

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

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

No. 12-cv-3419 (GBD)

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

No. 15-cv-5844 (GBD)

DECLARATION OF VINCENT BRIGANTI

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

1. I am a member of the Bar of this Court and a shareholder with the law firm Lowey Dannenberg, P.C. (“Lowey”), court-appointed Class Counsel for Plaintiffs in the related actions *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD)(“*Laydon*”) and *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*, No. 15-cv-5844 (GBD)(“*Sonterra*”). I submit this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlements with Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, “Deutsche Bank”) and JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Securities plc (collectively, “JPMorgan,” and together with Deutsche Bank, the “Settling Defendants”) and Class Counsel’s Motion for Award of Attorneys’ Fees from the common fund created by those settlements.

Case Investigation, the Initial Pleading, and Service

2. In July 2011, reports emerged that UBS had entered the Department of Justice’s (“DOJ”) leniency program under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108-237 (“ACPERA”), by admitting to anticompetitive conduct involving Yen-LIBOR and Euroyen TIBOR. Lowey conferred with its clients and started researching the market for financial instruments priced, benchmarked and/or settled based on Yen-LIBOR and Euroyen TIBOR (“Euroyen-Based Derivatives”), and assembled a team to work on an initial complaint.

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

4. Lowey retained investigators both domestically and abroad, as well as experts, economists and industry consultants, to further develop the factual record. Based on this extensive investigation, Lowey filed an initial Class Action Complaint (“CAC”) on behalf of Jeffrey Laydon on April 30, 2012. *See Laydon*, ECF No. 1. The CAC asserted claims under the Sherman Act, Commodity Exchange Act (“CEA”), and several states’ laws, including claims for unjust enrichment, deceptive trade practices, and fraud, against twenty-five Defendants that were members of Yen-LIBOR and/or Euroyen TIBOR panels.

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

6. Lowey separately negotiated stipulations and scheduling orders with the non-Japanese Bank Defendants, extending their time to answer or otherwise move against the CAC to account for the uncertainty of when service upon the Japanese Bank Defendants would be completed via the Hague Service Convention. *See, e.g., Laydon*, ECF Nos. 21-23, 32, 57, 85. After approximately four months, all Defendants had been served.

7. While Lowey was working to effectuate service over the Japanese Bank Defendants through the Hague Service Convention, twelve Defendants—Barclays Bank plc, BNP Paribas S.A., Citi, Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (“Rabobank”), Deutsche Bank AG,

HSBC Holdings plc, JPMorgan Chase Bank, National Association, Lloyds Banking Group plc, The Norinchukin Bank, The Royal Bank of Scotland Group plc, Société Générale SA, and The Bank of Tokyo-Mitsubishi UFJ, Ltd. (collectively, the “Transfer Defendants”)—filed a letter motion on May 23, 2012 requesting to transfer the *Laydon* action to the Honorable Naomi Reice Buchwald, who was presiding over the *U.S. Dollar LIBOR MDL*, No. 11-md-2262 (S.D.N.Y.).

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

9. Lowey then moved pursuant to FED. R. CIV. P. 23(g) to be appointed as interim lead class counsel. *Laydon*, ECF Nos. 95-97. On August, 29, 2012, the Court entered a pre-trial order granting the request and authorized Lowey to, *inter alia*, (a) make, brief, and argue all motions; (b) assign work to additional Plaintiff’s counsel; (c) request that the Court approve settlements and fee awards; and (d) allocate fees among Plaintiff’s counsel. *Laydon*, ECF No. 99.

First and Second Amended *Laydon* Complaints

10. Lowey continued to investigate Defendants’ alleged manipulation of Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives after filing the CAC when, in June 2012, Barclays Bank plc became the first Defendant to settle with government regulators. Lowey analyzed Barclays’ settlement and retained a leading expert on benchmark manipulation to assist in preparing *Laydon*’s First Amended Class Action Complaint. *Laydon*, ECF No. 124 (“FAC”). Lowey

worked closely with this consulting expert, holding multiple in-person meetings and conference calls, to distill complex economic evidence into detailed allegations.

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

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

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

14. Lowey filed the SAC on April 15, 2013. *Laydon*, ECF No. 150. This 337-page complaint incorporated the evidence released in UBS's and RBS's government settlements and, based on that information, added Broker Defendants ICAP plc and R.P. Martin Holdings Limited. The SAC also included a separate 65-page appendix detailing 146 separate communications released in government settlements at that time.

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

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

Defendants' First Rule 12 Motions to Dismiss the SAC

17. Defendants filed their first round of motions to dismiss the SAC on June 14, 2013, including thirteen separate memoranda of law challenging Laydon's claims under the Sherman Antitrust Act, CEA, and state law unjust enrichment claims. *See Laydon*, ECF Nos. 204-21. Lowey dedicated significant resources to analyzing Defendants' positions, researching opposing arguments, and drafting Plaintiff's responses. On August 13, 2013, Lowey filed a 93-page omnibus opposition

to Defendants' motions to dismiss. *See Laydon*, ECF No. 226. Defendants filed eleven reply memoranda of law on September 27, 2013. *Laydon*, ECF Nos. 232-33, 235-43. These reply memoranda raised, for the first time, arguments against Plaintiff's CEA claims based on Judge Buchwald's decision in *In re Libor-Based Fin. Instruments Antitrust Litig.*, 962 F. Supp. 2d 606 (S.D.N.Y. 2013). Lowey petitioned the court for leave to file a sur-reply addressing these new arguments. *See Laydon*, ECF No. 244. The Court granted this request on October 4, 2013 and Lowey filed Plaintiff's sur-reply on October 9, 2013. *Laydon*, ECF Nos. 244-45.

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

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

20. With the exception of UBS Securities Japan Co., Ltd., all Defendants filed motions for reconsideration of *Laydon I* on April 11, 2014. *See Laydon*, ECF Nos. 275-83. The Defendants' four memoranda of law in support challenged the Court's decision to sustain Plaintiff's claims under the CEA arguing, *inter alia*, that the Court incorrectly interpreted the meaning of actual damages and manipulative intent under the CEA. *See id.* Lowey filed Plaintiff's opposition on May 9, 2014. *Laydon*, ECF No. 290. Defendants filed reply memoranda on May 30, 2014. *Laydon*, ECF Nos. 292-93, 295-96. The Court denied Defendants' motions for reconsideration on October 20, 2014. *Laydon*, ECF No. 398.

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

21. Lowey moved for leave to amend the SAC and to file a Proposed Third Amended Complaint ("PTAC") on June 17, 2014. *Laydon*, ECF Nos. 301-02. The PTAC added four new Defendants—ICAP Europe Limited, Martin Brokers (UK) Ltd., Lloyds Banking Group plc, and Tullett Prebon plc—and new facts based on information revealed in Rabobank, ICAP Europe Limited, and R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd.'s (collectively "R.P. Martin") government settlements during the year-and-a-half since the SAC was filed. *See id.* The PTAC also proposed two additional named plaintiffs, Oklahoma Police Pension & Retirement System ("OPPRS") and Stephen Sullivan ("Sullivan"), to cure certain deficiencies identified by the Court in *Laydon I*. *See id.*

22. These new plaintiffs transacted in other types of Euroyen-Based Derivatives; OPPRS, for example, traded over-the-counter Yen foreign exchange forward contracts directly with Defendants UBS, Citi, Barclays, Deutsche Bank, and JPMorgan, while Sullivan transacted in Yen currency futures contracts on the Chicago Mercantile Exchange ("CME"). Based on Sullivan's and OPPRS's transactions in these financial instruments, including OPPRS's direct dealings with several

Defendants, the PTAC included new claims for breach of the implied covenant of good faith and fair dealing, and renewed claims for unjust enrichment and Sherman Act violations.

23. The PTAC also added claims for violations of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) based in part on Defendant Rabobank’s traders’ guilty pleas to felony wire fraud for manipulating Yen-LIBOR and the Second Circuit’s decision in *European Community v. RJR Nabisco, Inc.*, 764 F.3d 149 (2d Cir. 2014), which clarified the extraterritoriality analysis applicable to the RICO statute.

24. Before opposing Plaintiff’s motion for leave to amend, fourteen Defendants filed nine motions to dismiss the SAC for lack of personal jurisdiction on August 7, 2014, arguing that the Supreme Court’s seven-month old decision in *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), had created a previously-unavailable personal jurisdiction defense. *See Laydon*, ECF Nos. 310, 315, 323, 327, 331, 337, 341, 344. Four of these Defendants, ICAP plc, Mizuho Bank, Ltd., Mizuho Trust & Banking Co., Ltd., and Resona Bank, Ltd., (collectively, the “Stipulating Defendants”) moved pursuant to a prior stipulation with Plaintiff preserving their right to challenge personal jurisdiction after the Court ruled on the merits. *See* ¶ 16 *supra* (describing stipulation); *see also Laydon*, ECF Nos. 310, 323, 331. The other ten Defendants—Deutsche Bank AG, The Bank of Tokyo Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., Mitsubishi UFJ Trust and Banking Corporation, Mizuho Corporate Bank, Ltd., The Norinchukin Bank, Shinkin Central Bank, The Shoko Chukin Bank, Ltd., Sumitomo Mitsui Trust Bank, Ltd., and Sumitomo Mitsui Banking Corporation (collectively, the “Non-Stipulating Defendants”)—moved to dismiss for lack of personal jurisdiction despite having failed to preserve their Rule 12(b)(2) defenses in a similar stipulation with Plaintiff. *See Laydon*, ECF Nos. 315, 327, 337, 341, 344.

25. On August 15, 2014, Defendants filed their opposition to Plaintiff’s motion for leave to amend, arguing, *inter alia*, that OPPRS’s and Sullivan’s claims were barred by the applicable

statutes of limitations. *See Laydon*, ECF No. 361.

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

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

28. The Court addressed the pending motions to dismiss and Plaintiff's motion for leave to amend the SAC on March 31, 2015. Dealing with the issue of personal jurisdiction in two separate orders, the Court granted the four Stipulating Defendants' motions to dismiss for lack of personal jurisdiction but denied the ten Non-Stipulating Defendants' motions, agreeing with Plaintiff that they had waived their right to assert a personal jurisdiction defense. *See Laydon*, ECF Nos. 446-47. The Court also granted-in-part and denied-in-part Laydon's motion for leave to amend, allowing Plaintiff to add the four new defendants, but not the new plaintiffs or claims.

Laydon, ECF No. 448. (“*Laydon II*”). CalSTRS’s request to join the action was also denied, but CalSTRS was allowed to renew that application by letter within 30 days.

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

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

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

32. Two months after the Court denied the Non-Stipulating Defendants’ motion for reconsideration, the Non-Stipulating Defendants filed a petition for writ of mandamus in the U.S. Court of Appeals for the Second Circuit on September 25, 2015. *See In re Mizuho Corporate Bank*, No. 15-3014 (2d Cir.), ECF No. 1-1. The Second Circuit denied the petition on January 20, 2016. *Id.*, ECF No. 67.

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

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

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

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

Laydon, ECF No. 493. Defendants filed a letter opposing the request on August 4, 2015. *Laydon*, ECF No. 494.

36. Lowey began negotiating with Defendants regarding service of the *Sonterra* complaint. As a condition of accepting service, Defendants required the *Sonterra* Plaintiffs to first translate the 452-page, 1,078-paragraph complaint into Japanese. *Sonterra*, ECF No. 32. Plaintiffs complied with Defendants' request and all Defendants were served with the Japanese translation by January 25, 2016.

37. The U.K criminal trials of six brokers (Terry Farr and James Gilmour from R.P. Martin, Noel Cryan from Tullett Prebon, and Darrell Read, Colin Goodman and Danny Wilkinson from ICAP) began on October 6, 2015. The broker trials revealed additional facts about Defendants' manipulation of Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives not publicly available before the trial began. Lowey again dispatched attorneys to London and worked with investigators there to remain current on the proceedings. Lowey used this new information to draft allegations for inclusion in a subsequent amended complaint.

38. On October 8, 2015, the Court addressed both CalSTRS's motion to intervene in *Laydon* and the *Sonterra* Plaintiffs' request to consolidate the *Laydon* and *Sonterra* actions. The Court denied, without prejudice, Plaintiffs' request to consolidate the two actions, explaining that it would reconsider the issue of consolidation once all Defendants had either moved or answered in *Laydon* and *Sonterra*. See *Laydon*, ECF No. 524; see also *Laydon*, ECF No. 529, Tr. of Oct. 8, 2015 Conf. at 5.

39. The Court denied CalSTRS's motion to intervene in *Laydon*, instructing CalSTRS to file a separate case to pursue its claims. *Laydon*, ECF No. 525; see also *Laydon*, ECF No. 529, Tr. of Oct. 8, 2015 Conf. at 5-6. To obviate the need for another complaint and subsequent round of briefing, I proposed at the hearing that CalSTRS be added to the *Sonterra* action, where Plaintiffs still had the ability to amend their complaint as of right. *Laydon*, ECF No. 529, Tr. of Oct. 8, 2015 Conf.

at 7-8. The Court agreed and ordered the *Sonterra* Plaintiffs to file an amended complaint by December 1, 2015. *Id.* at 9. Laydon was also ordered to file his Third Amended Complaint (“TAC”), adding four new Defendants, by the same date. *Id.*

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

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

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

42. The TAC included new factual allegations based on evidence released during the Hayes trial, broker trials, settlement cooperation provided by R.P. Martin and Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc. (collectively, “Citi”), and the DOJ criminal trial against Rabobank traders and submitters Anthony Allen and Anthony Conti for their roles in manipulating Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives.

43. On January 5, 2016, Defendants filed an undocketed letter motion requesting that the Court strike the TAC because it failed to comply with the Court’s order granting leave to amend by, *inter alia*, including previously-dismissed claims. On January 8, 2016, the Court granted Defendants’ letter motion to strike the TAC and directed Plaintiff to submit a letter request with a

new proposed TAC by January 28, 2016. *Laydon*, ECF No. 558. Plaintiff filed a letter request with a new proposed TAC on January 28, 2016. *Laydon*, ECF No. 564. Defendants opposed Plaintiff's January 28, 2016 submission on February 18, 2016. *Laydon*, ECF No. 573. On February 19, 2016, the Court granted Plaintiff leave to file the January 28, 2016 PTAC. *Laydon*, ECF No. 574.

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

45. On May 16, 2016, 21 Defendants (the "Legacy Defendants")¹ filed sixteen answers to the TAC totaling more than 2,000 pages, in which Defendants also asserted 365 affirmative defenses. *Laydon*, ECF Nos. 623-37, 639. Following the filing of Defendants' answers, Plaintiff met and conferred with Legacy Defendants over the course of four months to avoid the necessity of filing a motion to strike under FED. R. CIV. P. 12(f). As a direct result of the meet-and-confer process, four Defendants filed amended answers to the TAC addressing Plaintiff's identified deficiencies on November 14, 2016. *Laydon*, ECF Nos. 725 (Barclays Bank plc), 726 (Deutsche Bank), 727 (UBS AG and UBS Securities Japan Co., Ltd.), and 728 (RBS Securities Japan Limited, Royal Bank of Scotland plc, and The Royal Bank of Scotland Group plc).

46. Defendants ICAP Europe Limited, Tullett Prebon plc, and Lloyds Banking Group plc ("Newly-Added *Laydon* Defendants") filed motions to dismiss Laydon's TAC for lack of personal jurisdiction pursuant to FED. R. CIV. P. 12(b)(2) on May 16, 2016. *Laydon*, ECF Nos. 610,

¹ The "Legacy Defendants" are The Bank of Tokyo-Mitsubishi UFJ, Ltd.; Sumitomo Mitsui Trust Bank, Limited; The Norinchukin Bank; Mitsubishi UFJ Trust & Banking Corp.; Sumitomo Mitsui Banking Corp.; 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.; The Royal Bank of Scotland Group PLC; The Royal Bank of Scotland PLC; RBS Securities Japan Limited; Barclays Bank PLC; Coöperatieve Rabobank U.A. (f/k/a Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.); JPMorgan Chase & Co.; JPMorgan Chase Bank, N.A.; J.P. Morgan Securities plc; and Société Générale. For purposes of answering and discovery, related Defendants (*e.g.*, JPMorgan; The Royal Bank of Scotland Group Plc, The Royal Bank of Scotland Plc, and RBS Securities Japan Limited; and UBS AG, and UBS Securities Japan Co. Ltd.) responded as a single unit.

614, 618. Lowey filed its oppositions on July 18, 2016. *Laydon*, ECF Nos. 663-65. The Newly-Added *Laydon* Defendants filed their reply on August 16, 2016. *Laydon*, ECF Nos. 668, 670-71. After briefing was completed, the Second Circuit decided *Waldman v. Palestine Liberation Org.*, Nos. 15–3135–cv (L); 15–3151–cv (XAP) (2d Cir. August 31, 2016). The parties submitted letter briefing on the impact of the *Waldman* decision on the pending motion to dismiss. *Laydon*, ECF Nos. 679-80. The Court held oral argument on the Newly-Added *Laydon* Defendants’ motion on October 25, 2016. *Laydon*, ECF Nos. 675, 717. On March 10, 2017, the Court issued an order granting the Newly-Added *Laydon* Defendants’ motions to dismiss. *Laydon*, ECF Nos. 750.

47. On May 16, 2016, the Legacy Defendants filed a motion to partially dismiss Laydon’s TAC, arguing that claims during the last six months of the Class Period (*i.e.*, January 1, 2011 through June 30, 2011) were time-barred. *Laydon*, ECF Nos. 621-22. Lowey filed its opposition on July 18, 2016. *Laydon*, ECF No. 663. The Legacy Defendants filed their reply on August 16, 2016. *Laydon*, ECF No. 673. The Court held oral argument on the Legacy Defendants’ motion also on October 25, 2016. *Laydon*, ECF Nos. 675, 717. On March 10, 2017, the Court issued an order granting the Legacy Defendants’ motion to partially dismiss claims during the period January 1, 2011 to June 30, 2011.² *Laydon*, ECF Nos. 749.

48. On September 29, 2016, the Non-Stipulating Defendants moved for revision and relief from the Court’s March 31, 2015 Order that found these Defendants had waived their personal jurisdiction defense, or, alternatively, certification of the March 31, 2015 Order for appeal pursuant to 28 U.S.C. § 1292(b). *Laydon*, ECF Nos. 696-97. On the same day, three other Defendants, Barclays, Rabobank, and Société Générale, filed a similar motion seeking revision or relief from the Court’s November 10, 2014 Order denying them leave to move for dismissal based on lack of personal jurisdiction, or certification of the November 10, 2014 Order for appeal. *Laydon*,

² Before the Court issued its decision on Legacy Defendants’ motion, Deutsche Bank and JPMorgan withdrew from the motion in light of their binding settlements.

ECF Nos. 698-99. Lowey filed its opposition briefs on October 12, 2016. *Laydon*, ECF Nos. 702-03. The Non-Stipulating Defendants and Barclays, Rabobank, and Société Générale filed their replies on October 24, 2016. *Laydon*, ECF Nos. 707-08. The Court did not hold oral argument on the motions. On May 19, 2017, the Court denied the Non-Stipulating Defendants' and Barclays, Rabobank, and Société Générale's motions in their entirety.³ *Laydon*, ECF No. 761.

Defendants' Motions to Dismiss *Sonterra*

49. On February 1, 2016, all Defendants in the *Sonterra* action filed their motion to dismiss the *Sonterra* action pursuant to FED. R. CIV. P. 12(b)(1), (2), (5) and/or (6). Defendants filed at least five memoranda of law and more than 30 supporting declarations. *Sonterra*, ECF Nos. 147-51, 154-86. On March 18, 2016, Lowey filed its opposition to Defendants' motion to dismiss. *Sonterra*, ECF Nos. 208-11.

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

51. On April 22, 2016, Defendants filed their reply briefs in support of their motion to dismiss the *Sonterra* action. *Sonterra*, ECF Nos. 227-37.

52. On May 5, 2016, the Court held an all-day oral argument on Defendants' motions to dismiss the *Sonterra* complaint. Following the oral argument, the Second Circuit decided *Gelboim v. Bank of America Corporation*, 823 F.3d 759 (2d Cir. 2016). The parties submitted letter briefing on the

³ Before the Court issued its decision on Non-Stipulating Defendants' motion, Deutsche Bank withdrew from the motion in light of its binding settlement term sheet with Plaintiff.

impact of the *Gelboim* decision on the pending motions to dismiss. *Sonterra*, ECF Nos. 249, 256. The Court granted Defendants' motion to dismiss on March 10, 2017, finding that Plaintiffs failed to plead facts that supported their Article III standing to bring federal claims based on Defendants' alleged manipulation of Yen-LIBOR and Euroyen TIBOR and declining to exercise supplemental jurisdiction.⁴ *Sonterra*, ECF No. 314. The Court entered judgment on the same day and closed the case. *Sonterra*, ECF No. 315.

53. Plaintiffs filed their Notice of Appeal of the Court's March 10, 2017 Order on April 3, 2017. *Sonterra*, ECF No. 317. On May 2, 2017, the Second Circuit notified the parties that the appeal had been placed on the Expedited Calendar, with Plaintiffs' briefing due June 6, 2017. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF No. 126 (2d Cir.).

54. The dismissal of the *Sonterra* action in its entirety and subsequent appeal created uncertainty as to the Court's ability to entertain a motion to approve the Deutsche Bank and JPMorgan settlements. Accordingly, while Lowey drafted Plaintiffs' Second Circuit appellate brief, Lowey also drafted Plaintiffs' motion on consent to amend the March 10, 2017 Judgment pursuant to FED. R. CIV. P. 60(a) and 60(b) and for an indicative ruling under FED. R. CIV. P. 62.1, which was filed on May 22, 2017. *Sonterra*, ECF Nos. 322-23. The Court granted this motion and issued its indicative ruling on May 24, 2017. *Sonterra*, ECF No. 324. On May 25, 2017, Lowey then filed a motion with the Second Circuit, pursuant to Fed. R. App. P. 12.1(b), to remand the case to this Court to amend the March 10, 2017 judgment to exclude Deutsche Bank and JPMorgan from that judgment, and to retain and exercise jurisdiction over Deutsche Bank and JPMorgan in order to consider approval of their proposed settlements. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF No. 140 (2d Cir.). On June 13, 2017, the Second Circuit granted the motion to remand, enabling this Court to amend the *Sonterra* judgment entered on March 10, 2017 to exclude Deutsche

⁴ Before the Court issued its decision on Defendants' motion, Deutsche Bank and JPMorgan withdrew from the motion in light of its binding settlement term sheet with Plaintiff.

Bank and JPMorgan from the judgment, and retain and exercise jurisdiction over Deutsche Bank and JPMorgan in order to consider approval of their settlements. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF No. 151 (2d Cir.). The *Sonterra* appeal is stayed pending the Court's consideration of the proposed Deutsche Bank and JPMorgan settlements, and Plaintiffs have been ordered to inform the Second Circuit in writing every 30 days of the status of this Court's proceedings consistent with the indicative ruling. *Id.* Plaintiffs have timely filed these letters. *See Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944, ECF Nos. 155-56, 159-60 (2d Cir.)

Discovery Efforts in *Laydon*

55. After issuing its ruling in *Laydon I* granting-in-part and denying-in-part Defendants' motions to dismiss the SAC, the Court held a Rule 16 conference on April 24, 2014. At the conference, the Court ordered the parties to prepare a joint discovery plan, set deadlines for the Stipulating Defendants' motions to dismiss for lack of personal jurisdiction and for Plaintiff's motion for leave to amend the SAC. After Lowey filed the motion to amend the SAC, Lowey served Plaintiff's First Request for Production of Documents ("First Request") on all Defendants on June 18, 2014. Among other things, the First Request asked for all documents that Defendants had previously produced to government regulators during the course of those regulators' investigations into the manipulation of Yen-LIBOR and Euroyen TIBOR.

56. Over the next month, Lowey and Defendants began to meet and confer regarding Defendants' joint objections to Plaintiff's First Request. Defendants, among other things, raised objections under thirteen countries' foreign data privacy laws and argued that government regulators would not allow them to produce the requested documents at the risk of inhibiting their ongoing regulatory investigations. While the parties met and conferred on the First Request, the parties also negotiated a Protective Order that the Court entered on August 8, 2014. *Laydon*, ECF No. 349. The parties also proposed a Joint Initial Report and discovery plan to the Court. The Court had already

stayed discovery until September 2014 while parties were briefing Defendants' motions to dismiss for lack of personal jurisdiction, when the DOJ filed a motion to intervene and for a stay of discovery. *Laydon*, ECF No. 380. The Court granted the DOJ's motion to intervene and ordered a stay of discovery until May 15, 2015. *Laydon*, ECF No. 451. Defendants served their responses and objections to Plaintiff's First Request on December 18, 2014.

57. The discovery stay was lifted on May 15, 2015. Some Defendants, as a result of the parties' meet and confer efforts, began producing documents on a rolling basis in the summer of 2015.

58. Following the lifting of the discovery stay, Magistrate Judge Pitman held a discovery conference on June 25, 2015 and set a briefing schedule for Defendants' discovery objections based on foreign data privacy laws. *Laydon*, ECF No. 483. On August 6, 2015, Defendants HSBC Holdings plc and HSBC Bank plc (collectively, "HSBC"), JPMorgan, Société Générale, Sumitomo Mitsui Banking Corporation, Mizuho Corporate Bank, Ltd., and Deutsche Bank AG (collectively, the "UK Data Privacy Objectors") moved for an order sustaining their discovery objections under the foreign data privacy or bank secrecy laws of the United Kingdom. *Laydon*, ECF No. 495. On the same date, The Bank of Tokyo-Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., JPMorgan, Mitsubishi UFJ Trust and Banking Corporation, Mizuho Corporate Bank, Ltd., The Norinchukin Bank, Shinkin Central Bank, The Shoko Chukin Bank, Ltd., Société Générale, Sumitomo Mitsui Banking Corp. and Sumitomo Mitsui Trust Bank, Ltd. (collectively, the "Japan Data Privacy Objectors") moved for an order sustaining objections based on Japanese data privacy laws. *Laydon*, ECF No. 501. On September 11, 2015, Lowey filed its opposition, which included an expert declaration, to the UK Data Privacy Objectors' motion. *Laydon*, ECF Nos. 512-14.

59. On September 11, 2015, Lowey and the Japan Data Privacy Objectors notified Magistrate Judge Pitman that they had reached an agreement to table the Japan Data Privacy

Objectors' motion under the foreign data privacy laws of Japan. *Laydon*, ECF No. 511. On April 29, 2016, Magistrate Judge Pitman overruled the UK Data Privacy Objectors' motions for an order sustaining their discovery objections under the foreign data privacy and bank secrecy laws of the United Kingdom. *Laydon*, ECF No. 596. Lowey also negotiated separate discovery issues with Defendants on an individual basis. For example, to avoid briefing the issue of the application of France's data privacy and bank secrecy laws to Plaintiff's discovery requests, Lowey and Defendant Société Générale negotiated a procedure, approved by Magistrate Judge Pitman on January 15, 2016, which allowed Plaintiff to receive documents immediately through the consent procedures of the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, March 18, 1970, T.I.A.S. No 7444, 28 U.S.T. 2555, rather than requiring the Court to rule on the objection. *Laydon*, ECF No. 562.

60. Plaintiff served his Second Request for Production of Documents ("Second Request") on Barclays on March 31, 2016, on the Bank of Tokyo Mitsubishi UFJ, Ltd., The Bank of Yokohama, Ltd., Mitsubishi UFJ Trust and Banking Corporation, Shinkin Central Bank, The Shoko Chukin Bank, Ltd., and Sumitomo Mitsui Trust Bank, Ltd. on June 6, 2016, and on the remaining Defendants on July 14, 2016. All Defendants served their responses and objections to the Second Request by August 18, 2016.

61. Lowey began meeting and conferring with the 16 Legacy Defendants on the Second Request in August 2016. At least 75 meet-and-confers have been held with the Legacy Defendants, either jointly or individually, over the last 15 months to address various responses and objections to the Second Request, including certain Defendants' objections based on the Japanese Act on the Protection of Personal Information, Act No. 57 of 2003 ("APPI") covering data privacy, and to pursue the production of documents responsive to the Second Request, such as documents from certain Defendants' employees who engaged in the trading of Euroyen-Based Derivatives

(“Euroyen-Based Derivatives traders”). Lowey proposed a comprehensive set of search terms, translated into Japanese, to certain Defendants and negotiated with those Defendants to find an agreeable set of search terms to facilitate the production of documents from employees involved in each Defendant’s Yen-LIBOR and/or Euroyen TIBOR daily submissions.

62. On August 4, 2017, Lowey sought a pre-motion conference in advance of moving to compel six Defendants, Sumitomo Mitsui Trust Bank, Limited, The Shoko Chukin Bank, Ltd., The Bank of Tokyo-Mitsubishi UFJ, Ltd., Mitsubishi UFJ Trust and Banking Corporation, The Bank of Yokohama, Ltd., and Shinkin Central Bank, (collectively, the “Objecting Defendants”) to produce documents from their Euroyen-Based Derivatives traders. *Laydon*, ECF No. 783. The Objecting Defendants responded to Plaintiff’s request on August 11, 2017. *Laydon*, ECF No. 785. Magistrate Judge Pitman heard the parties’ arguments on September 19, 2017 and issued an order from the bench, later reduced to writing on September 27, 2017, requiring the Objecting Defendants to produce the non-privileged documents and communications that are responsive to Plaintiff’s document requests from 10% of each Defendants’ Euroyen-Based Derivatives traders, without prejudice to Plaintiff’s right to compel the production of additional documents from these and other Euroyen-Based Derivatives traders. *Laydon*, ECF No. 802. Plaintiff and the Objecting Defendants are now engaged in a meet-and-confer process to identify the 10% of Euroyen-Based Derivatives traders whose files will be produced. The Objecting Defendants also agreed to complete the production of their submitters’ files by December 1, 2017.

63. In addition to the meet-and-confers, Plaintiffs have sent numerous emails and letters raising issues in advance of a call or following up on outstanding items after a call. Plaintiffs continue to meet and confer with the Legacy Defendants on discovery issues relating to the Second Request and other identified deficiencies in productions.

64. We devoted, and continue to devote, substantial resources to reviewing the almost 11 million pages of documents received. To maximize efficiency and cut costs for the Class, Lowey leveraged its in-house technological expertise to locally deploy Relativity, a sophisticated document review platform, rather than relying on expensive outside vendors. In addition to avoiding unnecessary document hosting costs, this afforded Lowey unlimited access to Relativity's powerful analytics engine. Developing an analytics-based workflow enabled Lowey to effectively manage almost 2.8 million documents (more than 10.8 million pages) and more than 100,000 audio files that Defendants produced by suppressing duplicates and promoting documents involving key custodians, keywords, and other factors gleaned from five-and-a-half years of litigation. Lowey has leveraged the language skills of its attorneys and other Plaintiff's counsel, as well as external resources, to translate documents produced in French, German, and Japanese to further develop Plaintiff's theory of the case and identify additional areas of discovery that are likely to produce relevant documents.

Prior Settlement and Mediation Efforts with Other Defendants

65. Settlement discussions began with R.P. Martin in September 2014 after Lowey learned that R.P. Martin was facing insolvency, which would potentially impact access to relevant documents and information.

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

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

68. Settlements with Citi and HSBC were likewise reached after months of arm's-length negotiation, involving multiple phone calls and in-person meetings at which counsel for both sides presented the strengths and weaknesses of their respective claims and defenses. Negotiations with Citi spanned approximately four months, from early April 2015 through August 2015, when a settlement with Citi was formally executed. Following initial phone calls with Citi's counsel during the first week of April 2015, Lowey and Citi met on April 9, 2015. At the April 9 meeting, Lowey presented to Citi's counsel and a Citi representative what Lowey perceived to be the strengths and weaknesses of the litigation as well as Citi's litigation exposure. The April 9 meeting did not result in a settlement. Over the next several weeks, Lowey and counsel for Citi had numerous phone calls and continued to discuss the perceived strengths and weaknesses of the litigation. On May 26, 2015, Lowey and counsel for Citi signed a Memorandum of Understanding, which led to the August 11, 2015 Settlement Agreement.

69. The negotiations with HSBC took place over eight months starting approximately in October 2015 and continuing until the HSBC Settlement was executed in June 2016. Following initial phone calls with HSBC's counsel in October 2015, Lowey and HSBC met in person on

October 21, 2015. At the October 21 meeting, Lowey and HSBC discussed the respective strengths and weaknesses of each other's claims and defenses, as well as HSBC's potential litigation exposure. The October 21 meeting did not result in a settlement. Over the next several months, Lowey and counsel for HSBC held numerous phone calls and continued to present to each other the perceived strengths and weaknesses of the litigation, but the parties reached an impasse. On May 2, 2016, Lowey, CalSTRS, and a representative of HSBC, together with HSBC's counsel, participated in an all-day mediation session before Gary McGowan at the New York offices of HSBC's counsel, Locke Lord LLP. At the May 2 mediation, Plaintiffs and HSBC reached an agreement in principle to settle.

70. Lowey successfully moved for preliminary approval of the R.P. Martin and Citi settlements on February 1, 2016. *Laydon*, ECF Nos. 565-67 & *Sonterra*, ECF Nos. 187-89. On April 6, 2016, Plaintiffs submitted their supplemental memorandum of law to their preliminary approval motion, outlining the Proposed Notice Program and Proposed Plan of Allocation. *Laydon*, ECF No. 590-91 & *Sonterra*, ECF Nos. 221-22. The Court preliminarily approved these settlements on April 7, 2016. *Laydon*, ECF No. 592 & *Sonterra*, ECF No. 223. Lowey then moved for preliminary approval of the HSBC settlement on June 17, 2016, seeking to combine it with the Citi and R.P. Martin settlements pursuant to FED. R. CIV. P. 23 for the purpose of Notice and Distribution to the Settlement Class. *Laydon* ECF Nos. 654-57 & *Sonterra* ECF Nos. 260-63. On June 22, 2016, the Court granted this motion and issued a superseding order preliminarily approving the Settlements under FED. R. CIV. P. 23(e). *Laydon*, ECF No. 659 & *Sonterra*, ECF No. 264.

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

72. Lowey has worked with expert Dr. Craig Pirrong to develop the Plan of Allocation, which was posted on the Settlement website on or about August 5, 2016 and previously approved by this Court as part of final approval of the Citi and HSBC settlements. *Sonterra*, ECF No. 298 ¶ 20. As more fully described in Dr. Pirrong's declaration (*Laydon*, ECF No. 657-1; *Sonterra*, ECF No. 263-1), the Plan of Allocation is based on Euroyen market data reflecting what Defendants paid to borrow Yen in the interbank market during the Class Period. To facilitate this data-driven Plan of Allocation, Lowey developed proprietary software to extract the relevant transactional information from R.P. Martin's trade database and deployed a separate team to isolate additional transaction records from the Non-Settling Defendants' productions in *Laydon* using Relativity's advanced analytics engine. This team then converted those documents from images and PDFs into machine-readable form by manually entering the necessary data into a database. Lowey has also fielded potential Class Member questions via phone and email since the time the settlements were reached and preliminarily approved.

73. Class Counsel also retained Kenneth Feinberg, Esq. to oversee the allocation process and ensure a fair and reasonable distribution of settlement funds to Settlement Class Members. As part of this process, Class Counsel appointed separate allocation counsel to represent the interests of Class members that transacted in different types of Euroyen-Based Derivatives, including interest rate swaps and forward rate agreements, Euroyen TIBOR futures contracts, Yen foreign exchange forwards, and CME Yen currency futures contracts. In August 2016, Mr. Feinberg led a two-day mediation among allocation counsel to determine if any legal discounts should be applied to the value of Settlement Class Members' claims. *See Laydon*, ECF No. 683 & *Sonterra*, ECF No. 275.

74. On November 10, 2016, the Court granted Plaintiffs' motion for final approval of the settlements with R.P. Martin, Citi, and HSBC and the Plan of Allocation (*Laydon*, ECF No. 720; *Sonterra*, ECF No. 298) and entered a final judgment and order dismissing R.P. Martin, Citi, and

HSBC from the Actions with prejudice. *Laydon*, ECF No. 721; *Sonterra*, ECF No. 299. The Court also awarded Class Counsel attorneys' fees of \$14,500,000 (*Laydon*, ECF No. 723; *Sonterra*, ECF No. 296), and reimbursement of expenses, as well as incentive awards for the class representatives. *Laydon*, ECF No. 724; *Sonterra*, ECF No. 298.

75. The attorneys' fees awarded represented only 39.56% of the aggregate lodestar of \$36,649,109 for the 69,022.36 hours spent by Plaintiffs' Counsel working on *Laydon* and *Sonterra* through August 31, 2016. *See Sonterra*, ECF No. 279 ¶¶ 65-74.

Settlement and Mediation Efforts with Deutsche Bank and JPMorgan

76. Settlements with Deutsche Bank and JPMorgan were reached after almost two years of arm's-length negotiations, involving multiple phone calls and in-person meetings at which counsel for both sides presented the strengths and weaknesses of their respective claims and defenses. Plaintiffs' settlements with Deutsche Bank and JPMorgan benefited from the knowledge Class Counsel gained from settlement cooperation materials received from R.P. Martin, Citi and HSBC, the discovery produced in *Laydon*, government settlements and public accounts of the manipulation involving Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives, Class Counsel's own investigation, industry and expert analysis of Yen-LIBOR, Euroyen TIBOR and the Euroyen-Based Derivatives market, and information shared by Deutsche Bank and JPMorgan during the course of settlement negotiations.

77. Negotiations with Deutsche Bank occurred over 20 months, and started in November 2015. After an initial phone call, Plaintiffs met with Deutsche Bank's counsel for preliminary discussions which did not result in a settlement. Settlement discussions continued through early 2016 but reached a pause by June 2016. On August 30, 2016, Lowey and Deutsche Bank's counsel resumed settlement discussion that continued through a combination of in-person meeting and phone calls through December 2016. In December 2016, the parties reached an

impasse and agreed to mediation before the Honorable Daniel Weinstein. On January 9, 2017, Class Counsel, the general counsel for the California State Teachers' Retirement System, counsel for Deutsche Bank, and Deutsche Bank's Global Head of Litigation and Regulatory Enforcement participated in an all-day mediation session at the New York office of Deutsche Bank's counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP. At the end of the January 9 mediation, Plaintiffs and Deutsche Bank reached an impasse. The mediator then made a mediator's proposal, which was ultimately accepted by Plaintiffs and Deutsche Bank. The parties signed a binding term sheet on January 26, 2017.

78. Negotiations with JPMorgan also began in November 2015 with a preliminary settlement discussion following an initial phone call. Plaintiffs' discussions with JPMorgan continued through early 2016, but ceased by June 2016. Following a call by JPMorgan's counsel, the parties resumed settlement discussions on November 10, 2016. Plaintiffs and JPMorgan met again on December 2, 2016, December 19, 2016 and via a series of phone calls, resulting in an agreement in principle reached on January 23, 2017. The parties executed a binding term sheet on January 26, 2017.

79. Over the next several months, Plaintiffs conferred with Deutsche Bank and JPMorgan separately to negotiate the precise language to be used in each settlement agreement. After the Court issued its March 10, 2017 Order and Judgment in *Sonterra* and Plaintiffs appealed the decision, Class Counsel also undertook efforts to resolve any uncertainty as to the Court's ability to entertain a motion seeking approval of the Deutsche Bank and JPMorgan settlements. Upon the Court's issuance of its indicative ruling on May 24, 2017 and the Second Circuit's remand of the action on June 13, 2017, Plaintiffs finalized the terms of settlement with Deutsche Bank and JPMorgan, culminating with the execution of the settlements on July 21, 2017.

80. On July 21, 2017, Lowey moved for preliminary approval of the Deutsche Bank and JPMorgan settlements, outlined the Proposed Notice Program, and advised the Court of the previously approved Plan of Allocation. *Laydon*, ECF No. 773-76 & *Sonterra*, ECF No. 336-39. On August 3, 2017, the Court granted this motion and issued an order preliminarily approving of the settlements under FED. R. CIV. P. 23(e). *Laydon*, ECF No. 782 & *Sonterra*, ECF No. 345. To accommodate JPMorgan's timeline for the production of the names and addresses of its U.S.-based counterparties to Euroyen-Based Derivatives transactions for notice purposes, Lowey moved for a superseding preliminary approval order. *Laydon*, ECF No. 794 & *Sonterra*, ECF No. 351. This Court granted to motion and issued a superseding order preliminarily approving of the settlements on September 14, 2017. *Laydon*, ECF No. 796 & *Sonterra*, ECF No. 355.

81. The Deutsche Bank and JPMorgan settlements collectively established a common fund of \$148 million, providing additional monetary compensation for the Class's otherwise uncompensated injuries, and additional transaction data, communications, and documents that have greatly assisted (and will continue to assist) Class Counsel in prosecuting the case.

Attorneys' Fees

82. The schedule in Exhibit A is a summary reflecting the amount of time spent by the attorneys and professional support staff of Lowey involved in this litigation from inception to September 30, 2017 and also from September 1, 2016 through September 30, 2017, reflecting the period since Class Counsel's previous motion seeking an award of attorneys' fees in these actions. The schedule was prepared based upon the daily time records maintained by Lowey.

83. From the initiation of these actions through September 30, 2017, Lowey's total compensable time for which it seeks an award of attorneys' fees is 70,325.35 hours, which includes 23,605.65 hours spent from September 1, 2016 through September 30, 2017. The total lodestar value of these professional services based on current rates is \$37,605,263.75, which includes

\$11,107,393.75 of lodestar value for professional services provided from September 1, 2016 through September 30, 2017.

84. The hourly rates for Lowey's attorneys and professional support staff listed in the schedule in Exhibit A are the firm's current hourly rates. Lowey's lodestar figures do not include charges for expense items.

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

86. I understand from the declaration of Benjamin M. Jaccarino that Lovell Stewart Halebian Jacobson calculates that, from the initiation of these actions through September 30, 2017, they expended an additional 7,147.54 hours totaling \$4,677,762.10 in fees, which includes 3,509.90 hours for professional services provided from September 1, 2016 through September 30, 2017 at a lodestar value of \$2,342,450.25.

87. I understand from the declaration of Todd A. Seaver that Berman Tabacco calculates that, from the initiation of these actions through September 30, 2017, they expended an additional 25,179.92 hours totaling \$10,631,759.70 in fees, which includes 8,840.80 hours for professional services provided from September 1, 2016 through September 30, 2017 at a lodestar value of \$3,632,694.50.

88. I understand from the declaration of Jennifer W. Sprengel that Cafferty Clobes Meriwether & Sprengel LLP calculates that, from the initiation of these actions through September 30, 2017, they expended an additional 2,798.20 hours totaling \$1,337,941.00 in fees, which includes 769.40 hours for professional services provided from September 1, 2016 through September 30, 2017 at a lodestar value of \$343,695.50.

89. I understand from the declaration of Linda Nussbaum that Nussbaum Law Group, P.C. calculates that, from September 1, 2016 through September 30, 2017, they expended an additional 24 hours totaling \$21,695.00 in fees.

90. In total, all Plaintiffs' Counsel have, as of September 30, 2017 expended 105,775.61 hours, the equivalent of \$54,532,316.55 in pursuing these actions. This total includes the lodestar of additional firms who worked on these actions and previously filed declarations. *See* ECF *Laydon*, ECF Nos. 690, 692 & *Sonterra*, ECF Nos. 282, 284. To date, Plaintiffs' Counsel have been award \$14,500,000, or approximately 26.59% of the total lodestar value of their professional services.

91. Expense items are billed separately and such charges are not duplicated in Lowey's current billing rates. *See* Declaration of Geoffrey M. Horn. Lowey incurred \$194,360.69 in expenses from September 1, 2016 through September 30, 2017.

92. I understand that Lovell Stewart Halebian Jacobson incurred an additional \$18,437.82 in expenses from September 1, 2016 through September 30, 2017.

93. I understand that Berman Tabacco incurred an additional \$10,231.89 in expenses from September 1, 2016 through September 30, 2017.

94. I understand that Cafferty Clobes Meriwether & Sprengel LLP incurred an additional \$144.25 in expenses from September 1, 2016 through September 30, 2017.

95. I understand that Nussbaum Law Group incurred an additional \$98.01 in expenses from September 1, 2016 through September 30, 2017.

96. Additionally, Plaintiffs' Counsel had \$28,464.69 in expenses previously submitted to the Court that were not reimbursed by the \$1 million expense award previously granted by the Court. *See Laydon*, ECF No. 686 & *Sonterra*, ECF No. 278 at 23.

97. These expenses have been paid or will be paid from the litigation expense fund of \$500,000.00 established by this Court's prior order approving settlements with Citi and HSBC. *See Laydon*, ECF No. 724 & *Sonterra*, ECF No. 297 ¶ 3.

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

Executed on October 31, 2017

/s/ Vincent Briganti
Vincent Briganti

EXHIBIT A

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

| Name and Position¹ | Rates | Hours from inception to 9/30/2017 | Lodestar from inception to 9/30/2017 | Hours from 9/1/2016 to 9/30/2017 | Lodestar from 9/1/2016 to 9/30/2017 |
|--------------------------------------|--------------|--|---|---|--|
| Richard W. Cohen (S) | \$975 | 242.20 | 236,145.00 | 56.70 | 55,282.50 |
| Barbara Hart (S) | \$900 | 265.90 | 239,310.00 | 137.80 | 124,020.00 |
| Geoffrey M. Horn (S) | \$875 | 4,684.00 | 4,098,500.00 | 828.40 | 724,850.00 |
| Gerald Lawrence (S) | \$875 | 388.80 | 340,200.00 | 206.90 | 181,037.50 |
| Peter D. St. Phillip (S) | \$875 | 4,512.70 | 3,948,612.50 | 602.50 | 527,187.50 |
| Thomas M. Skelton (S) | \$875 | 1,640.15 | 1,435,131.25 | 457.45 | 400,268.75 |
| Vincent Briganti (S) | \$875 | 6,383.90 | 5,585,912.50 | 894.80 | 782,950.00 |
| David C. Harrison (P) | \$800 | 211.50 | 169,200.00 | 107.10 | 85,680.00 |
| Scott V. Papp (A) | \$600 | 118.90 | 71,340.00 | 45.40 | 27,240.00 |
| Deborah Rogozinski (A) | \$600 | 275.10 | 165,060.00 | 64.00 | 38,400.00 |
| John V. D'Amico (A) | \$575 | 2,143.50 | 1,232,512.50 | 1,061.00 | 610,075.00 |
| Sitso Bediako (A) | \$550 | 2,754.70 | 1,515,085.00 | 1,246.90 | 685,795.00 |
| Frank Strangeman (A) | \$550 | 1,659.30 | 912,615.00 | 1,119.40 | 615,670.00 |
| Sung-Min Lee (A) | \$525 | 110.10 | 57,802.50 | -- | -- |
| Uriel Rabinovitz (A) | \$525 | 58.50 | 30,712.50 | 14.80 | 7,770.00 |
| Noelle Ruggiero (A) | \$525 | 62.60 | 32,865.00 | 0.50 | 262.50 |
| Raymond Girnys (A) | \$500 | 6,090.80 | 3,045,400.00 | 1,163.20 | 581,600.00 |
| Christian Levis (A) | \$500 | 3,187.20 | 1,593,600.00 | 899.50 | 449,750.00 |
| Ian Sloss (A) | \$500 | 2,759.90 | 1,379,950.00 | 1,075.90 | 537,950.00 |
| Lee J. Lefkowitz (A) | \$500 | 1,911.00 | 955,500.00 | 825.70 | 412,850.00 |
| Michelle Conston(A) | \$400 | 3,516.80 | 1,406,720.00 | 1,091.30 | 436,520.00 |
| Melissa Cabrera | \$400 | 1,646.10 | 658,440.00 | -- | -- |
| Matthew J. Acocella (A) | \$350 | 1,283.70 | 449,295.00 | 161.10 | 56,385.00 |
| Sylvie Bourassa (A) | \$350 | 1,681.00 | 588,350.00 | 1,307.30 | 457,555.00 |
| Lee Yun Kim (A) | \$350 | 4,382.50 | 1,533,875.00 | 1,772.70 | 620,445.00 |
| Christina McPhaul (A) | \$350 | 801.20 | 280,420.00 | 41.00 | 14,350.00 |

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

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|---------------------------------|-------|------------------|------------------------|------------------|------------------------|
| Roland R. St. Louis, III (A) | \$350 | 1,784.20 | 624,470.00 | 121.50 | 42,525.00 |
| Jennifer Tembeck (A) | \$350 | 2,917.10 | 1,020,985.00 | 765.80 | 268,030.00 |
| Bonnie Espino | \$350 | 810.10 | 283,535.00 | -- | -- |
| Jennifer Risener (A) | \$350 | 1,463.90 | 512,365.00 | 684.90 | 239,715.00 |
| Samantha L. Breitner (A) | \$325 | 1,714.40 | 557,180.00 | 1,378.30 | 447,947.50 |
| Garam Choe (A) | \$325 | 571.00 | 185,575.00 | 441.20 | 143,390.00 |
| Matthew Guarnero (A) | \$325 | 1,806.20 | 587,015.00 | 80.30 | 26,097.50 |
| Yong Kim (A) | \$325 | 1,747.20 | 567,840.00 | 1,254.70 | 407,777.50 |
| Adebola Aderinto (A) | \$325 | 306.80 | 99,710.00 | 306.80 | 99,710.00 |
| Anita Alexander (A) | \$325 | 65.80 | 21,385.00 | 65.80 | 21,385.00 |
| Anthony Christina (A) | \$325 | 318.90 | 103,642.50 | 318.90 | 103,642.50 |
| Peter Demato, Jr. (AA) | \$325 | 324.40 | 105,430.00 | 324.40 | 105,430.00 |
| Richard Frank (A) | \$325 | 104.50 | 33,962.50 | 104.50 | 33,962.50 |
| Bracha Gefen (A) | \$325 | 449.65 | 146,136.25 | 449.65 | 146,136.25 |
| Craig Maider (AA) | \$325 | 540.60 | 175,695.00 | 540.60 | 175,695.00 |
| Anthony Odorisi (AA) | \$325 | 91.25 | 29,656.25 | 91.25 | 29,656.25 |
| Willian Olson (AA) | \$325 | 93.30 | 30,322.50 | 93.30 | 30,322.50 |
| Adam Settle (A) | \$325 | 201.60 | 65,520.00 | 201.60 | 65,520.00 |
| Katherine Vogel (PL) | \$275 | 1,247.40 | 343,035.00 | 851.50 | 234,162.50 |
| Stephen Fay (PL) | \$150 | 250.70 | 37,605.00 | 108.50 | 16,275.00 |
| Sylvia Hoffmann (PL) | \$150 | 70.20 | 10,530.00 | 9.80 | 1,470.00 |
| Joanne Mannion (PL) | \$150 | 124.70 | 18,705.00 | 51.50 | 7,725.00 |
| Gregory Santiago (PL) | \$150 | 309.20 | 46,380.00 | 178.50 | 26,775.00 |
| Maribel Valentin-Rodriguez (PL) | \$150 | 32.00 | 4,800.00 | 1.00 | 150.00 |
| Elisa Horn | \$150 | 208.20 | 31,230.00 | -- | -- |
| TOTALS | | 70,325.35 | \$37,605,263.75 | 23,605.65 | \$11,107,393.75 |