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

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

Plaintiff,

- against -

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

Defendants.

Docket No. 12-cv-3419 (GBD)

FUND LIQUIDATION HOLDINGS LLC as assignee and successor-in-interest to Sonterra Capital Master Fund, Ltd., HAYMAN CAPITAL MASTER FUND, L.P., JAPAN MACRO OPPORTUNITIES MASTER FUND, L.P., and CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

UBS AG, UBS SECURITIES JAPAN CO. LTD., SOCIÉTÉ GÉNÉRALE S.A., NATWEST GROUP PLC, NATWEST MARKETS PLC, NATWEST MARKETS SECURITIES JAPAN LTD, NATWEST MARKETS SECURITIES, INC., BARCLAYS BANK PLC, BARCLAYS PLC, COÖPERATIEVE RABOBANK U.A., LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, NEX INTERNATIONAL LIMITED, ICAP EUROPE LIMITED, TP ICAP PLC, BANK OF AMERICA CORPORATION, BANK OF AMERICA, N.A., MERRILL LYNCH INTERNATIONAL, AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-5844 (GBD)

MEMORANDUM OF LAW IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH (1) BARCLAYS BANK PLC, BARCLAYS CAPITAL INC., AND BARCLAYS PLC; (2) NEX INTERNATIONAL LIMITED AND ICAP EUROPE LIMITED; AND (3) TP ICAP PLC

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Pursuant to the orders preliminarily approving the class action settlements (the "Settlements") in these Actions (ECF Nos. 1060-62) (the "Preliminary Approval Orders") and in accordance with Rule 23 of the Federal Rules of Civil Procedure, Representative Plaintiffs[1] respectfully submit this memorandum of law in support of their motion seeking final approval of their Settlements with (1) Defendants Barclays Bank PLC, Barclays Capital Inc., and Barclays PLC (collectively, "Barclays"); (2) Defendants Nex International Limited (f/k/a ICAP plc) and ICAP Europe Limited (collectively, "ICAP"); and (3) Defendant TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc) (together, "Tullett Prebon" and, collectively with Barclays and ICAP, the "Settling Defendants."), final certification of the Settlement Class in connection with these Settlements, and approval to apply the previously authorized Plan of Allocation (the "Distribution Plan") to the Settlements.

INTRODUCTION

Representative Plaintiffs have secured three proposed Settlements that provide an additional **$22,500,000** in non-reversionary all-cash payments for the benefit of the Settlement Class and totally resolve all claims against the Settling Defendants.[2] These three additional Settlements with Barclays, ICAP, and Tullett Prebon bring the total recovery in these Actions to **$329,500,000**.

[1] Representative Plaintiffs are Plaintiffs Jeffrey Laydon, the California State Teachers' Retirement System, Fund Liquidation Holdings, LLC, individually and as assignee and successor-in-interest to Sonterra Capital Master Fund, Ltd., Hayman Capital Master Fund, L.P., and Japan Macro Opportunities Fund, L.P. Unless otherwise indicated, ECF citations herein are to the docket in *Laydon v. The Bank of Tokyo-Mitsubishi UFJ, Ltd., et al. (Laydon v. Mizuho Bank, Ltd.)*, No. 12-cv-3419 (GBD) (S.D.N.Y.) ("*Laydon*"), and internal citations and quotation marks are omitted. "*Sonterra*" refers to *Fund Liquidation Holdings LLC, et al. v. UBS AG, et al. (Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.)*, No 15-cv-5844 (GBD) (S.D.N.Y.). Unless otherwise defined, capitalized terms herein have the same meaning as in the Barclays, ICAP and Tullett Prebon Settlement Agreements. *See* ECF Nos. 1049-1, 1049-2, 1049-3.

[2] Under their respective Settlements, Barclays will pay $17,750,000, ICAP $2,375,000, and Tullett Prebon $2,375,000.

Following entry of the Preliminary Approval Orders, Class Counsel implemented the robust notice plan that the Court approved to apprise Class Members of their rights and options. The Class Notice plan was set forth at length in Exhibit C to the Declaration of Linda V. Young (ECF No. 1049-4) submitted in connection with Plaintiffs' motion for preliminary approval of the Settlements. This present motion is being filed before the deadline to object or opt out of the Settlements. Nevertheless, to date, there are no objections to the Settlements, Class Counsel's request for attorneys' fees and expenses, or the request for a service award, and only one potential Class Member has opted out of the Settlements. *Id*. Representative Plaintiffs will separately address any objections in accordance with the schedule set by the Court. However, the favorable reaction to the Settlements by the Class thus far only further confirms that this Court should approve them.

The terms of the Settlements are fair, reasonable, and easily satisfy the criteria for final approval under Rule 23 of the Federal Rules of Civil Procedure. The Settlements were the result of years of hard-fought litigation and months of arm's-length negotiations between highly sophisticated parties and their experienced counsel. The Settlements' terms are substantially the same as the terms the Court finally approved in connection with the eight prior settlements Representatives Plaintiffs reached with other defendants in these Actions, and the Settlement Class is identical to the class this Court previously certified. *See* ECF Nos. 720, 838, 891, 1013, 1014. The Distribution Plan is the same plan that the Court previously approved in connection with those earlier settlements and should similarly be approved for application to these Settlements. ECF No. 720 ¶ 20, ECF No. 838 ¶ 20; ECF No. 891 ¶ 20; ECF No. 1013 ¶ 20; ECF No. 1014 ¶ 20.

When the Court entered the Preliminary Approval Orders, it found that it would likely be able to finally approve the Settlements and certify the Settlement Class. The evidence in support

of that preliminary determination has only strengthened following notice of the Settlements to the Class. As described herein and in Representative Plaintiffs' motion for preliminary approval (ECF Nos. 1047-49),[3] the Settlements are in the best interest of the Class. Representative Plaintiffs respectfully request that the Court grant final approval of the Settlements, approve the application of the Distribution Plan to the Settlements, finally certify the Settlement Class, and enter Final Judgments dismissing the claims against Barclays, ICAP and Tullett Prebon with prejudice on the merits, in the form of the proposed orders and judgments filed herewith.

ARGUMENT

I. THE SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE

Public policy favors the resolution of class actions through settlement. *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001); *see also Wal-Mart Stores, Inc. v. Visa U.S.A., Inc*., 396 F.3d 96, 116-17 (2d Cir. 2005); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 439, 455 (S.D.N.Y. 2004). "[C]ourts encourage early settlement of class actions, when warranted, because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Beckman v. KeyBank, N.A*., 293 F.R.D. 467, 474-75 (S.D.N.Y. 2013). In service of "the strong judicial policy in favor of settlements, particularly in the class action context," *Wal-Mart Stores, Inc.*, 396 F.3d at 116–17, a court may approve a class action settlement upon a showing that the settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2).

A settlement is fair, reasonable, and adequate and should be approved if the settlement is shown to be both procedurally and substantively fair. *See In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig*., 330 F.R.D. 11, 28 (E.D.N.Y. 2019) ("*Payment Card*"). Rule

[3] Representative Plaintiffs incorporate by reference the arguments presented in their motion for preliminary approval of the Settlements.

23 sets out the factors that guide the Court's analysis, with the factors in Rule 23(e)(2)(A) and (B) focusing on the procedural fairness, and those in Rule 23(e)(2)(C) and (D) focusing on substantive fairness. The courts in this Circuit also consider the complementary factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) ("*Grinnell*") to assess the fairness of a class settlement. Applying both the *Grinnell* and Rule 23(e) factors to the Settlements here demonstrates final approval of the Settlements is warranted.

A. The Settlements Are Procedurally Fair

To approve a class action settlement, Rule 23 requires the Court to find in part that, "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length[.]" FED. R. CIV. P. 23(e)(2)(A)-(B). Courts presume settlements are procedurally fair when they are "the product of arm's length negotiations between experienced and able counsel on all sides." *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001).

1. Representative Plaintiffs Have Adequately Represented the Class

Adequate representation under Rule 23(e)(2)(A) requires that the "interests . . . served by the Settlement [are] compatible with" those of the class members. *Wal-Mart Stores, Inc.*, 396 F.3d at 110; *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 827 F.3d 223, 232 (2d Cir. 2016) (the focus for adequacy is whether the interests of the proposed settlement class are "sufficiently cohesive to warrant adjudication"). This is satisfied when the class representative's interests are aligned and not antagonistic to those of the class. *See In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 111-12 (S.D.N.Y. 2010); *see also Wal-Mart Stores, Inc.*, 396 F.3d at 106–07 ("Adequate representation of a particular claim is established mainly by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

These requirements are undoubtedly satisfied here. Representative Plaintiffs suffered the same alleged injury as other Class Members, transacting in Euroyen-Based Derivatives that were allegedly price fixed by Settling Defendants' manipulation. As a result of Defendants' alleged manipulation of Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives, Representative Plaintiffs and all Class Members traded in a noncompetitive financial market. Defendants' alleged misconduct impacted the entire market, and members of the Class, including Representative Plaintiffs, paid more or received less for their Euroyen-Based Derivatives transactions based on the artificiality in the market. *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006).

Moreover, there are no conflicting interests among Representative Plaintiffs and the Settlement Class that would provide a barrier to Representative Plaintiffs' adequate representation of the Class. *See Wal-Mart Stores, Inc.*, 396 F.3d at 110–11 (class representatives are adequate if their injuries encompass those of the class they seek to represent); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 (JG) (VVP), 2014 WL 7882100, at *34 (E.D.N.Y. Oct. 15, 2014) ("Even if there was a conflict [relating to the assignment of recovery rights] (and there is not), it would under no conceivable circumstances be so 'fundamental'" to cause class representatives to be inadequate), *report and recommendation adopted*, 2015 WL 5093503 (E.D.N.Y. July 10, 2015). Representative Plaintiffs and Class Members both have a strong interest in obtaining the maximum recovery possible for the harm caused by Defendants' alleged manipulation of Euroyen-Based Derivatives.

2. Plaintiffs' Counsel Have Adequately Represented the Class

The second factor in evaluating the Settlements is the adequacy of plaintiffs' counsel. *Payment Card*, 330 F.R.D. at 30 (considering whether "plaintiff's attorneys are qualified, experienced and able to conduct the litigation"); *accord* FED. R. CIV. P. 23(g). Class Counsel's and

additional Plaintiffs' Counsel's extensive class action, antitrust, Commodity Exchange Act ("CEA") and complex litigation experience provides strong evidence that the Settlements are procedurally fair. Declaration of Vincent Briganti ("Briganti Decl.") ¶ 27; *see In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009), *aff'd sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010) (noting the "extensive" experience of counsel in granting final approval of settlement); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11 CIV. 7961 CM, 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (giving "great weight" to experienced class counsel's opinion that the settlement was fair).

Class Counsel, Lowey Dannenberg, P.C. ("Lowey"), has led the prosecution of these Actions from their inception and negotiated the proposed Settlements. Lowey has worked diligently for more than ten years advancing these Actions, which have included multiple rounds of motions to dismiss in both Actions and appellate proceedings in the Second Circuit challenging certain orders by this Court. Briganti Decl. ¶¶ 11-14, 29, 50-51, 55, 72-73. Lowey is among the most knowledgeable and experienced law firms litigating complex class actions involving benchmark interest rate manipulation claims and has done so on behalf of some of the nation's largest pension funds and institutional investors. Briganti Decl. ¶ 28. Lowey was well informed about the strengths and weaknesses of the claims and defenses in these Actions, and had the benefit of its extensive investigation, analysis of relevant government settlements with banks allegedly involved in manipulating benchmark rates, discovery and settlement cooperation produced in the Actions, expert analyses, and the opinions of this Court and others deciding similar issues prior to and during settlement negotiations with the Settling Defendants. Briganti Decl. ¶ 29.

3. The Proposed Settlements Were Negotiated at Arm's Length

Courts presume settlements are procedurally fair when they are "the product of arm's

length negotiations between experienced and able counsel on all sides." *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06MD1775JGVVP, 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009); *see also In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173–74 (S.D.N.Y. 2000), *aff'd sub nom. D'Amato*, 236 F.3d 78 (where a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness"). To assess the integrity of the process, the key question is whether "plaintiffs' counsel is sufficiently well informed" to adequately advise and recommend the settlement to the class representatives and settlement class. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 699 (S.D.N.Y. 2019).

As detailed in the declarations filed with Representative Plaintiffs' Preliminary Approval Motion and this motion, the Settlements were reached after extensive arm's-length, non-collusive negotiations. *See* ECF No. 1049 ¶¶ 40-47; Briganti Decl. ¶¶ 31-38. In addition to the knowledge acquired during the course of litigating these Actions, Class Counsel had the benefit of meaningful and productive discussion with each of the Settling Defendants concerning each party's views on the merits of the Actions, the risks of continued litigation, and the key settlement terms, including the settlement amount and extent of cooperation that would be provided to assist in any further prosecution of these Actions. Plaintiff CalSTRS — the largest educator-only pension fund in the world and the second largest pension fund in the United States — was closely involved in developing the negotiation strategy and ultimately approved entering into each of the three proposed Settlements. *See* Declaration of Brian J. Bartow ("Bartow Decl.") ¶ 12.

The negotiations with Barclays initially occurred in January 2015. Briganti Decl. ¶ 32. While initial settlement talks did not advance, parties again attempted to reach a negotiated resolution, first in May 2020, and later in November 2021. *Id*. The talks that began in November

2021 were productive, and the Parties continued their negotiations until execution of the Barclays Settlement Agreement on July 22, 2022. *Id.* The ICAP settlement negotiations initially began in January 2021 but did not initially progress. Negotiations resumed in January 2022 and resulted in the execution of a settlement agreement on July 20, 2022. *Id.* ¶ 35. The negotiations with Tullett Prebon took place over three months starting approximately in April 2022 and progressed rapidly, leading to the execution of the settlement agreement on July 20, 2022. *Id.* ¶ 37.

The Settlement Class benefitted from being represented by Class Counsel, who was well informed about the strengths and weaknesses of the claims and defenses presented, and active Representative Plaintiffs whose interests aligned with those of the Class. At all times, Class Counsel had a sufficient basis on which to recommend that Representative Plaintiffs enter into the Settlements, which weighs in favor of finding that the Settlements are procedurally fair and should be approved. *See In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) ("*NASDAQ III*") (courts give "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

B. The Proposed Settlements Are Substantively Fair

To assess a settlement's substantive fairness, the Court considers whether, "the relief provided for the class is adequate," accounting for the following factors: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C). The Court is also required to confirm that the Settlement "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D).

Courts in this Circuit consider the nine *Grinnell* factors in deciding whether a settlement is substantively fair, reasonable, and adequate:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. The amended Rule 23(e)(2) factors complement the *Grinnell* factors. *See In re GSE Bonds Antitrust Litigation*, 414 F. Supp. 3d at 692 ("The Advisory Committee Notes to the 2018 amendments indicate that the four new Rule 23 factors were intended to supplement rather than displace these '*Grinnell*' factors."); *accord Payment Card*, 330 F.R.D. at 29 ("Indeed, there is significant overlap between the *Grinnell* factors and the Rule 23(e)(2)(C-D) factors . . ."). Here, the factors set forth in Rule 23(e) and *Grinnell* support final approval.

1. The Costs, Risks, and Delay of the Trial and Appeal Favor the Settlements

Rule 23(e)(2)(C)(i) "implicates several *Grinnell* factors, including: (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Payment Card*, 330 F.R.D. at 36; *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693. In evaluating this factor, the Court's role is to "balance the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 694; *see also Shapiro*, 2014 WL 1224666, at *10 (at final approval, the Court's role is not to "decide the merits of the case or resolve unsettled legal questions or to foresee with absolute certainty the outcome of the case" but rather to "assess the risks of litigation against the certainty of recovery under the proposed settlement.").

The costs, risks, and delay of trial and appeal are significant in all benchmark manipulation cases, but particularly in cases involving facts such as these. While Representative Plaintiffs are confident in the merits of their claims and believe they would ultimately prevail at trial, the factual and legal issues in these Actions are complex and expensive to litigate. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d at 693 (recognizing the complexity of federal antitrust claims and finding that the "complex issues of fact and law related to the [transactions occurring] at different points in time" weighed in favor of approval); *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. at 123 ("The complexity of Plaintiffs' claims *ipso facto* creates uncertainty.").

These Actions allege manipulative and collusive conduct between and among more than 40 institutions over a five-year time-period to rig Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives. Simply to get to this point in the litigation, Representative Plaintiffs have had to file numerous amended complaints, defend against multiple motions to dismiss, argue several motions for reconsideration, and file multiple appeals in the Second Circuit. Briganti Decl. ¶¶ 41-96. The various orders issued in the proceedings confirm the risks and challenges of prosecuting these Actions.

This litigation has been, and will continue to be, massive, complex, and expensive to prosecute. This case presents an inherent level of risk and uncertainty because it involves a financial market unfamiliar to the average juror. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. at 123 ("the complexity of Plaintiffs' claims ipso facto creates uncertainty"); *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 663 (S.D.N.Y. 2015) ("The greater the 'complexity, expense and likely duration of the litigation,' the stronger the basis for approving a settlement."). The intricate nature of the financial products and market involved, the lengthy time period over which the alleged misconduct occurred, and the number of defendants involved in the

alleged anticompetitive conduct made, and continue to make, these Actions highly complex and risky cases to pursue. *Id.* at 670 (antitrust class actions are among the most "complex, protracted, and bitterly fought."); *In re Platinum & Palladium Commodities Litig.*, No. 10CV3617, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) (noting that commodities cases are "complex and expensive" to litigate).

When the Settlements were reached, there was a significant risk of adverse outcomes for Representative Plaintiffs. The appeal in *Laydon* had been argued and was awaiting a decision from the Second Circuit,[4] while various motions to reconsider the Court's decision denying in part and granting in part Defendants' motion to dismiss the *Sonterra* complaint were before this Court for resolution. Briganti Decl. ¶¶ 21-23. The Settlements exchanged some of that risk for certain recovery for the Class.

And if Representative Plaintiffs overcome some or all of the adverse rulings, the continued prosecution of the Actions will take a considerable amount of time, be extremely costly and is likely to result in extensive motion practice, a trial in several years, and potentially further appeals. Representative Plaintiffs would still need to engage in complex, arduous discovery to establish liability over Settling Defendants and any other non-settling Defendants remaining in the Actions. Moreover, the risk of certifying a litigation class would remain as well. To demonstrate common price impact and a common damages methodology, expert discovery would be necessary. A battle of experts heightens the risk as "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors." *In re Warner Commc'ns Sec. Litig.*,

[4] A panel of the Second Circuit subsequently affirmed the dismissal, and Representative Plaintiffs are seeking a rehearing *en banc*. *See Laydon v. Coöperatieve Rabobank U.A.*, No. 20-3626(L), ECF No. 379 (2d Cir. Nov. 22, 2022).

618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Expert discovery will likely lead to *Daubert* motions, increasing the litigation costs and risks, and delaying any resolution. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) (experts "tend[] to increase both the cost and duration of litigation"). The expert work alone in this case has been and will continue to be costly.

Although Representative Plaintiffs and Class Counsel firmly believe that the asserted claims are meritorious, and they would zealously prosecute those claims to prevail at trial, Class Counsel's judgment is that there are very substantial risks attendant with the continued prosecution of the claims. The existence of those risks fully supported entering into these Settlements now before this Court, and those same risks favor the Settlements' approval.

2. The Remaining *Grinnell* Factors Also Support Final Approval of the Settlements

The *Grinnell* factors not expressly included in Rule 23(e)(2)(c)(i) also guide the Court in assessing whether the relief provided to the class is adequate. These factors include: "(2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; . . . (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell*, 495 F.2d at 463.

a. The Reaction of the Settlement Class to the Settlements

"A positive reaction of the class to the proposed settlement favors its approval by the Court." *Meredith Corp.*, 87 F. Supp. 3d at 663. The class's reaction to a proposed settlement is an important factor to be weighed in considering its fairness and adequacy. *See, e.g.*, *Maley v. Del*

Glob. Techs. Corp., 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."). This motion is being filed before the deadline to object or opt out of the Settlements, and Representative Plaintiffs will respond to objections (if any). To date, there are no objections, and only one request for exclusion has been received, while more than 157,000 Notice Packets were sent to Class Members. Declaration of Steven J. Straub ("Straub Decl.") ¶ 18; Declaration of Rust Consulting Inc. ¶ 5; Declaration of The Bank of Tokyo-Mitsubishi UFJ, Ltd. (n/k/a MUTF Bank, Ltd.) and Mitsubishi UFJ Trust and Banking Corporation ¶ 5; Declaration of Ajmal Choudry ¶ 5; Declaration of Derek Smith ¶ 5; Declaration of Jason Rabe ¶ 5;[5] *see Wal-Mart Stores, Inc.*, 396 F.3d at 118 ("'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'"). As a result, the lack of objections (and opt outs) is a particularly strong indication of support of the Settlements.

Further, Representative Plaintiffs favor the Settlements. Plaintiff CalSTRS' general counsel Brian Bartow has been directly involved in overseeing the litigation, participating in litigation and settlement strategy sessions, approving negotiated settlements, and monitoring Class Counsel's time and expenses. Bartow Decl. ¶¶ 12-14. As the vast majority of the Class are likely sophisticated, institutional investors that, like CalSTRS, have the financial expertise and wherewithal of closely scrutinize the Settlements, Representative Plaintiffs anticipate that the Class will similarly approve of the Settlements.

The Settlement Administrator will submit an updated report following the February 7, 2023 objection and opt-out deadline. To the extent any objections are filed, Class Counsel will file a response addressing the objections.

[5] The foregoing declarations have been filed in connection with this motion.

b. The Stage of the Proceedings

Examining the stage of the proceedings at which the Settlements occur is intended to assess "whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc.*, No. 02 CIV. 5575 (SWK), 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006); *In re Global Crossing Securities and ERISA Litigation*, 225 F.R.D. at 458 ("[T]he question is whether the parties had adequate information about their claims."). This factor does not require extensive formal discovery, or indeed any formal discovery at all, "as long as '[counsel] have engaged in sufficient investigation . . . to enable the Court to 'intelligently make . . . an appraisal' of the settlement." *In re AOL Time Warner, Inc.*, 2006 WL 903236, at *10.

In this case, there is no doubt that Representative Plaintiffs and Class Counsel had sufficient information with which to determine that the Settlements were fair, reasonable, and adequate. These Actions have been litigated for over ten years, during which Representative Plaintiffs conducted extensive factual and legal research and consulted experts to assess the merits of their claims; reviewed publicly-available information, including government pleas, non-prosecution and deferred prosecution agreements, trial transcripts, and attended criminal proceedings in the United States and abroad concerning the manipulation of Yen-LIBOR and Euroyen TIBOR as well as various other global benchmarks; conducted discovery in *Laydon*, including the review of over 11,000,000 pages of documents and more than 100,000 audio files; reviewed settlement cooperation produced in these Actions; opposed numerous motions to dismiss; appealed adverse orders from this Court, prepared their expert report and moved for class certification in *Laydon*, among other work. *See generally* Briganti Decl. ¶¶ 41-96. Moreover, Class Counsel brought to bear the knowledge and experience gained from litigating other similar benchmark interest rate manipulation cases (*see* Briganti Decl. ¶ 28). The information gathered

during this process greatly informed Representative Plaintiffs of the advantages and disadvantages of entering into the Settlements.

c. The Ability of Settling Defendants to Withstand Greater Judgment

While each Settling Defendant could withstand a greater judgment than the amount paid in settlement, "[a] defendant is not required to 'empty its coffers' before a settlement can be found adequate." *Meredith Corp.*, 87 F. Supp. 3d at 665. The possibility that the Settling Defendants could have sustained a greater judgment is not determinative of substantive fairness or unfairness. *See In re Global Crossing Securities and ERISA Litigation*, 225 F.R.D. at 460 ("[T]he fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate").

d. The Reasonableness of the Settlement Amount in Light of the Best Possible Recovery and the Risks of Litigation

The eighth and ninth *Grinnell* factors—the reasonableness of the settlement in light of the best possible recovery and the risks of litigation—also weigh in favor of approving the Settlements. As the Second Circuit has explained, there is "a range of reasonableness with respect to a settlement" that "recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972).

These Settlements further increase the substantial recovery already achieved in these Actions, particularly in light of the risks of the litigation described above. The monetary relief that Barclays, ICAP, and Tullett Prebon will pay and the cooperation that they have agreed to provide will also further lower the risk of the continued prosecution of the cases. Even if Representative Plaintiffs are unable to reinstate claims against any of the dismissed Defendants, Class Counsel effectively implemented a strategy that has achieved a "maximum aggregate recovery for the

class." *In re Corrugated Container Antitrust Litig.*, MDL No. 310, 1981 WL 2093, at *23 (S.D. Tex. June 4, 1981) (approving several settlements achieved, including ice-breaker settlements that strategically helped facilitate other settlements).

"The adequacy of the amount achieved in settlement is not to be judged 'in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case.'" *Meredith Corp*., 87 F. Supp. 3d at 665-66; *In re Union Carbide Corp. Consumer Prod. Bus. Sec. Litig.*, 718 F. Supp. 1099, 1103 (S.D.N.Y. 1989) (same). These three Settlements, totaling $22,500,000 were achieved while *Laydon* was on appeal and Representative Plaintiffs' motion to reconsider the order granting in part Defendants' motion to dismiss in *Sonterra* was pending, such that there was a very real risk that no further recoveries would be achieved in either of the Actions. Even if Representative Plaintiffs are ultimately successful in pursing their claims against one or more non-settling Defendants, they would still face hurdles in establishing liability and damages at trial.

In pertinent part, private antitrust plaintiffs, unlike the government, have the burden to prove antitrust impact and damages. *Gottesman v. Gen. Motors Corp.*, 436 F.2d 1205, 1210 (2d Cir. 1971). Even where the Department of Justice has secured criminal guilty pleas, civil juries have found no damages. *See, e.g., Special Verdict on Indirect Purchases, In re TFT-LCD (Flat Panel) Antitrust Litig*., No. M 07-1827 SI (N.D. Cal. Sept. 3, 2013), ECF No. 8562. "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *NASDAQ III*, 187 F.R.D. at 476; *see also In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 748 (E.D. Pa. 2013) ("Even if Plaintiffs had succeeded in proving liability at trial, there is no guarantee they would have recovered damages."); *U.S. Football League v. Nat'l Football League*, 644 F. Supp.

1040, 1042 (S.D.N.Y. 1986) ("[T]he jury chose to award plaintiffs only nominal damages, concluding that the USFL had suffered only $1.00 in damages."), *aff'd*, 842 F.2d 1335, 1377 (2d Cir. 1988); *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1166–69 (7th Cir. 1983) (antitrust judgment was remanded for a new trial and damages).

Based on Class Counsel's preliminary damages estimates, if Representative Plaintiffs successfully certify a litigation class and completely prevail at trial, their damages model was fully accepted, and the verdict survived any appeal, Representative Plaintiffs and the Class could possibly recover billions of dollars. While the monetary compensation Settling Defendants provided under the Settlements is a percentage of the total maximum amount of damages, it is still acceptable under the *Grinnell* factors. *See Grinnell*, 495 F.2d at 455 ("satisfactory settlement" could be "a thousandth part of a single percent of the potential recovery."). Class Counsel finds the Settlements indispensable in that they provide immediate compensation to the Class and will assist Class Counsel in the continued prosecution of the action against the non-settling Defendants.

In light of the ostensible risks of litigation, Class Counsel's considered judgment is that the total consideration provided by the Settlements, together with the substantial cooperation that Representative Plaintiffs have received and will continue to receive, is fair, reasonable, and adequate in light of all of the circumstances. Therefore, the consideration that the Settlements provide is well within the range of consideration held to be "fair, reasonable, and adequate" at final approval. *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("*NASDAQ II*").

3. The Distribution Plan Provides an Effective Method for Distributing Relief Satisfying Rule 23(e)(2)(C)(ii)

A plan of allocation that is supported by competent and qualified counsel is reviewed only to determine whether it has a "reasonable, rational basis." *In re Initial Pub. Offering Sec. Litig.*,

671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009); *see also In re Nasdaq Mkt.-Makers Antitrust Litig.*, No. 94 CIV. 3996 RWS, 2000 WL 37992, at *2 (S.D.N.Y. Jan. 18, 2000) ("[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' Class Counsel.") (citation omitted).

This Court has previously approved the same Distribution Plan (*see* ECF No. 591-5) for use with the earlier approved settlements. *See* ECF No. 720 ¶ 20, ECF No. 838 ¶ 20; ECF No. 891 ¶ 20; ECF No. 1013 ¶ 20; ECF No. 1014 ¶ 20. As previously described (ECF No. 591-5, at 2), Dr. Craig Pirrong created an "artificiality matrix" for Yen-LIBOR and Euroyen TIBOR, which is posted on the Settlement Website. The Net Settlement Fund will be distributed by multiplying the Net Settlement Fund by the *pro rata* fraction. The denominator of the *pro rata* fraction is the sum total of the Net Artificiality Paid by all Class Members who have positive Net Artificiality Paid (*i.e.*, they paid artificiality), and the numerator of the *pro rata* fraction is each Class Member's Net Artificiality Paid. For example, if the Class Member's Net Artificiality Paid constitutes 1% of the Net Artificiality Paid of all Class Members with positive Net Artificiality Paid, then that Class Member will receive 1% of the Net Settlement Fund. So, if the Net Settlement Fund is $15 million and a Class Member's Pro Rata Share is 1%, that Class Member will receive $150,000.

This methodology of allocating settlement proceeds based on the amounts of artificial impact has been approved as a fair, reasonable, and adequate method of allocating settlement funds not only by this Court but repeatedly by courts in other antitrust and CEA manipulation class action settlements as well. *See, e.g.*, *In re Platinum and Palladium Commodities Litigation*, 2014 WL 3500655, at *3 (allocations based on net artificiality on each trading day); *In re Amaranth Natural Gas Commodities Litig.*, No. 07-cv-6377, ECF No. 413 ¶ 6 (S.D.N.Y. May 23, 2012) (modifying

final judgment to reflect plan of allocation). The Court should again approve the Distribution Plan for use in allocating proceeds from these Settlements.

4. The Proposed Attorneys' Fees Indicate that the Class will Receive Substantial Relief from the Settlements

The attorneys' fees and expenses that will be sought in connection with the Settlements are reasonable and further indicate that the Settlement Class will receive a substantial Net Settlement Fund. Pursuant to a retainer agreement executed between CalSTRS, Class Counsel, and additional Plaintiffs' Counsel Berman Tabacco, Plaintiffs' Counsel seek 20% of the Settlement Funds ($4,500,000). *See* Bartow Decl. ¶ 7; Briganti Decl. ¶ 5, 118-19. As more fully described in the accompanying Class Counsel's Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Additional Service Award, the percentage of attorneys' fees requested is reasonable in light of the negotiated agreement, which reflects market rates, and given the range of attorneys' fee awards made in cases of similar or less complexity in this District. In addition to the request for attorneys' fees, Plaintiffs' Counsel seek a reimbursement of $108,554.45 (or 0.5% of the Settlement Fund) for unreimbursed litigation costs and expenses incurred through December 31, 2022, as well as $500,000 to replenish the litigation expense fund established in these Actions. *See Meredith Corp.*, 87 F. Supp. 3d at 671 (reasonably incurred expenses may be reimbursed from the settlement fund). The expenses are of the type reasonably incurred in class action litigation.

5. There Are No Unidentified Agreements That Impact the Adequacy of the Relief for the Settlement Class

Rule 23(e)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, the Settlement Agreements sets forth all such terms or specifically identifies all other agreements that relate to the Settlements (namely, the Supplemental Agreements). *See* ECF Nos. 1049-1 ¶ 23; 1049-2 ¶ 23; 1049-3 ¶ 23. Each Supplemental Agreement provides the respective Settling Defendant with a qualified right to

terminate the Settlement Agreement under certain circumstances before final approval. *Id*. This type of agreement is standard in complex class action settlements and does not impact the fairness of the Settlements.[6]

6. The Settlements Treat the Settlement Class Equitably and Do Not Provide Any Preferences

The Settlements also "treat[] class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). The Distribution Plan provides for a *pro rata* distribution of the Net Settlement Fund among Authorized Claimants, a method this Court has already approved as fair, reasonable, and adequate. *See, e.g.*, ECF Nos. ECF No. 720 ¶ 20, ECF No. 838 ¶ 20; ECF No. 891 ¶ 20; ECF No. 1013 ¶ 20; ECF No. 1014 ¶ 20; *see also Payment Card*, 330 F.R.D. at 47 (finding that "pro rata distribution scheme is sufficiently equitable"). The Settlements do not favor or disfavor any of the Representative Plaintiffs or Settlement Class Members; nor do they discriminate against, create any limitations, or exclude from payments any persons or groups within the Settlement Class. *See NASDAQ II*, 176 F.R.D. at 102. All Settlement Class Members would release Settling Defendants with respect to claims based on the same factual predicate of these Actions. The proposed Class Notice provides information on how to opt out of the Settlements; absent opting out, each Class Member will be bound by the release.

* * * * *

Based on all of the foregoing factors, including the risks that Representative Plaintiffs would face in continuing to litigate, the Court should grant final approval of the Settlements.

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[6] *See, e.g.*, *In re Carrier IQ, Inc., Consumer Priv. Litig.*, No. 12-MD-02330-EMC, 2016 WL 4474366, at *5, 7 (N.D. Cal. Aug. 25, 2016), *amended in part sub nom. In re Carrier IQ, Inc.*, No. 12-MD-02330-EMC, 2016 WL 6091521 (N.D. Cal. Oct. 19, 2016) (observing that such "opt-out deals are not uncommon as they are designed to ensure that an objector cannot try to hijack a settlement in his or her own self-interest," and granting final approval of class action settlement); *accord* MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.631 (2004) (explaining that "[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out.").

II. THE PROPOSED SETTLEMENT CLASS SATISFIES ALL REQUIREMENTS OF RULE 23 AND SHOULD BE FINALLY CERTIFIED

For all of the reasons detailed in the Preliminary Approval Motion (ECF No. 1048) and as held in the Court's Preliminary Approval Orders (ECF Nos. 1060-62), the Settlement Class satisfies all requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—as well as the predominance and superiority requirements of Rule 23(b)(3). The preliminarily certified Settlement Class is as follows:

> All Persons who purchased, sold, held, traded, or otherwise had any interest in Euroyen-Based Derivatives[7] during the period from January 1, 2006 through June 30, 2011 (the "Class Period"), provided that, if Representative Plaintiffs expand the Class in any subsequent amended complaint, class motion, or settlement, the defined Class in this Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Settlement Class are the Defendants (as defined in the Settlement Agreement) and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

The same Settlement Class has been previously certified by this Court in connection with the earlier settlements. *See* ECF Nos. ECF No. 720 ¶ 2, ECF No. 838 ¶ 2; ECF No. 891 ¶ 2; ECF No. 1013 ¶ 2; ECF No. 1014 ¶ 2. The Court should similarly certify the Settlement Class in connection with these Settlements.

There are thousands of geographically dispersed persons and entities that fall within the Settlement Class definition. *See* ECF No. 1048 at 19, 22; *see also* Straub Decl. ¶¶ 3, 18 (describing

[7] "Euroyen-Based Derivatives" means (i) a Euroyen TIBOR futures contract on the Chicago Mercantile Exchange ("CME"); (ii) a Euroyen TIBOR futures contract on the Tokyo Financial Exchange, Inc. ("TFX"), Singapore Exchange ("SGX"), or London International Financial Futures and Options Exchange ("LIFFE") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (iii) a Japanese Yen currency futures contract on the CME; (iv) a Yen LIBOR- and/or Euroyen TIBOR-based interest rate swap entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (v) an option on a Yen LIBOR- and/or a Euroyen TIBOR-based interest rate swap ("swaption") entered into by a U.S. Person, or by a Person from or through a location within the U.S.; (vi) a Japanese Yen currency forward agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.; and/or (vii) a Yen LIBOR- and/or Euroyen TIBOR-based forward rate agreement entered into by a U.S. Person, or by a Person from or through a location within the U.S.

that notice had been mailed to over 133,797 potential class members and detailing the total number of claims filed in the Actions). Commonality is easily satisfied here where there are numerous common questions of law and fact and where each Representative Plaintiff and Class Member will have to answer the same liability and impact questions through the same body of common class-wide proof. *See* ECF No. 1048 at 21.

Plaintiffs' claims are typical of those of the entire Settlement Class because the Plaintiffs' and Class Members' claims all arise from the same course of conduct involving Defendants' alleged false reporting and manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives.

The named Plaintiffs in these Actions are adequate representatives because they share the same overriding interest (1) in obtaining the largest financial recovery possible; (2) in securing the invaluable cooperation from Barclays, ICAP and Tullett Prebon; and (3) in prosecuting claims against the remaining non-settling defendants. In addition, Class Counsel are highly experienced attorneys who have litigated these and other types of complex class actions for decades.

Lastly, common questions predominate and a class action is the superior method for resolving this case. Predominance exists because the question of whether Defendants engaged in the false reporting and manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives is common across the Settlement Class. A class action is superior because Settlement Class members have no substantial interest in proceeding individually given the complexity and expense of the litigation.

III. THE CLASS NOTICE PLAN INFORMED THE CLASS OF THE SETTLEMENTS AND SATISFIED DUE PROCESS

Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." FED. R. CIV. P. 23(e)(1)(B). The standard

for the adequacy of notice to the class is reasonableness. FED. R. CIV. P. 23(c)(2)(B) (for actions certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart Stores, Inc.*, 396 F.3d at 114. The Class Members here have received adequate notice and have been given sufficient opportunity to weigh in on or exclude themselves from the Settlements.

The Class Notice plan has been fully implemented. *See generally* Straub Decl. A.B. Data has produced and mailed 133,797 copies of the mailed notice to potential Class Members including (i) Settling Defendants' known counterparties that transacted in Euroyen-Based Derivatives, consistent with the obligations set forth in the Settlement Agreements and relevant foreign bank secrecy and/or customer confidentiality laws that may restrict their ability to provide counterparty-identifying information to third parties; (ii) known counterparties of prior settling defendants that transacted in Euroyen-Based Derivatives, consistent with the obligations set forth in their settlement agreements and relevant foreign bank secrecy and/or customer confidentiality laws that may restrict their ability to provide counterparty-identifying information to third parties; (iii) members of the International Swaps and Derivatives Association ("ISDA"), a global trade association for OTC derivatives responsible for maintaining the standardized ISDA Master Agreements; (iv) senior executives at hedge funds, investment banks, and real-estate companies; (v) financial executives, including pension fund managers and derivatives traders; (vi) individual traders and brokers who have transacted in the Euroyen market; (vii) the largest traders on the

Chicago Mercantile Exchange ("CME"); and (viii) the Settlement Administrator's proprietary list of banks, brokers, and other nominees, which are likely to trade or hold Euroyen-Based Derivatives on behalf of themselves and their clients. *See* Straub Decl. ¶¶ 5-18 (describing direct mail component of notice plan).

The Settlement Administrator also caused the publication notice to be published in *The Wall Street Journal*, *Investor's Business Daily*, *The Financial Times*, *Barron's*, *Stocks & Commodities*, *Hedge Fund Alert*, Euromoney *Magazine*, and *Grant's Interest Rate Observer*, and banner ads on hundreds of websites. The Settlement Administrator also disseminated a news release via PR Newswire's US1 Newsline distribution list announcing the Settlements, which was distributed to the news desks of approximately 10,000 newsrooms. *See* Straub Decl. ¶ 20. The Settlement Administrator continues to maintain a Settlement Website (www.EuroyenSettlement.com), where class members were able to review and obtain: (i) the Settlement Agreements with Settling Defendants; (ii) the full-length mail and publication notices; (iii) Court orders and key pleadings; (iv) the proposed Distribution Plan; and (v) a Proof of Claim form for the Settlements. *Id.* ¶¶ 26-28.

The Class Notice plan, as well as the mailed notice and publication notice, satisfy due process. *See, e.g.*, Final Judgment Approving Class Action Settlement, *In re JPMorgan Precious Metals Spoofing Litig.*, No. 18-cv-10356 (GHW), (S.D.N.Y. July 7, 2022), ECF No. 115 (holding similar notice plan satisfied "due process"); *In re Mexican Gov't Bonds Antitrust Litig.*, No. 18-CV-02830, 2021 WL 5709215, at *2 (S.D.N.Y. Oct. 28, 2021) (same). The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g.*, *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 319 (1950). The mailed notice and publication notice are written in clear and concise language, and reasonably conveyed the necessary

information to the average class member. *See Wal-Mart Stores, Inc.*, 396 F.3d at 114. Class Members have been advised on the nature of the Action, including the relevant claims, issues, and defenses. *See* Straub Decl., at Ex. A (Notice Packet). Class Members have been afforded a full and fair opportunity to consider the proposed Settlements, exclude themselves from the Settlements, and respond and/or appear in Court. Further, the Class Notice fully advised Class Members of the binding effect of the judgment on them. *Id.*, Ex. A.

The Court should find that the Class Notice plan as implemented was reasonable and satisfied due process.

CONCLUSION

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court finally approve the Settlements and the Distribution Plan, finally certify the Settlement Class, and enter the proposed Final Approval Orders and Final Judgments dismissing with prejudice the claims against the Settling Defendants.

Dated: January 24, 2023
White Plains, New York

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