any common fund settlements. Berman Tabacco (formerly Berman DeValerio) was counsel for CalSTRS and then joined the case as counsel prosecuting the case.

30. On October 3, 2014, Lowey and Lovell filed the Third Amended Class Action Complaint ("TAC") which added named Plaintiffs CalSTRS, Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P. and FrontPoint Australian Opportunities Trust. ECF No. 139. The TAC also included a new claim for breach of the implied covenant of good faith and fair dealing against Plaintiffs' direct counterparties: UBS, Barclays, Citibank, Deutsche Bank, HSBC, JPMorgan, RBS and Société Générale.

31. During and after the formal stay of discovery requested by the DOJ, Class Counsel continued to work with their experts, conducted research into new developments relating to the Action, and performed other investigation. Class Counsel analyzed Federal Reserve Bank reports and compiled over-the-counter ("OTC") and exchange traded data for Euro foreign exchange and interest rate derivatives. Class Counsel engaged an expert to dissect the derivatives data for the purposes of assessing potential class-wide damages and market artificiality, and to develop economic models of such effects. This work involved, for example, collecting and normalizing data collected from the Class Period; constructing tables of contract expirations; creating regression models and moving averages for Euribor data; and calculating fair value difference.

32. Class Counsel also worked with Europe-based investigators to gather information on regulatory investigations, particularly those involving Deutsche Bank, and European court proceedings of individuals charged with manipulating Euribor and other rates. As they became available, Class Counsel obtained and translated findings from regulators and other court orders related to the conduct at issue in this Action.

33. Class Counsel sent a select group of attorneys to London, alternating through one attorney each week, to monitor the criminal trials of individuals charged with manipulating

benchmark rates for previously-undisclosed information and evidence directly relating to the alleged Euribor manipulation. The attorneys that monitored the trials sent daily reports detailing relevant testimony and evidence that could impact this Action, negotiations with Defendants, our ongoing investigations, or other matters. From these trials, Class Counsel learned many details. These details included facts relating to the structure of the OTC derivatives market, the role interdealer brokers played in manipulating benchmarks, and other traders potentially involved in manipulating Euribor.

34. Class Counsel analyzed various U.S. indictments of individuals and banks alleged to have manipulated Euribor and other rates, and compiled and organized instant messages relating to Euribor manipulation. Class Counsel also explored opportunities to interview individuals with information that may be relevant to understanding the Euribor manipulation.

35. Using the information they learned, Class Counsel developed questions for Barclays and targeted document requests to pursue once ACPERA cooperation was permitted. In addition, Class Counsel constructed exposure estimates based on the list of known days on which Barclays engaged in manipulation.

36. Class Counsel engaged in ongoing legal research, keeping informed of legal developments in cases that could potentially impact this action, and refined their understanding of the case based on the new information obtained.

**Barclays' Settlement and Plaintiffs' Fourth Amended Complaint**

37. Class Counsel continued to meet and confer with Barclays after filing the TAC. Both Plaintiffs and Barclays stated an interest in attempting to settle the claims against Barclays. But Class Counsel expressed concern about proceeding with settlement discussions without access to ACPERA cooperation materials.

38. On May 12, 2015, the Government notified the Court that it no longer objected to ACPERA cooperation proceeding in this case. ECF No. 154. The Court immediately modified the

stay to permit document discovery. ECF No. 155.

39. Upon the modification of the stay, Class Counsel immediately contacted Barclays to determine a schedule by which cooperation would be provided under ACPERA, beginning with substantial proffers about Barclays' Euribor-related conduct and the banks described in Barclays' regulatory settlements. The parties also agreed on rolling productions of Barclays' documents, prioritized to provide information that would allow Class Counsel to assess damages and make an informed settlement demand. Over several days, Barclays disclosed important details about Euribor manipulation, including dates, tenors and Barclays' co-conspirators for each instance of manipulation.

40. Plaintiffs and Barclays agreed to use respected mediator Kenneth R. Feinberg to facilitate settlement discussions. In preparation, Class Counsel spent weeks analyzing Barclays' information and working with several economists. The mediation was an intensive process that occurred over three full days. The first day (May 27, 2015) was devoted to presentations regarding the merits (and defenses) of the case. Next, on June 23, 2015, the experts for each side made economic presentations, including calculations of potential damages caused by the Euribor manipulation. Class Counsel's experts attended this mediation on Plaintiffs' behalf, and worked extensively with Class Counsel to prepare questions for Barclays' experts. The third and final day of mediation (June 25, 2015) was spent trying to reach agreement on the possible financial terms of a settlement. However, the parties reached an impasse and the mediation ended on June 25, 2015.

41. While the mediation occurred, Plaintiffs sought leave to further amend the complaint to incorporate Barclays' information and information recently disclosed in regulatory settlements involving Deutsche Bank AG and a subsidiary, DB Group Services (UK) Ltd. *See* ECF No. 160.

42. On June 19, 2015, the Court granted Plaintiffs leave to further amend their complaint by August 11, 2015. ECF No. 161.

43. Thereafter, Mr. Feinberg continued to work with Class Counsel and Barclays to bridge the significant differences relating to settlement. During numerous telephone calls during the two weeks following the end of the mediation, Mr. Feinberg emphasized the substantial risks faced by each side if the litigation went forward. While negotiations were still in progress, Barclays began producing documents to Plaintiffs pursuant to their ACPERA obligations. Barclays' initial production included more than 3,700 pages of liability related documents.

44. As a result of the efforts of the mediator, Barclays and Class Counsel agreed upon the financial terms for a settlement and engaged in direct negotiations with one another to negotiate the other settlement terms and binding memorandum of understanding ("MOU"). Also during July 2015, Class Counsel analyzed the documents produced by Barclays, drafted allegations for a Fourth Amended Class Action Complaint ("FAC"), and performed additional investigation based on information revealed by Barclays' cooperation.

45. Meanwhile, after some initial calls, Class Counsel had separately reached out to Deutsche Bank's counsel concerning settlement. We met in person with Deutsche Bank's counsel during July 2015. Class Counsel presented to Deutsche Bank's counsel their view of the strengths and weaknesses of the litigation as well as Deutsche Bank's litigation exposure. But no negotiations occurred. And no further discussions occurred for more than one year.

46. On August 5, 2015, Barclays filed a proposed order negotiated with Lowey and Lovell to protect the confidentiality of the cooperation materials provided (ECF No. 166), which the Court "so ordered" on August 12, 2015. ECF No. 173.

47. In a letter dated August 10, 2015, Plaintiffs sought leave to file under seal the fourth amended complaint, based on a request from the DOJ. ECF No. 168.

48. Class Counsel and counsel for Barclays had been negotiating since July on an MOU, and the parties executed a final MOU on August 11, 2015.

49. In response to Plaintiffs' request to file the Fourth Amended Complaint under seal, the Court adjourned the date to file the fourth amended complaint from August 11 to August 13, 2015. ECF No. 170. On August 11, 2015, the Court ordered that the Department of Justice show cause in writing as to why the unredacted pleadings ought not to be filed in the public record. ECF No. 172. On August 14, 2015, the DOJ reported that it took no position on whether the Fourth Amended Complaint should be filed under seal. ECF No. 177.

50. Plaintiffs filed the FAC which reflected Barclays' initial ACPERA production, on August 13, 2015. The FAC added BNP Paribas S.A., DB Group Services (UK) Ltd., ICAP plc, and ICAP Europe Limited as Defendants, set forth additional allegations against Defendants and added three additional antitrust claims. ECF No. 174.[3] The FAC totaled 205 pages, with an additional 1,125 pages of exhibits.

51. After two more months of hard-fought negotiation with Barclays, a final settlement agreement was executed on October 7, 2015.

52. Over the course of the mediation sessions and prior to settlement, Class Counsel were well informed regarding the strengths and weaknesses of Plaintiffs' claims against Barclays and the risks and benefits of continued prosecution. Plaintiffs had the benefit of Class Counsel's extensive factual and legal research regarding the best possible claims, Barclays' proffers, government orders revealing various facts, and economic analyses.

53. Class Counsel successfully moved for preliminary approval of the Barclays Settlement, obtaining an order from this Court on December 15, 2015. ECF No. 234.

54. To date, Class Counsel have received and reviewed more than 18 productions containing 741,000 pages of documents, 10,000 audio files (reflecting hundreds of hours of

[3] On September 24, 2015, Plaintiffs filed notice of voluntary dismissal of Defendant BNP Paribas S.A. without prejudice. ECF No. 185.

discussions), and data concerning thousands of transactions. Some of the produced documents were in a foreign language and were translated by attorneys with the requisite language skills or by a vendor subject to the appropriate protective order.

**Motion to Dismiss FAC, HSBC and Deutsche Bank Settlements, and Proposed Fifth Amended Complaint**

55. On October 14, 2015, Defendants moved to dismiss Plaintiffs' Fourth Amended Complaint under FED. R. CIV. P. 12(b)(1), (b)(2), and (b)(6), filing two separate Memoranda of Law totaling 55 pages, four exhibits, and twelve declarations challenging Plaintiffs' claims under FED. R. CIV. P. 12(b)(1) and (b)(6), and the Court's personal jurisdiction over Defendants Crédit Agricole S.A., Crédit Agricole CIB, Deutsche Bank AG, DB Group Services (UK) Ltd., HSBC Holdings plc, HSBC Bank plc, ICAP plc, ICAP Europe Limited, Rabobank, RBS, Société Générale and UBS AG. ECF. Nos. 197-214.

56. Defendants relied heavily on *LIBOR I* and *Laydon* 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. Defendants also challenged Plaintiffs' standing under Article III of the Constitution, the Commodity Exchange ("CEA"), and Sherman Act, arguing that Plaintiffs failed to plausibly allege that a manipulation of Euribor could have affected their trader financial instruments. Additionally, several self-styled "Foreign Defendants" argued that they could not be sued in the United States because the manipulation of Euribor occurred entirely abroad.

57. In the context of this pending motion to dismiss on personal jurisdiction and other grounds, Plaintiffs began in approximately October 2015 to negotiate with HSBC to settle the claims against it. After some initial phone calls, Class Counsel and HSBC met in person on October 21, 2015. During the October 21 meeting, Class Counsel described to HSBC's counsel and corporate representative the strengths and weaknesses of the litigation as well as HSBC's litigation exposure.

After counsel's respective presentations, the October 21 meeting proved to be the beginning of a process of negotiations between Plaintiffs and HSBC.

58. On December 4, 2015, Class Counsel opposed all the Defendants' motions to dismiss. Class Counsel filed two separate briefs and a declaration attaching sixteen exhibits, including ISDA Master Agreements entered by Defendants, economic reports from the Federal Reserve Bank of New York, and transcripts from the ongoing DOJ criminal trial of several Rabobank traders for manipulating LIBOR, that supported rejecting Defendants' personal jurisdiction defense. ECF No. 228-30.

59. Defendants filed their reply memoranda and additional declarations on December 23, 2015. ECF No. 236-40.

60. Meanwhile, during late 2015 and continuing until April 2016, Class Counsel and Counsel for HSBC had numerous settlement calls and negotiations. Finally, they reached an impasse. To try to resolve the impasse, they agreed to mediation.

61. On May 2, 2016, Class Counsel and CalSTRS's general counsel participated in an all-day mediation session with HSBC's counsel and corporate representative, conducted by Gary McGowan, at HSBC's counsel's New York office. CalSTRS' general counsel, Brian Bartow, Esq., traveled from California to attend the mediation and delivered a statement on behalf of the Class.

62. Both Plaintiffs and HSBC presented their views on the merits and dimensions of the case. Negotiations occurred all day long. Finally, an impasse was reached. But Mr. McGowan then made a mediator's proposal to bridge the differences between the parties. This proposal, for a settlement of $45 million, had been accepted by both Plaintiffs and HSBC by May 3. On May 4, 2016, counsel for HSBC and Class Counsel completed and signed a MOU.

63. The HSBC Settlement was reached in the context of HSBC's pending motion to dismiss on personal jurisdiction and other grounds. Thereafter, Class Counsel and HSBC's counsel

continued to negotiate a Settlement Agreement which included a right on behalf of Plaintiffs to rescind the Settlement if HSBC's discovery materials did not support HSBC's representations about its limited involvement in the alleged manipulation.

64. Prior to executing the MOU (and, later, the HSBC Settlement Agreement), Class Counsel were well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses asserted therein. In addition to benefiting from the government settlements, expert analysis and their own investigation, Class Counsel had the benefit of Barclays' ACPERA cooperation material prior to negotiating the agreement with HSBC. Further, the HSBC Settlement Agreement was contingent on Plaintiffs' verifying HSBC's representation through confirmatory discovery, further protecting Plaintiffs and the Class.

65. Many of the documents relevant to the Euribor manipulation were kept in France by a local HSBC affiliate and were arguably subject to French data privacy law. Class Counsel spent several weeks negotiating with HSBC regarding how these documents would be produced. 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. After careful analysis and based on 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 Evidence Convention") to allow HSBC and its affiliates to comply with foreign data privacy laws. Plaintiffs and HSBC spent several weeks negotiating the scope of the motion and authorizing documents required to use The Hague Evidence Convention.

66. Also during 2016-early 2017, after the motions to dismiss had been fully briefed, Class Counsel drafted or responded to 14 separate supplemental authority letters reflecting 66 pages of analysis on decisions relevant to both jurisdictional and merits issues of this case. ECF Nos. 244, 245, 249, 251-54, 257, 259-60, 263-64, 270, 273. A number of courts issued decisions relating to

issues raised in the motion. In June 2016, the U.S. Supreme Court decided *RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090 (2016). The Second Circuit decided *Brown v. Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016) in February 2016, *Gelboim v. Bank of America Corp.*, 823 F.3d 759 (2d Cir. 2016) in May 2016, and *Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016) in August 2016. In March, April and December 2016, courts in this District issued decisions in *Alaska Electrical Pension Fund, et al., v. Bank of America Corp.*, 175 F. Supp. 3d 44 (S.D.N.Y. 2016), *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, no. 13-cv-7789 (LGS), 2016 WL 1268267 (S.D.N.Y. Mar. 31, 2016), and *In re LIBOR-Based Financial Instruments Antitrust Litig.*, No. 11-md-2262 (NRB), 2016 WL 1558504 (S.D.N.Y. Apr. 15, 2016) and 2016 WL 7378980 (S.D.N.Y. Dec. 20, 2016).

67. In the context of Deutsche Bank's pending motion to dismiss on personal jurisdiction and other grounds, as well as the numerous pertinent decisions,[4] Deutsche Bank's counsel, on August 30, 2016, called Lowey to resume settlement negotiations. Numerous phone calls and in-person meetings followed. But by mid-December 2016, the parties had reached an impasse.

68. During this time, Class Counsel continued to negotiate with counsel for Defendant HSBC. We executed a final settlement agreement with HSBC's counsel on December 27, 2016. Plaintiffs then moved for preliminary approval of the HSBC settlement. ECF No. 274. Again, Class Counsel were well informed of the risks and benefits of continued prosecution of the claims against HSBC. On January 18, 2017, the Court filed an order granting preliminary approval of the HSBC Settlement Agreement. ECF No. 279.

69. Also during December 2016, Class Counsel was promptly seeking to resolve the impasse in the settlement negotiations between Plaintiffs and Deutsche Bank. Class Counsel and

[4] In *Gelboim v. Bank of America Corp.*, 823 F.3d 759 (2d Cir. 2016), the Court of Appeals had reversed *LIBOR I* and, in effect, overruled *Laydon*, to the effect that there is no harm to competition and antitrust injury in the context of a benchmark interest rate manipulation.

Deutsche Bank's counsel succeeded in obtaining an early mediation date of January 9, 2017 before the Honorable Daniel Weinstein (Ret.).

70. The parties promptly prepared the appropriate documents to inform the mediators of the pertinent facts. The parties negotiated, with the aid of the mediator, all day long and into the evening on January 9, 2017. But the parties finally reached an impasse. Judge Weinstein then presented a mediator's proposal of $170 million with specific cooperation terms. The parties accepted.

71. Class Counsel and Deutsche Bank's counsel then worked diligently to execute a settlement term sheet by January 24, 2017. The Court was informed of Plaintiffs' settlement with Deutsche Bank. Class Counsel and Deutsche Bank executed the settlement agreement on May 10, 2017.

72. The Deutsche Bank settlement was reached in the context of Deutsche Bank's pending motion to dismiss on personal jurisdiction grounds. Class Counsel were well informed of the strengths and weaknesses of the claims against Deutsche Bank and the resulting risks of continued prosecution against Deutsche Bank. In reaching the settlement, Class Counsel benefited from their own investigation, Barclays' ACPERA cooperation materials, the government settlements, and extensive other investigation.

73. On February 21, 2017, the Court granted the motion to dismiss all foreign Defendants who had not settled. They were Rabobank, Crédit Agricole S.A., Crédit Agricole CIB, ICAP plc, ICAP Europe Limited, RBS, Société Générale, and UBS AG, leaving Citi and JPMorgan in the case. ECF No. 286 (the "February 21 Order").

74. Because Deutsche Bank and HSBC had agreed to settle, the Court did not address their personal jurisdiction motions. *Id.*

75. The Court sustained CalSTRS's and FrontPoint Australian Opportunity Trust's Sherman Act claim for restraint of trade against all Defendants, Plaintiffs' claims against UBS and Rabobank for violations to the CEA and certain of CalSTRS's and FrontPoint Australian Opportunity Trust's state law claims. *Id.* The Court dismissed certain other claims, including Plaintiffs' RICO claims. *Id.*

76. On March 3, 2017, Plaintiffs submitted a letter to the Court requesting leave to file a motion to amend the complaint. ECF No. 290. On March 7, 2017, the Court granted leave to file a motion to amend the complaint by March 15, 2017. ECF No. 294. After receiving a short extension, Plaintiffs filed their motion for leave to amend their complaint on March 17, 2017. ECF Nos. 298-301. The Proposed Fifth Amended Class Complaint ("PFAC") included a substantial amount of new facts regarding Defendants' Euribor-based derivatives sales and marketing activities in the United States, along with details regarding the terms of their ISDA Master Agreements with Plaintiffs and relationship between those agreements and Plaintiffs' Euribor-based derivatives transactions. Defendants filed their opposition to the motion on March 31, 2017. ECF Nos. 308-11. Plaintiffs filed their reply memorandum on April 7, 2017, which included a declaration from CalSTRS. ECF Nos. 333-34. On April 17, 2017, the Court denied Plaintiffs' motion to amend their complaint. ECF No. 340.

77. On March 7, 2017, Citi and JPMorgan had filed a motion for clarification and/or reconsideration of the February 21 Order. ECF Nos. 291-92. Plaintiffs filed their opposition on March 21, 2017. ECF No. 302. Citi and JPMorgan filed their reply memorandum on March 28, 2017. ECF No. 303. On April 17, 2017, the Court issued an order granting Citi and JPMorgan's motion for clarification, dismissing Plaintiffs' antitrust, unjust enrichment, and breach of the covenant of good faith and fair dealing claims relating to exchange-traded futures contracts. ECF No. 339.

78. Meanwhile, on March 10, 2017, Plaintiffs informed the Court that HSBC agreed to produce certain French-originated documents that were in the possession of HSBC France SA and requested leave to file a Joint Motion of Issuance of a Request for International Judicial Assistance, Appointment of Commissioner and Direction of Submission of Hague Convention Application ("Hague Motion"). ECF No. 295.

79. On April 4, 2017, Plaintiffs filed Hague Motion. ECF No. 314.

80. On April 7, 2017, this Court issued an order granting The Hague Motion ("Hague Order"). ECF No. 331. Class Counsel, at its own expense, hired a commissioner based in France to facilitate the document production in compliance with The Hague Order and, at HSBC's request, obtained a certified translation of the order for submission to the relevant French authority. After the certified translations were completed and the original documents sent to the commissioner, the request for assistance was filed with the French authorities on May 2, 2017. French authorities approved the request on May 12, 2017. Class Counsel coordinated with HSBC and the commissioner to receive rolling productions of documents.

81. HSBC produced data and documents from HSBC France via the commissioner on a rolling basis through September 2017. Some of the produced documents were in a foreign language and were translated by attorneys with the requisite language skills.

82. Plaintiff also obtained relevant data and documents from HSBC and other affiliates via, for example Rule 45 subpoenas to non-party HSBC affiliates.

83. The HSBC Settlement Agreement provided that Plaintiffs could terminate the agreement within 90 days after receiving all relevant cooperation materials if Plaintiffs found that the cooperation materials did not support HSBC's representations during the settlement process concerning HSBC's involvement in manipulating Euribor and Euribor Products. *See* ECF No. 276-1 ¶ 28. Upon receiving the documents from HSBC and its affiliates, Class Counsel and their experts

analyzed the information to determine whether it aligned with HSBC's representations. Class Counsel also compared the discovery provided by HSBC to other discovery and cooperation materials received to verify the accuracy of HSBC's representation. After their review, Class Counsel determined that there was insufficient evidence to suggest inaccuracies in HSBC's representations, and Plaintiffs chose to maintain the agreement.

84. In total so far, HSBC produced more than 79,000 pages of documents, 13,000 audio files (totaling seven gigabytes and reflecting approximately 125 hours of conversations), and data reflecting millions of Euribor-based money market and derivatives transactions.

85. On June 12, 2017, Plaintiffs had moved for preliminary approval of the Deutsche Bank Settlement. ECF No. 358 On July 5, 2017, the Court preliminary approved the Deutsche Bank Settlement and scheduled a hearing for final approval of the Settlements for May 18, 2018. ECF No. 364.

86. The Deutsche Bank Settlement Agreement provides for the production of cooperation materials. To date, Class Counsel have received over 253,000 pages of documents and 100 audio files from Deutsche Bank. Some of the produced documents were in a foreign language and were translated by attorneys with the requisite language skills or by a vendor subject to the appropriate protective order. Class Counsel expect to receive some additional cooperation materials from Deutsche Bank.

87. At no time was there any collusion or bad faith. The three Settlement Agreements were the result of arm's length negotiations that took place over several months of separate and individual negotiations with each of the Settling Defendants. We were personally involved in the settlement negotiations and were well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims against the Settling Defendants.

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

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

89. After analyzing the Barclays AG Settlement, and investigating the consideration to be paid out, Class Counsel determined as follows. The settlement threatened the rights of many Class Members to participate in the $94 million Barclays Settlement in this action, but likely did not provide separate compensation relating to their Euribor losses. For many months, Class Counsel negotiated with Barclays and the New York Attorney General's office over the scope of the release to protect Class Members potentially impacted by the Barclays AG Settlement.

90. Eventually, Class Counsel successfully obtained relief from the Barclays AG Settlement. Additional notice to the Class was provided. More important, the release provision was amended to permit Class Members to participate in this settlement and also participate in the Barclays AG Settlement.

91. When Deutsche Bank entered into a similar agreement with state attorneys general, the attorneys general carved out from the release of claims against Deutsche Bank, the claims in this Action. Thus, again, Class Counsel ensured the ability of Class Members to participate both in the Deutsche Bank settlement now before the Court as well as the attorneys general settlement.

**Discovery Efforts**

92. On April 10, 2017, the Court issued a Scheduling Order addressing the timing of discovery and other events in the Action. ECF No. 337. Since then, CalSTRS and FrontPoint Australian Opportunity Trust negotiated a protective order with Citi and JPMorgan to facilitate the production of documents. ECF No. 363. CalSTRS and FrontPoint Australian Opportunity Trust have served document requests and interrogatories and, to date, Plaintiffs have received 14 gigabytes of data, including 100,000 pages of documents, from Citi and JPMorgan. Plaintiffs continue to meet and confer with Citi and JPMorgan concerning the production of documents. Additionally, CalSTRS and FrontPoint Australian Opportunity Trust have responded to Citi and JPMorgan's document requests and interrogatories and continue to produce responsive documents.

93. Since first obtaining discovery materials, Class Counsel have devoted, and continue to devote substantial resources to reviewing thousands of documents and data received from Settling Defendants, Citi and JPMorgan. To maximize efficiency and cut costs for the Class, Lowey leveraged 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 one million pages (290,000 documents) and over 24,000 audio files (hundreds of hours of conversations) produced by Settling Defendants, Citi and JPMorgan using key custodians, keywords and other factors gleaned from five years of litigation.

94. For example, Lowey used a layering technique to prioritize audio for review. Lowey targeted phone calls between co-conspirators around dates where other communications indicated manipulation before broadening the search to dates where econometric evidence indicated misconduct.

95. Lovell employed technology 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. Through these tools and targeted or document by document review, 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.

96. Class Counsel had to quickly identify and interpret trader jargon used in phone calls from persons speaking various languages and with unfamiliar accents. As foreign language documents and audios were identified, these documents were coded and assigned to attorneys with the requisite language skills to determine whether such documents had any relevance. These attorneys would review and if appropriate provide written translations of documents to Class Counsel with summaries describing the document's potential significance. To the extent a particular language skill was not available among attorneys, a vendor would be used to translate the documents. In either case, the translations took significant time and resources, but were an essential step to fully understanding the nature of interactions described in documents produced to Class Counsel.

97. As authorities in the United Kingdom began to try individuals who allegedly manipulated benchmark rates such as Euribor, Class Counsel realized that substantial information would be made public that could pertain to some of the conduct and actors at issue in this Action.

98. Lowey sent attorneys to the U.K. trials for approximately five months, through December 2015. *See supra* ¶ 33.

99. During approximately the same time, Class Counsel also monitored U.S. trials and proceedings involving individuals alleged to have manipulated benchmark rates for information

concerning co-conspirators, methods and effects on the Euribor market. Class Counsel have continued to review the transcripts of relevant trials and other proceedings in the United States and the United Kingdom as events warranted.

100. Class Counsel also issued subpoenas to third parties such as the Chicago Mercantile Exchange ("CME") to identify individuals and entities that may have been harmed by Euribor manipulation. The contact information received was provided to the Settlement Administrator to facilitate the widest distribution of the Class Notice as possible.

**Counsel's Work to Develop a Plan of Distribution**

101. The Barclays, HSBC, and Deutsche Bank settlements collectively established a common fund of $309 million, providing monetary compensation for the Class's otherwise uncompensated injuries. The Settlements provided the transaction data, communications, and multiple other types of documents that have greatly assisted (and will continue to greatly assist) Class Counsel in prosecuting the case and developing a plan of allocation.

102. Using these documents as well as other documents produced in this case, Class Counsel developed a database of Defendants' questionable conduct. Working with economic and industry experts, Class Counsel analyzed or caused to be analyzed the pertinent data, evidence, and other issues.

103. Based on this work and all the circumstances, Class Counsel determined that the Plan of Distribution should provide 90% of the Net Settlement Fund to compensate Authorized Claimants who suffered adverse impact to their qualifying transaction caused by Defendants' manipulation of Euribor and Euribor Products. The remaining 10% of the Net Settlement Fund will be distributed to Authorized Claimants based on an adjusted volume of specific transactions.

104. Also in connection with the plan of distribution, Class Counsel retained Kenneth R. 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 certain types of Euribor-based derivatives, including over-the-counter ("OTC") Euribor-based derivatives transactions directly with Defendants (represented by Berman Tabacco), futures transactions in Euribor Product (represented by Kirby McInerney), and OTC Euribor-based derivatives transactions with non-Defendants (represented by Caffery Clobes Meriwether & Sprengel). The allocation mediation occurred over a full day, with allocation counsel vigorously arguing on behalf of their respective interests for or against legal discounts to be applied and navigating the various issues involved in fairly allocating settlement proceeds. At the end of the mediation session, allocation counsel agreed unanimously on the legal discounts to be applied, and Mr. Feinberg agreed that the legal discounts were fair, reasonable and adequate.

105. On January 8, 2018, Plaintiffs filed a motion for preliminary approval of the plan distribution for use in the settlements with Defendants Barclays, HSBC, and Deutsche Bank. ECF No. 381-83. The Court preliminarily approved the Plan of Distribution on February 16, 2018. ECF No. 392. The plan was posted on the Settlement Website on or about February 16, 2018. After more information is received, the Settlement Website will be updated.

**Objections and Requests for Exclusions**

106. To date, Class Counsel have received no objections to the Settlements and three potential Settlement Class Members have excluded themselves from the Settlement. The Settlement Administrator will notify the Court of the total number of exclusions in accordance with the schedule set by the Court.

**Requested Attorneys' Fees and Expenses Awards**

107. Accompanying Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses are declarations from Plaintiffs' Counsel in support of the request for

an award of attorneys' fees and reimbursement of costs and expenses incurred in this action. Each declaration includes a schedule that summarizes the hours and lodestar of the firm, as well as the firm's costs and expenses by category. Lodestar calculations are based on the firm's current hourly rates, and as each declaration states, were prepared based upon daily time records maintained by attorneys and professional support staff at the firm. Lodestar figures do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount the firm paid the respective vendor.

108. From the spring of 2012 through February 28, 2018, Lowey's total compensable time for which it seeks an award of attorneys' fees is 46,053.70 hours. The lodestar value of these professional services is $24,602,578.75. Lowey incurred costs and expenses totaling $766,031.42. *See* Declaration of Geoffrey M. Horn.

109. From the initiation of this Action through February 28, 2018, Lovell's total compensable time for which it seeks an award of attorneys' fees is 54,178.08 hours. The lodestar value of these professional services is $22,227,129.25. Lovell incurred costs and expenses totaling $802,762.34. *See* Declaration of Christopher M. McGrath.

110. We understand from the declaration of Todd A. Seaver that Berman Tabacco expended 5,433.65 hours from the initiation of this Action through February 28, 2018 on work assigned by Class Counsel, totaling $2,455,815.25 in fees, and incurred $33,494.62 in expenses related to this Action.

111. We understand from the declaration of David E. Kovel that Kirby McInerney LLP expended 1,357.00 hours from the initiation of this Action through February 28, 2018 on work assigned by Class Counsel, totaling $824,612.50 in fees, and incurred $2,001.50 in expenses related to this Action.

112. We understand from the declaration of Brian P. Murray that Glancy Prongay & Murray LLP expended 337.85 hours from the initiation of this Action through February 28, 2018 on work assigned by Class Counsel, totaling $157,417.50 in fees, and incurred $4,473.23 in expenses related to this Action.

113. We understand from the declaration of Jennifer W. Sprengel that Cafferty Clobes Meriwether & Sprengel LLP expended 137.7 hours from the initiation of this Action through February 28, 2018 on work assigned by Class Counsel, totaling $101,767.50 in fees, and incurred $2,325.71 in expenses related to this Action.

114. We understand from the declaration of Linda Nussbaum that Nussbaum Law Group, P.C. expended 281.0 hours from the initiation of this Action through February 28, 2018 on work assigned by Class Counsel, totaling $108,476.50 in fees, and incurred $370.46 in expenses related to this Action.

115. In total, Plaintiffs' Counsel have, as of February 28, 2018, expended 107,778.98 hours, the equivalent of $50,477,797.25 in pursuing this action. Plaintiffs' Counsel's reimbursable costs and expenses total $1,611,459.28.

116. Again, Class Counsel had negotiated a fee schedule in the event of a common fund settlement with CalSTRS. We determined to observe that agreement. As a result, in the Class Notice, Class Counsel advised that they would seek attorneys' fees no greater than 23% of the common fund created by the Settlements and reimbursement of no more than $1.6 million for costs and expenses. *See* ECF No. 384-1, Ex. A at 8.

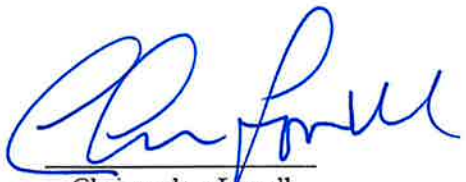
117. Class Counsel now respectfully request that attorneys' fees in the amount of 22.24% of the common fund created by the Settlements be awarded. This is $68.71 million. This 22.24% percentage effectuates the negotiated fee schedule which Plaintiffs reached with CalSTRS. *See supra* ¶ 29.

118. Based on the representation made in the Class Notice, Class Counsel request reimbursement of only $1.6 million of their costs and expenses.

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

Dated: March 23, 2018

Vincent Briganti



Christopher Lovell