

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 DOES NOS. 1-50,

Defendants.

Docket No.  
13-cv-02811 (PKC)

**SETTLEMENT AGREEMENT  
BETWEEN PLAINTIFFS AND THE BARCLAYS DEFENDANTS**

This Settlement Agreement is made and entered into this 7th day of October, 2015, by and between Barclays plc, Barclays Bank plc and Barclays Capital Inc. (collectively, “Barclays”) and named Plaintiffs 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 (collectively, “Plaintiffs”), for themselves and on behalf of each Settlement Class Member<sup>1</sup> in *Sullivan v. Barclays PLC*, No. 13-cv-02811. This Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, on February 12, 2013, Plaintiffs filed a putative class action complaint against Barclays and other defendants arising out of alleged manipulation of Euribor in the United States District Court for the Northern District of Illinois. On April 25, 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.”). On April 29, 2013, the action was transferred to the S.D.N.Y. and assigned to the Honorable P. Kevin Castel;

WHEREAS, on August 13, 2015, Plaintiffs filed their fourth amended class action complaint (“Fourth Amended Class Action Complaint”), asserting ten claims against Barclays and ten other banks and an interdealer broker: (i) a conspiracy to restrain competition in and to fix the prices of Euribor-based derivatives in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; (ii) bid rigging in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; (iii) concerted refusal to deal in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1; (iv) the manipulation of Euribor and the prices of Euribor-based derivatives, in violation of the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1, *et seq.*; (v) vicarious liability for manipulation of Euribor and prices of Euribor-based derivatives, in violation of Section 2(a)(1) of the CEA, 7 U.S.C. § 2(a)(1); (vi) aiding and abetting the manipulation of Euribor and the prices of Euribor-based derivatives, in violation of Section 22(a)(1) of the CEA, 7 U.S.C. § 25(a)(1); (vii) racketeering by engaging in wire fraud to transmit false Euribor submissions, in violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961, *et seq.*; (viii) conspiracy to violate RICO, in violation of 18 U.S.C. § 1962(d); (ix) unjust enrichment; and (x) breach of the implied covenant of good faith and fair dealing. Plaintiffs further contend that they suffered monetary damages as a result of Barclays’ conduct;

WHEREAS, Plaintiffs, for themselves and on behalf of each Settlement Class Member, and Barclays agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission or evidence of: (i) any violation of any statute or law, (ii) any liability or wrongdoing by Barclays, or (iii) the truth of any of the claims or allegations alleged in the Action;

WHEREAS, pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act (“ACPERA”), and to the extent permitted by relevant authorities, Barclays has actively cooperated with Plaintiffs since the inception of this Action by providing valuable information about the Euribor-related conduct;

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<sup>1</sup> All capitalized terms shall have the meaning set forth herein.

WHEREAS, Barclays agrees to continue its cooperation with Plaintiffs' Counsel and Plaintiffs as set forth in this Agreement;

WHEREAS, arm's length settlement negotiations have taken place, through counsel, between Barclays and Plaintiffs, including in mediation sessions before Mediator Kenneth R. Feinberg, and this Agreement embodies all of the terms and conditions of the Settlement between Barclays and Plaintiffs, both individually and on behalf of each Class Member;

WHEREAS, Plaintiffs' Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (i) it is in the best interests of the Settlement Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Settlement Class, and (ii) the Settlement set forth herein is fair, reasonable and adequate, and in the best interests of Settlement Class Members; and

WHEREAS, Barclays has agreed to enter into this Agreement to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation, and in furtherance of Barclays' DOJ Immunity agreement and ACPERA, and thereby to resolve this controversy and avoid the risks inherent in complex litigation;

NOW, THEREFORE, IT IS HEREBY AGREED by and among Plaintiffs (for themselves and each Settlement Class Member) and Barclays, by and through their respective counsel or attorneys of record, that, subject to the approval of the Court, the Action as against Barclays shall be finally and fully settled and releases extended, as set forth below:

#### **A. DEFINITIONS**

1. As used in this Agreement the following capitalized terms have the meanings specified below.

1.1. "Action" means *Sullivan, et al. v. Barclays PLC, et al.*, No. 13-cv-02811, currently pending in the S.D.N.Y.

1.2. "Agreement" means this Settlement Agreement.

1.3. "Authorized Claimant" means any Class Member who, in accordance with the terms of this Agreement, is entitled to a distribution from the Net Settlement Fund pursuant to any Distribution Plan or order of the Court.

1.4. "Barclays" means Barclays plc, Barclays Bank plc and/or Barclays Capital Inc.

1.5. "CFTC Order" means the settlement reached between Barclays and the U.S. Commodity Futures Trading Commission ("CFTC"), which is memorialized in a Settlement Order Agreement with the CFTC, dated June 27, 2012.

1.6. “Claims Administrator” means the Notice and/or Claims Administrator(s) to be approved by the Court.

1.7. “Class” or “Settlement Class” shall have the meaning set forth in ¶ 4.

1.8. “Class Member” or “Settlement Class Member” means a Person who is a member of the Settlement Class and has not timely and validly excluded itself from the Settlement Class in accordance with the procedure to be established by the Court.

1.9. “Court” means the U.S. District Court for the Southern District of New York, also referred to herein as the S.D.N.Y.

1.10. “Defendants” means 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 Does Nos. 1-50.

1.11. “Distribution Plan” means any plan or formula of allocation of the Settlement Fund, to be approved by the Court, whereby the Net Settlement Fund shall in the future be distributed to Authorized Claimants.

1.12. “DOJ Immunity” means the conditional immunity that Barclays obtained from the United States Department of Justice Antitrust Division (“DOJ Antitrust”) with respect to certain Euribor-related conduct.

1.13. “EC Immunity” means immunity under the European Commission’s 2006 Leniency Notice that Barclays obtained with respect to certain Euribor-related conduct.

1.14. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 33, have occurred.

1.15. “Escrow Agent” means the entity jointly designated by Plaintiffs’ Counsel and Barclays, and any successor agent, to maintain the Settlement Fund.

1.16. “Euribor” means the Euro Interbank Offered Rate.

1.17. “Euribor Products” means any and all interest rate swaps, forward rate agreements, futures, options, structured products, and any other instrument or transaction related in any way to Euribor, including but not limited to, NYSE LIFFE Euribor futures contracts and options, CME Euro currency futures contracts and options, Euro currency forward agreements, Euribor-based swaps, Euribor-based forward rate agreements and/or any other financial instruments that reference Euribor.

1.18. “Execution Date” means the date on which this Agreement is executed by the last party to do so.

1.19. “Final” means, with respect to any court order, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. An order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this ¶ 1.19, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or other proceeding pertaining solely to any order adopting or approving the Distribution Plan, and/or any order issued in respect of an application for attorneys’ fees and expenses pursuant to ¶ 29, shall not in any way delay or prevent the Judgment from becoming Final.

1.20. “Final Approval Order” means the Court’s approval of the Settlement following preliminary approval thereof, notice to the Class and a hearing on the fairness of the Settlement.

1.21. “FSA Settlement” means the settlement reached between Barclays and the U.K. Financial Services Authority (the “FSA”), which is memorialized in a Final Notice by the FSA, dated June 27, 2012.

1.22. “Incentive Award” means any award by the Court to Plaintiffs as described in ¶¶ 16, 29.

1.23. “Interim Lead Counsel” means Lowey Dannenberg Cohen & Hart, P.C., and Lovell Stewart Halebian & Jacobson LLP.

1.24. “Judgment” means the order of judgment and dismissal of the Action with prejudice as to Barclays, the form of which shall be mutually agreed upon by the Settling Parties and submitted to the Court for approval thereof.

1.25. “Mediator” means Kenneth R. Feinberg or, if he is unable or unwilling to serve in that capacity, an alternate neutral mediator jointly selected in good faith by Plaintiffs’ Counsel and Barclays’ Counsel.

1.26. “Net Settlement Fund” means the Settlement Fund less the payments set forth in ¶¶ 18.1 to 18.7.

1.27. “Notice” means the form of notice of the proposed Settlement to be provided to Class Members as provided in this Agreement and the Preliminary Approval Order

1.28. “NPA” means the settlement reached between Barclays and the U.S. Department of Justice Fraud Division (“DOJ Fraud,” and together with DOJ Antitrust, the “DOJ”), which is memorialized in a Non-Prosecution Agreement, addendum and amendment, dated June 26, 2012, September 28, 2012 and June 17, 2014.

1.29. “Person(s)” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, municipality, state, state agency, any entity that is a creature of any state, any government or any political subdivision, authority, office, bureau or agency of any government, and any business or legal entity, and any spouses, heirs, predecessors, successors, representatives or assignees of any of the foregoing.

1.30. “Plaintiffs” means 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.

1.31. “Plaintiffs’ Counsel” means (i) Interim Lead Counsel and (ii) any other attorney or law firm that represents Plaintiffs and seeks to receive any portion of the attorneys’ fees that may be awarded by the Court in connection with this Settlement.

1.32. “Proof of Claim and Release” means the form to be sent to Class Members, upon further order(s) of the Court, by which any Class Member may make a claim against the Net Settlement Fund.

1.33. “Released Claims” means all claims, rights, demands, suits, matters, issues or causes of action that were asserted in the Action by the Plaintiffs, or that have arisen, could have arisen, arise now or relate in any manner to the subject matter of the claims that were asserted by the Plaintiffs in the Action relating to Euribor or Euribor Products, and expressly includes (a) any such claims based upon, arising out of or relating to the acts, facts or events described in or underlying the FSA Settlement, the NPA, the CFTC Order, the DOJ Immunity and/or the EC Immunity; and (b) any such claims arising out of or relating to the Action. The following claims shall not be released by this Settlement: (i) any claims against former Barclays employees arising from those former employees’ conduct that occurred while not employed by Barclays or not otherwise acting within the scope of employment or agency of Barclays; (ii) any claims against the named Defendants in this Action other than Barclays; or (iii) any claims against inter-dealer brokers or their employees or agents when and to the extent they were engaged as employees or agents of the other Defendants or inter-dealer brokers.

1.34. “Releasees” means Barclays, its predecessors, successors and assigns, its direct and indirect parents, subsidiaries and affiliates, and its respective current and former officers, directors, employees, managers, members, partners, agents (in their capacity as agents of Barclays), shareholders (in their capacity as shareholders of Barclays), attorneys, or legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. “Affiliates” in this provision means entities controlling, controlled by, or under common control with a Releasee.

1.35. “Releasers” means Plaintiffs and each and every Settlement Class Member on their own behalf and on behalf of their respective predecessors, successors and

assigns, direct and indirect parents, subsidiaries and affiliates, their current and former officers, directors, employees, agents, fiduciaries, beneficiaries or legal representatives, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, and any other Person legally entitled to bring Released Claims on their behalf or by reason of their relationship to any of the foregoing Persons. With respect to any Settlement Class Member that is a government entity, Releasor includes any Settlement Class Member as to which the government entity has the legal right to release such claims. As used in this provision, “affiliates” means entities controlling, controlled by, or under common control with a Releasor.

1.36. “Settlement” means the settlement of the Released Claims set forth herein.

1.37. “Settlement Amount” means ninety-four million dollars (\$94,000,000.00) of which one million dollars (\$1,000,000.00) will be a non-refundable payment for the costs of notice, claims administration and other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement.

1.38. “Settlement Fund” means the Settlement Amount plus any interest that may accrue.

1.39. “Settling Party” means Barclays or any Plaintiff (for itself and on behalf of each Settlement Class Member).

## **B. PRELIMINARY APPROVAL ORDER, NOTICE ORDER AND SETTLEMENT HEARING**

2. **Reasonable Best Efforts to Effectuate this Settlement.** The Settling Parties agree to cooperate with one another to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Agreement.

3. **Motions for Preliminary Approval and Stay.** Within forty-five (45) calendar days after the Execution Date, Plaintiffs’ Counsel shall submit this Agreement to the Court and shall file a motion for entry of an order (the “Preliminary Approval Order”) requesting, *inter alia*, preliminary approval of the Settlement, including certification of the Class for purposes of the Settlement only. The motion shall include a proposed order preliminarily approving the Settlement substantially in a form agreed to by the Settling Parties. In addition, Plaintiffs’ Counsel shall file a motion to stay all proceedings in the Action against Barclays until the Court renders a final decision on approval of the Settlement. Such a motion shall be filed immediately upon execution of this Agreement.

4. **Stipulation to Certification of a Settlement Class.** The Settling Parties hereby stipulate for purposes of the Settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied and, subject to Court approval, the following Class shall be certified:

All persons who purchased, sold, held, traded or otherwise had any interest in Euribor Products from June 1, 2005 through and

including March 31, 2011, who were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted Euribor Products in the United States or its territories from June 1, 2005 through and including March 31, 2011, including, but not limited to, all persons who traded CME Euro currency futures contracts, all persons who transacted in NYSE LIFFE Euribor futures and options from a location within the United States, and all persons who traded any other Euribor Product from a location within the United States; provided that, if Plaintiffs expand the Class in any subsequent amended complaint, class motion, or settlement, the defined class period in this agreement shall be expanded so as to be coterminous with such expansion.

If the Settlement as described herein is finally disapproved by any court, is terminated as provided herein or is reversed or vacated following any appeal taken therefrom, then this stipulation for the purposes of Settlement that the above Class should be certified becomes null and void, and Barclays reserves all rights to contest that the Action should be certified as a class action.

5. **Notice to Class.** In the event that the Court preliminarily approves the Settlement, Plaintiffs' Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Preliminary Approval Order, provide Class Members whose identities can be determined after reasonable efforts with notice of the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed Settlement ("Settlement Hearing"). The Notice may be sent solely for this Settlement or combined with notice of other settlements or of any litigation class. The Notice shall also explain the general terms of the Settlement set forth in this Agreement, the general terms of the proposed Distribution Plan, the general terms of the Fee and Expense Application (as defined in ¶ 29), and a description of Class Members' rights to object to the Settlement, request exclusion from the Class, and appear at the Settlement Hearing. The text of the Notice shall be agreed upon by Plaintiffs' Counsel and Barclays before its submission to the Court for approval thereof.

6. **Publication.** Plaintiffs' Counsel shall cause to be published a summary ("Summary Notice") in accord with the Notice submitted to the Court by Plaintiffs' Counsel and approved by the Court. Barclays shall have no responsibility for providing publication or distribution of the Settlement or any notice of the Settlement to Class Members or for paying for the cost of providing notice of this Settlement to Class Members. The Settling Parties shall mutually agree on any content relating to Barclays that will be used by Plaintiffs' Counsel and/or the Claims Administrator in any Settlement-related press release or other media publications, including on websites.

7. **Motion for Final Approval and Entry of Final Judgment.** Thirty (30) days prior to the date of the Settlement Hearing set by the Court in the Preliminary Approval Order, to the extent permitted by the Court, Plaintiffs' Counsel shall make a motion to the Court for the final approval of the Settlement, and the Settling Parties shall jointly seek entry of the Final Approval Order and Judgment on substantially the following terms:



7.1. Fully and finally approving the Settlement contemplated by this Agreement as fair, reasonable and adequate within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms and conditions;

7.2. Finding that the Notice constituted the best notice practicable under the circumstances and complied in all respects with the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process;

7.3. Directing that the Action be dismissed with prejudice as to Barclays and, except as provided for herein, without costs;

7.4. Discharging and releasing the Released Claims as to the Releasees;

7.5. Permanently barring and enjoining the institution and prosecution by Plaintiffs and any Settlement Class Member of any lawsuit, arbitration or other proceeding against the Releasees in any jurisdiction asserting any of the Released Claims;

7.6. Reserving the Court's continuing and exclusive jurisdiction over the Settlement, including all future proceedings concerning the administration and enforcement of this Agreement;

7.7. Determining pursuant to Rule 54(b) of the Federal Rules of Civil Procedure that there is no just reason for delay and directing entry of a Final Judgment as to Barclays; and

7.8. Containing such other and further provisions consistent with the terms of this Agreement to which the Settling Parties expressly consent in writing.

8. Sufficiently before the Settlement Hearing, Plaintiffs' Counsel will timely request that the Court approve the Fee and Expense Application (as defined in ¶ 29). As set forth in ¶ 30, a Fee and Expense Application and the Distribution Plan are matters separate and apart from the Settlement between the Settling Parties.

### **C. SETTLEMENT FUND**

9. **Payments made by Barclays.** Barclays shall pay by wire transfer \$94,000,000 into the Settlement Fund within fifteen (15) business days after the Execution Date. All interest earned by any portion of the Settlement Amount paid into the Settlement Fund shall be added to and become part of the Settlement Fund. Except as provided in ¶ 36, the Settlement Amount shall not be subject to reduction, and, upon the occurrence of the Effective Date, no funds may be returned to Barclays through reversion or other means. The Escrow Agent shall only act in accordance with instructions mutually agreed upon by the Settling Parties in writing.

10. **Disbursements Prior to Effective Date.** No amount may be disbursed from the Settlement Fund unless and until the Effective Date, except that, upon written notice to the Escrow Agent by Plaintiffs' Counsel with a copy to Barclays: (a) reasonable costs of the Notice

(“Notice and Administrative Costs”) may be paid from the Settlement Fund as they become due; (b) Taxes and Tax Expenses may be paid from the Settlement Fund as they become due; and (c) reasonable costs of the Escrow Agent (“Escrow Agent Costs”) may be paid from the Settlement Fund as they become due; and (d) any attorneys’ fees and expenses awarded by the Court, as set forth in ¶ 29, shall be payable from to the Settlement Fund upon award, to the extent permitted pursuant to ¶ 30. Plaintiffs’ Counsel will attempt in good faith to minimize the amount of Notice and Administrative Costs to the extent consistent with providing reasonable notice to Class Members and/or acting in accordance with Court orders.

11. **Refund by Escrow Agent.** If Plaintiffs do not file a motion for final approval of the Settlement at least thirty (30) calendar days prior to the Settlement Hearing date set by the Court in the Preliminary Approval Order, or on such other date as ordered by the Court, or the Settlement is finally disapproved by any court or is terminated as provided herein, or the Judgment is overturned on appeal or by writ, the Settlement Fund, including all interest earned on such amount while held in the escrow account, and excluding any amounts for any proper, already disbursed Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs or costs of other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement, will be refunded, reimbursed and repaid by the Escrow Agent to Barclays within ten (10) business days after receiving notice. To the extent that the one million dollar (\$1,000,000) non-refundable payment, as set forth in ¶ 1.37, has not been exhausted on already disbursed Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs or costs of other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement at the time of any refund, any amounts remaining of that non-refundable payment shall be distributed as set forth in ¶ 19.

12. **No Additional Payments by Barclays.** Under no circumstances will Barclays be required to pay more than the Settlement Amount. For purposes of clarification, and as provided in ¶ 18, the payment of any Fee and Expense Award (as defined in ¶ 29), Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs, and any other costs associated with the implementation of this Agreement, shall be paid exclusively from the Settlement Fund. This Settlement is not a claims-made settlement and, if all conditions of the Settlement are satisfied, the Judgment is entered and becomes Final, no portion of the Settlement Fund will be returned to Barclays, irrespective of the number of claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants.

13. **Taxes.** The Settling Parties and the Escrow Agent agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. The Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 13, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver timely and properly the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

13.1. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the

Escrow Agent. The Escrow Agent shall satisfy the administrative requirements imposed by Treas. Reg. § 1.468B-2 by, *e.g.*, (a) obtaining a taxpayer identification number, (b) satisfying any information reporting or withholding requirements imposed on distributions from the Settlement Fund, and (c) timely and properly filing applicable federal, state and local tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)) and paying any taxes reported thereon. Such returns (as well as the election described in this ¶ 13) shall be consistent with this ¶ 13 and in all events shall reflect that all Taxes as defined in ¶ 13.2, on the income earned by the Settlement Fund shall be paid from the Settlement Fund as provided in ¶ 18.

13.2. All (a) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including, without limitation, any taxes or tax detriments that may be imposed upon Barclays or its counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (collectively, “Taxes”), and (b) expenses and costs incurred in connection with the operation and implementation of this ¶ 13, including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 13 (collectively, “Tax Expenses”), shall be paid from the Settlement Fund; in all events, Barclays and its counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. With funds from the Settlement Fund, the Escrow Agent shall indemnify and hold harmless Barclays and its counsel for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall timely be paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(I)(2)); neither Barclays nor its counsel is responsible therefor, nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 13.

14. **Plaintiffs’ Release and Covenant Not to Sue.** Upon the Effective Date, and in exchange for the receipt of the Settlement Amount provided for herein, the receipt and sufficiency of which is hereby acknowledged, the Releasers, and any other Person claiming against the Settlement Fund (now or in the future) through or on behalf of any Releasor, shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged Releasees from any and all Released Claims, and shall be permanently barred and enjoined from instituting, commencing or prosecuting any such Released Claim in any lawsuit, arbitration or other proceeding against any Releasee in any court or venue in any jurisdiction worldwide. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release,

any distribution from the Settlement Fund or Net Settlement Fund. The releases set forth herein are given pursuant to New York law and are to be construed under New York law, including N.Y. General Obligations Law § 15-108, which bars claims for contribution by joint tortfeasors and other similar claims. This Agreement is expressly intended to absolve Releasees against any claims for contribution, indemnification or similar claims from other defendants in the Action, arising out of or related to the Released Claims, in the manner and to the fullest extent permitted under the law of New York or any other jurisdiction that might be construed or deemed to apply to any claims for contribution, indemnification or similar claims against any Releasee.

Notwithstanding the foregoing, should any court determine that any Defendant is/was legally entitled to any kind of contribution or indemnification from Barclays arising out of or related to Released Claims, the Releasers agree that any money judgment subsequently obtained by the Releasers against any Defendant shall be reduced to an amount such that, upon paying the entire amount, the Defendant would have no claim for contribution, indemnification or similar claims against Barclays. Except in the event of termination of this Settlement, the Settling Parties agree not to assert under Rule 11 of the Federal Rules of Civil Procedure or any similar law, rule or regulation, that the Action was brought or defended in bad faith or without a reasonable basis.

15. **Unknown Claims/California Civil Code Section 1542.** The release set forth in ¶ 14, above, constitutes a waiver of Section 1542 of the California Civil Code (to the extent it applies to the Action), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT  
TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR  
HER SETTLEMENT WITH THE DEBTOR.

The release set forth in ¶ 14, above, also constitutes a waiver of any and all provisions, rights, and benefits of any federal, state or foreign law, rule, regulation, or principle of law or equity that is similar, comparable, equivalent to, or which has the effect of, Section 1542 of the California Civil Code. The Releasers acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally, and forever all of the Released Claims, and in furtherance of such intention, the release shall be irrevocable and remain in effect notwithstanding the discovery or existence of any such additional or different facts. In entering and making this Agreement, the Releasers assume the risk of any mistake of fact or law, and the release shall be irrevocable and remain in effect notwithstanding any mistake of fact or law.

16. **Payment of Fees and Expenses.** Subject to Court approval, Plaintiffs and Plaintiffs' Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current or future litigation expenses, and any Incentive Award approved by the Court. Barclays shall have no responsibility for any costs, fees or expenses incurred for or by Plaintiffs' or Class Members' respective attorneys, experts, advisors, agents or representatives.

17. **Defendants' Release.** Upon the Effective Date of the Settlement, Barclays shall release and be deemed to release and forever discharge, and shall forever be enjoined from prosecuting any and all claims against Plaintiffs, the Settlement Class Members, and their counsel arising out of or relating to the institution, prosecution, and resolution of the Released Claims in the Action; provided, however, that this paragraph does not release or discharge any claim or right Barclays may have to enforce this Agreement, or any claim or right Barclays may have to enforce the terms of any Euribor Product that any Plaintiff or Class Member purchased from, sold to, or otherwise transacted with Barclays.

**D. ADMINISTRATION AND DISTRIBUTION OF SETTLEMENT FUND**

18. **Distribution of Settlement Fund.** The Claims Administrator, subject to such supervision and direction of the Court and/or Plaintiffs' Counsel as may be necessary or as circumstances may require, shall administer the claims submitted by Settlement Class Members and shall oversee the distribution of the Settlement Fund pursuant to the Distribution Plan. Subject to the terms of this Agreement and any order(s) of the Court, the Settlement Fund shall be applied as follows:

18.1. To pay Notice and Administrative Costs;

18.2. To pay Escrow Agent Costs;

18.3. To pay all costs and expenses reasonably and actually incurred in assisting Settlement Class Members with the filing and processing of claims against the Net Settlement Fund;

18.4. To pay the Taxes and Tax Expenses;

18.5. To pay any Fee and Expense Award;

18.6. To pay any Incentive Award; and

18.7. To distribute the Net Settlement Fund to Authorized Claimants as allowed by the Agreement, any Distribution Plan or order of the Court.

19. **Distribution of Net Settlement Fund.** Upon the Effective Date and thereafter, and in accordance with the terms of this Agreement, the Distribution Plan, or any order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:

19.1. Each Settlement Class Member who claims to be an Authorized Claimant shall be required to submit to the Claims Administrator a verified completed Proof of Claim and Release supported by such documents as specified in the Proof of Claim and Release and as are reasonably available to such Class Member;

19.2. Except as otherwise ordered by the Court, each Settlement Class Member who fails to submit a Proof of Claim and Release within such period as may be ordered by the Court, or otherwise allowed, shall be forever barred from receiving any payments

pursuant to this Agreement and the Settlement set forth herein, but shall in all other respects be subject to and bound by the provisions of this Agreement, the releases contained in this Agreement, and the Judgment;

19.3. The Net Settlement Fund shall be distributed to Authorized Claimants, and in no event shall there be any reversion to Barclays. The distribution to Authorized Claimants shall be substantially in accordance with the Distribution Plan to be approved by the Court upon such further notice to the Class as may be required. Any such Distribution Plan is not a part of this Agreement. No funds from the Net Settlement Fund shall be distributed to Authorized Claimants until the Effective Date; and

19.4. Each Class Member shall be subject to and bound by the provisions of this Agreement, the releases contained herein, and the Judgment, regardless of whether such Class Member seeks or obtains by any means, including, without limitation, by submitting a Proof of Claim and Release or any similar document, any distribution from the Net Settlement Fund.

**20. No Liability for Distribution of Settlement Funds.** The Releasees and their counsel shall have no responsibility for, interest in or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Distribution Plan, the determination, administration or calculation of claims, the payment or withholding of Taxes or Tax Expenses, the distribution of the Net Settlement Fund, or any losses incurred in connection with any such matters. Effective immediately upon the Execution Date, the Releasers hereby fully, finally and forever release, relinquish, and discharge the Releasees and their counsel from any and all such liability. No Person shall have any claim against Plaintiffs' Counsel or the Claims Administrator based on distributions made substantially in accordance with the Agreement and the Settlement contained herein, the Distribution Plan, or further orders of the Court.

**21. Balance Remaining in Net Settlement Fund.** If there is any balance remaining in the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise) following distribution pursuant to ¶ 19, or if the Effective Date does not occur and any portion of the one-million dollar (\$1,000,000.00) non-refundable payment, as set forth in ¶ 1.37, has not already been disbursed for Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs or costs of other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement, Plaintiffs' Counsel shall submit an additional distribution plan to the Court for approval. If any portion of the Net Settlement Fund remains following distribution pursuant to ¶ 19 and is of such an amount that in the discretion of the Claims Administrator it is not cost effective or efficient to redistribute to the Settlement Class, then such remaining funds, after payment of any further Notice and Administration Costs and Taxes and Tax Expenses and other costs and expenses related to the Action, shall be donated to a non-profit charitable organization recommended by Plaintiffs and approved by the Court.

#### **E. ACPERA COOPERATION**

**22. Stay of Discovery Except As Provided Herein.** The Settling Parties agree to a stay of all discovery as to Barclays, except as provided in ¶¶ 23 to 27. The stay will automatically be dissolved if (a) the Court does not enter the Preliminary Approval Order, the

Final Approval Order or the Judgment, or (b) the Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified or reversed, unless the Settling Parties, in their sole discretion within thirty (30) calendar days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Preliminary Approval Order, the Final Approval Order or the Judgment, as modified by the Court or on appeal.

23. **Barclays' Cooperation.** Barclays shall provide reasonable cooperation in the Action, including discovery cooperation, requested by Plaintiffs' Counsel and pursuant to ACPERA, to benefit the Settlement Class, as provided by ¶¶ 23 to 27 herein. All cooperation shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided.

23.1. Barclays' cooperation obligations shall apply only to Releasors who act with, by or through Plaintiffs' Counsel pursuant to this Agreement.

23.2. Notwithstanding any other provision in this Agreement, Barclays may assert where applicable the attorney work-product doctrine, the attorney-client privilege, the common interest doctrine, the joint defense privilege and/or any other applicable privilege or protection with respect to any documents, interviews, declarations, and/or affidavits, depositions, testimony, material, and/or information requested under this Agreement. Any documents, declarations, affidavits, deposition testimony and/or information provided to Plaintiffs' Counsel pursuant to this provision shall be covered by the protective orders in place in the Action. None of the cooperation provisions are intended to, nor do they, waive any such privileges or protections. Barclays agrees that its counsel will meet with Plaintiffs' Counsel as is reasonably necessary to discuss any applicable privilege or protection. Any disputes regarding privilege that cannot be resolved amongst the parties shall be reserved for resolution by the Court.

23.3. If any document protected by the attorney-client privilege, attorney work-product doctrine, the common interest doctrine, the joint defense privilege and/or any other applicable privilege or protection is accidentally or inadvertently produced, the document shall promptly be returned to Barclays' counsel, and its production shall in no way be construed to have waived any privilege or protection attached to such document or information.

23.4. Notwithstanding any other provision of this Agreement, in the event that Barclays believes that Plaintiffs' Counsel has unreasonably requested cooperation, its counsel and Plaintiffs' Counsel agree to meet and confer regarding such disagreement and seek resolution from the Court if necessary. If Court resolution is sought, the disputed aspect of cooperation shall be held in abeyance until such resolution by the Court, and such abeyance shall not constitute a breach of this Agreement.

23.5. Plaintiffs' Counsel agree to use any and all of the information and documents obtained from Barclays only for the purpose of the Action, and agree to be bound by the terms of the Stipulation and Protective Order Governing Materials

Produced by the Barclays Defendants and Addendum, which the Court has entered in the Action.

23.6. Plaintiffs' Counsel agree, unless ordered by a court or upon agreement by Barclays, that under no circumstances shall Plaintiffs' Counsel produce documents obtained from Barclays to any Person, including, without limitation, counsel for any other plaintiff in the Action or any Class Member who excludes itself from the Class for purposes of the Settlement.

24. **Document Production.** Barclays will provide cooperation to Plaintiffs by promptly producing, to the extent not previously produced and reasonably accessible, and on a rolling basis, the following categories of documents for the period June 1, 2005 through March 31, 2011, unless otherwise stated below, and for the benefit of the Plaintiffs and pursuant to ACPERA:

24.1. Communications between Barclays employees and employees of other financial institutions, including Euribor panel banks and inter-dealer brokers or other entities, concerning possible requests to or among other panel banks for Euribor submissions to be made at a certain level or in a certain direction, or requests to engage in other conduct to attempt to cause Euribor to be set at a certain level or to move in a certain direction;

24.2. Communications among Barclays employees concerning possible requests for Euribor submissions to be made at a certain level or in a certain direction, or requests to engage in other conduct to attempt to cause Euribor to be set at a certain level or to move in a certain direction;

24.3. Communications between Barclays employees and employees of other financial institutions, including Euribor panel banks and inter-dealer brokers, reflecting the exchange of information among competitors related to the quoting of Euribor-referenced derivatives transactions;

24.4. Communications relating to the determination of Euribor submissions by Barclays employees;

24.5. Barclays documents that reflect or refer to Barclays' Euribor-related conduct for relevant custodians that were produced to the DOJ, CFTC, FSA or European Commission in connection with Barclays' investigation of its Euribor-related conduct, but not documents created during the course of the investigation for the purpose of communicating, or cooperating, with these authorities;

24.6. Non-privileged declarations, affidavits, witness statements or other sworn or unsworn written statements of former and/or current Barclays directors, officers or employees concerning the allegations set forth in this Action with respect to Euribor to the extent such documents may be disclosed under applicable confidentiality or regulatory restrictions;



24.7. Trade data pertaining to Barclays' transactions in Euro-denominated money market instruments, including loans, deposits and certificates of deposit. Such trade data shall include reasonably available information for the years 2004 through 2011;

24.8. Trade data pertaining to Barclays' transactions in Euribor Products. Such trade data shall include reasonably available information for counterparties with which Barclays transacted for the years 2004 through 2011.

24.9. Documents quoted in Plaintiffs' Fourth Amended Class Action Complaint that are in Barclays' possession, custody or control;

24.10. Documents reflecting Barclays' submissions to the Federal Reserve Bank of New York and Bank of International Settlement relating to their surveys on turnover in foreign exchange and interest rate derivatives markets, to the extent permitted by relevant authorities and reasonably available, for the years 2004, 2007 and 2010;

24.11. Communications with the European Banking Federation ("EBF") regarding: (a) Euribor reporting rules or standards; (b) information reflecting Euribor-based derivatives volume or market share data by panel banks; and (c) meetings attended by Barclays with the EBF and any other Euribor panel banks; and

24.12. Such further documents which Plaintiffs may reasonably request that are relevant to the claims or defenses in this Action.

25. **Further Document Requests.** Pursuant to ¶ 24.712, Plaintiffs shall have the right to make requests to Barclays, without subpoena, for documents, including electronically stored information ("ESI"), relating to Euribor, and Barclays shall cooperate (by, among other ways, allowing Plaintiffs to provide search terms for electronic searches of specific Barclays custodians' files), and produce documents and ESI related to Euribor for the period June 1, 2005 through and including March 31, 2011. This provision shall be terminated if the Plaintiffs' claims against all other defendants have been dismissed in their entirety and the dismissal has been upheld after the exhaustion of all avenues of further review on appeal. If Barclays declines to produce documents in response to a request by Plaintiffs, Plaintiffs shall have the right to seek production of documents from Barclays by making a motion in the S.D.N.Y., unless Plaintiffs' claims against all other defendants have been dismissed in their entirety and the dismissal has been upheld after the exhaustion of all avenues of further review on appeal. Plaintiffs and Barclays agree that the standards for production set forth in Rule 34 of the Federal Rules of Civil Procedure and the terms of this Agreement shall apply to any request or motion made pursuant to ¶¶ 23 and 24. Plaintiffs are prohibited from making any requests to Barclays for documents pursuant to this ¶¶ 23 and 24 four (4) years after the Effective Date of the Settlement Agreement.

26. **Other Information.** Barclays will cooperate to provide information necessary for Plaintiffs to authenticate or otherwise make usable at trial the aforementioned documents or other documents as Plaintiffs may request pursuant to ¶¶ 23 and 24 of this Agreement. Barclays also will provide Plaintiffs with proffers of fact regarding conduct known to Barclays that is (a) the subject of DOJ Immunity or (b) related to Euribor and described in the FSA Settlement,

the NPA or the CFTC Order. Barclays also will provide Plaintiffs with a description of the data fields included in the trade data referenced in ¶¶ 24.7 to 24.8.

27. **Witnesses.** Barclays recognizes that provision of deposition and trial witnesses is an important part of the cooperation and consideration, and the witness testimony may be important in proving Plaintiffs' claims. Barclays shall cooperate to provide reasonable access to witnesses for purposes of the Action to the extent Barclays has control over those witnesses, and to the extent permitted by relevant authorities.

28. **ACPERA and Leniency.** Plaintiffs agree that, in the event any question arises as to whether Barclays' cooperation in the form detailed above is sufficient under the terms of ACPERA, Plaintiffs and Plaintiffs' Counsel will attest that cooperation in the form detailed above is sufficient under the terms of ACPERA. If Barclays complies with its obligations specified herein, and this Agreement is rescinded or rejected for any reason, then Plaintiffs and Plaintiffs' Counsel shall in no event claim or assert, in any manner, that Barclays' cooperation conduct up until the date of rescission or rejection was insufficient or untimely under the terms of ACPERA. Provided Barclays provides the cooperation set forth in ¶¶ 23 to 27, Plaintiffs, through Plaintiffs' Counsel, agree to assist Barclays to obtain final, unconditional acceptance into the United States Department of Justice Antitrust Division's leniency program.

#### **F. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

29. **Fee and Expense Application.** Barclays shall have no interest or right in or to any portion of the Settlement Fund based on any ruling that the Court makes on any application by Plaintiffs' Counsel for fees, costs or expenses. Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may, at their discretion and election, choose to submit an application or applications to the Court (collectively, "Fee and Expense Application") for distributions to them from the Settlement Fund for an award of attorneys' fees or reimbursement of expenses incurred in connection with prosecuting the Action. Plaintiffs may also make an application to the Court for an award in connection with their representation of the Settlement Class in this litigation, which amount constitutes an Incentive Award.

30. **Payment of Fee and Expense Award.** Upon the Court's approval of an award of attorneys' fees, costs and expenses, Interim Lead Counsel, on behalf of all Plaintiffs' Counsel, may immediately withdraw up to thirty percent (30%) of any such approved amount. The remainder may be withdrawn from the Settlement Fund only upon occurrence of the Effective Date. Any Plaintiffs' Counsel seeking to draw down their share of the attorneys' fees and expenses prior to the occurrence of the Effective Date unconditionally guarantee the repayment of the amount drawn down. If an event occurs that will cause Settlement Agreement not to become final pursuant to ¶ 36, or if Plaintiffs or Barclays terminates the Settlement Agreement pursuant to ¶ 37 or ¶ 38, then within ten (10) business days after receiving written notice of such an event from counsel for Barclays or from a court of appropriate jurisdiction, Plaintiffs' Counsel shall refund to the Settlement Fund any attorneys' fees, costs and expenses (not including any non-refundable expenses as described in ¶ 1.37) that were withdrawn plus interest thereon at the same rate at which interest is accruing for the Settlement Fund.

31. **Award of Fees and Expenses not Part of Settlement.** The Settling Parties have agreed that one million dollars (\$1,000,000) of the Settlement Amount shall be a non-refundable payment for the costs of notice, claims administration and other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement. The procedures for, and the allowance or disallowance by the Court of, any Fee and Expense Application are not otherwise part of the Settlement set forth in this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Agreement. Any order or proceeding relating to any Fee and Expense Application, or any appeal from any Fee and Expense Award or any other order relating thereto or reversal or modification thereof, including with respect to the non-refundable payment referenced in this paragraph, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the Judgment and the Settlement of the Action as set forth herein. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Fee and Expense Award or the Distribution Plan shall constitute grounds for termination of this Agreement.

32. **No Liability for Fees and Expenses of Plaintiffs' Counsel.** The Releasees shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Plaintiffs' Counsel for fees and expenses and/or to any other Person who may assert some claim thereto, or any Fee and Expense Award that the Court may make in the Action.

**G. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL OR TERMINATION**

33. **Effective Date.** The Effective Date of this Agreement shall be conditioned on the occurrence of all of the following events:

33.1. Barclays no longer has any right under the terms of this Agreement to terminate the Agreement or, if Barclays does have such right, it has given written notice to Plaintiffs' Counsel that it will not exercise such right;

33.2. The Court has entered the Final Approval Order and the Judgment; and

33.3. The Judgment has become Final.

34. **Occurrence of Effective Date.** Upon the occurrence of all of the events referenced in ¶ 33, above, any and all remaining interest or right of Barclays in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, and the Net Settlement Fund shall be transferred from the Escrow Agent to the Claims Administrator at the written direction of Plaintiffs' Counsel.

35. **Failure of Effective Date to Occur.** If all of the conditions specified in ¶ 33, above, are not satisfied, then this Agreement shall be terminated, subject to and in accordance with ¶ 39, unless the Settling Parties mutually agree in writing to continue with it for a specified period of time.

36. **Failure to Enter Proposed Preliminary Approval Order, Final Approval Order or Judgment.** If the Court does not enter the Preliminary Approval Order, the Final

Approval Order or the Judgment, or if this Court enters the Final Approval Order and the Judgment and appellate review is sought and, on such review, the Final Approval Order or the Judgment is finally vacated, modified or reversed, then this Agreement and the Settlement incorporated therein shall be terminated, unless all of the Settling Parties, in their sole discretion within thirty (30) days from the date of the mailing of such ruling to such Settling Parties provide written notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Preliminary Approval Order, the final Approval Order or the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Plaintiffs and the Class by Plaintiffs' Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein, provided, however, that no order of the Court concerning any Fee and Expense Application or the Distribution Plan, or any modification or reversal on appeal of such an order, shall constitute grounds for termination of this Agreement by any Settling Party. Without limiting the foregoing, Barclays shall have, in its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Action as to Barclays and a full discharge of the Released Claims as to Barclays.

**37. Termination by Barclays.** Upon application to the Mediator, Barclays may terminate this Agreement and withdraw from the settlement if the Mediator determines that all Persons that excluded themselves from the Settlement Class would likely have been eligible to receive collectively (but for their exclusion) a material part of the potential distributions from the Settlement Fund. Following the deadline approved by the Court for all Persons to exclude themselves from the Class, Plaintiffs' Counsel shall provide a list to Barclays of all Persons that have requested exclusion from the Class. Any application to terminate under this paragraph must be made by Barclays in writing within fifteen (15) days following the receipt by Barclays from Plaintiffs' Counsel of the list of all Persons that have requested to exclude themselves from the Class.

**38. Termination by Plaintiffs.** Interim Lead Counsel, acting on behalf of the Plaintiffs, shall have the right, but not the obligation, in their sole discretion, to terminate this Agreement if Barclays fails to comply with ¶ 9 and fails to cure such non-compliance within ten (10) business days after Interim Lead Counsel provides written notice to Barclays' counsel of such non-compliance. Any election to terminate this Agreement pursuant to this paragraph must be made by Interim Lead Counsel in writing to Barclays' counsel within fifteen (15) business days after Barclays fails to comply with ¶ 9 and the time to cure such non-compliance has passed.

**39. Effect of Termination.** Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Agreement should terminate or be cancelled, or otherwise fail to become effective for any reason, including, without limitation, in the event that Barclays exercises its right pursuant to ¶ 37, Plaintiffs exercise their rights pursuant to ¶ 38, or the Settlement as described herein is not finally approved by the Court or the Judgment is reversed or vacated following any appeal taken therefrom, or pursuant to ¶ 36, above, then:

39.1. Within ten (10) business days after written notification of such event is sent by counsel for Barclays or Plaintiffs' Counsel to the Escrow Agent, the Settlement Fund, including the Settlement Amount and all interest earned in the Settlement Fund and

all payments disbursed, including all expenses, costs, excluding any Notice and Administrative Costs that have either already been properly disbursed or are due and owing pursuant to ¶¶ 5 to 6, above, Taxes and Tax Expenses that have been properly paid or that have accrued and will be properly payable at some later date, and Escrow Agent Costs that have either already been properly disbursed or are due and owing, will be refunded, reimbursed and repaid by the Escrow Agent to Barclays. To the extent that the one million dollar (\$1,000,000) non-refundable payment, as set forth in ¶ 1.37, has not been exhausted on already disbursed Notice and Administrative Costs, Taxes and Tax Expenses, Escrow Agent Costs or costs of other steps taken pursuant to Court order in order to seek to obtain Court approval of the Settlement at the time of any refund, any amounts remaining of that non-refundable payment shall be distributed as set forth in ¶ 21;

39.2. The Escrow Agent or its designee shall apply for any tax refund owed to the Settlement Fund and pay the proceeds to Barclays, after deduction of any fees or expenses reasonably incurred in connection with such application(s) for refund;

39.3. The Settling Parties shall be restored to their respective positions in the Action as of the Execution Date, with all of their respective legal claims and defenses, preserved as they existed on that date;

39.4. The terms and provisions of this Agreement, with the exception of ¶¶ 11, 12, 33 to 41, and 44 to 45 (which shall continue in full force and effect), shall be null and void and shall have no further force or effect with respect to the Settling Parties, and neither the existence nor the terms of this Agreement (nor any negotiations preceding this Agreement nor any acts performed pursuant to, or in furtherance of, this Agreement) shall be used in the Action or in any other lawsuit, arbitration or other proceeding for any purpose (other than to enforce the terms remaining in effect); and

39.5. Any Judgment or order entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

## **H. NO ADMISSION OF LIABILITY**

40. **Final and Complete Resolution.** The Settling Parties intend the Settlement as described herein to be a final and complete resolution of all disputes between them with respect to the Action, and it shall not be deemed or construed as an admission by any Settling Party of anything, including, without limitation, the merit or lack of merit of any claim or defense, or an admission of liability by any Person, including, without limitation, Releasees.

41. **Use of Agreement as Evidence.** Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, of any allegation made in the Action, or of any wrongdoing or liability of Releasees; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault or omission of the Releasees in any civil, criminal, or administrative proceeding before any court, administrative agency, arbitration panel or other

tribunal. Nothing in this paragraph or Agreement shall exclude Plaintiffs from using any documents and testimony obtained in connection with ¶¶ 23 to 27, above, as necessary to continue to prosecute the Action. Neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Releasees may file this Agreement and/or the Judgment in any action for any purpose, including, but not limited to, DOJ Immunity, ACPERA or in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The limitations described in this ¶ 41 apply whether or not the Court enters the Preliminary Approval Order, the Final Approval Order or the Judgment.

## I. MISCELLANEOUS PROVISIONS

42. **Barclays' Right to Communicate.** Plaintiffs' Counsel acknowledges and agrees that Barclays has the right to communicate orally and in writing with, and to respond to inquiries from, Class Members, including (without limitation): (a) communications between Class Members and representatives of Barclays whose responsibilities include client relations to the extent such communications are initiated by Class Members; (b) communications between Class Members who are ongoing clients of Barclays or who seek to become clients of Barclays; and (c) communications that might be necessary to conduct Barclays' business.

43. **Voluntary Settlement.** The Settling Parties agree that the Settlement Amount and the other terms of the Settlement as described herein were negotiated in good faith by the Settling Parties, and reflect a Settlement that was reached voluntarily after consultation with competent legal counsel.

44. **Consent to Jurisdiction.** Barclays, each Plaintiff and each Settlement Class Member hereby irrevocably submits to the exclusive jurisdiction of the Court only for the specific purpose of any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement.

45. **Resolution of Disputes; Retention of Exclusive Jurisdiction.** Any disputes between or among Barclays and any Plaintiff or Class Member (or their counsel) concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain exclusive jurisdiction over the implementation and enforcement of this Agreement.

46. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs, and Plaintiffs' Counsel shall be binding upon all Class Members.

47. **Authorization to Enter Settlement Agreement.** The undersigned representatives of Barclays represent that they are fully authorized to enter into and to execute this Agreement on behalf of Barclays. Plaintiffs' Counsel, on behalf of Plaintiffs, represent that

they are, subject to Court approval, authorized to take all action required or permitted to be taken by or on behalf of the Class pursuant to this Agreement to effectuate its terms and to enter into and execute this Agreement and any modifications or amendments to the Agreement on behalf of the Class that they deem appropriate.

48. **Notices.** All notices and other communications required to be given hereunder which may be given pursuant to the provisions hereof, other than the Notice (the form and delivery of which shall be determined by the Court), shall be in writing. Each such notice shall be given either by (a) e-mail; (b) hand delivery; (c) registered or certified mail, return receipt requested, postage pre-paid; (d) FedEx or similar overnight courier; or (e) facsimile and first class mail, postage pre-paid, and, if directed to any Settlement Class Member, shall be addressed to Plaintiffs' Counsel at their addresses set forth on the signature page hereof; and if directed to Barclays, shall be addressed to its attorneys at the address set forth on the signature pages hereof or such other addresses as Plaintiffs' Counsel or Barclays may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

49. **No Conflict Intended.** The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

50. **No Party Deemed to Be the Drafter.** No Settling Party shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

51. **Choice of Law.** This Agreement and the exhibit(s) hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to this Agreement shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice of law principles.

52. **Amendment; Waiver.** This Agreement shall not be modified in any respect except by a writing executed by all the Settling Parties, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach of this Agreement, whether prior, subsequent or contemporaneous.

53. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of executed counterparts shall be filed with the Court.

54. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Settling Parties and no representations, warranties or inducements have been made to any Settling Party concerning this Agreement other than the representations, warranties and covenants contained and memorialized herein.

[Continued from the previous page]

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: October 7, 2015

*Plaintiffs' Counsel, on behalf of Plaintiffs  
individually and the Settlement Class*

By: Vincent Briganti

Vincent Briganti  
Geoffrey Milbank Horn  
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By: \_\_\_\_\_

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*gsjacobson@lshllp.com*



[Continued from the previous page]

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date set forth below.

Dated: October 7, 2015

*Plaintiffs' Counsel, on behalf of Plaintiffs  
individually and the Settlement Class*

By: \_\_\_\_\_

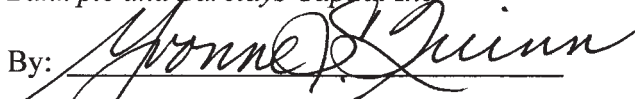
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