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)

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

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Pursuant to this Court's September 14, 2017 superseding order preliminarily approving Settlements with Deutsche Bank[1] and JPMorgan[2], Plaintiffs,[3] through Lowey Dannenberg, P.C. ("Class Counsel") respectfully move under Rule 23(h) of the Federal Rules of Civil Procedure for an award of attorneys' fees of $34.88 million, or approximately 23.57% of the $148 million common fund established by Plaintiffs' settlements with Deutsche Bank and JPMorgan in the related cases *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*"). The requested fees are consistent with the negotiated fee agreement with CalSTRS, one of the largest public pension systems in the world. Further, the fees are within the percentage found reasonable in this circuit and are less than the total lodestar incurred in litigating these cases to date.

INTRODUCTION

Class Counsel has been litigating on behalf of investors in Euroyen-Based Derivatives as sole Lead Counsel for over five-and-a-half years on a fully-contingent basis. Taking on 44 of the world's largest financial institutions regarding the manipulation of Yen-LIBOR and Euroyen TIBOR, Class Counsel has achieved significant results, including a total of $206 million in monetary compensation and valuable cooperation, while facing many of the top antitrust lawyers in the country and the vast resources of their clients.

Class Counsel's ability to successfully recover for the Settlement Class is a testament to the quality of the work and resources devoted to these massive cases, which included multiple amended pleadings, more than 15 motions and 50 separate memoranda, and almost eleven million pages in

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

[2] "JPMorgan" means JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, and J.P. Morgan Securities plc. Together, JPMorgan and Deutsche Bank are referred to as the "Settling Defendants."

[3] Plaintiffs are Jeffrey Laydon, Sonterra Capital Master Fund, Ltd. ("Sonterra"), Hayman Capital Master Fund, L.P. and Japan Macro Opportunities Master Fund, L.P. (collectively, "Hayman"), and California State Teachers' Retirement System ("CalSTRS"). Unless otherwise noted, ECF citations are to the docket in the *Sonterra* Action, and internal citations and quotation marks are omitted. Unless otherwise defined, capitalized terms herein have the same meaning as in the Deutsche Bank Settlement Agreement and JPMorgan Settlement Agreement. ECF Nos. 338-1; 338-2.

discovery. The *Laydon* Third Amended Complaint's ("TAC") (*Laydon*, ECF No. 580) and *Sonterra* Amended Class Action Complaint's (ECF No. 121) detailed allegations describing, *inter alia*, the structure of Defendants' conspiracy and its economic impact on the Euroyen-Based Derivatives market represent just a portion of the effort expended to date.

The Plan of Allocation is similarly representative of the effort expended. Class Counsel developed this data-driven approach over several months with one of the leading commodities manipulation experts, advancing all associated costs. Class Counsel deployed cutting-edge document review technology and a team specially trained in analyzing transactional data to mine the necessary records from the millions of documents that Defendants produced in the *Laydon* Action. This process was time-consuming, but invaluable and resulted in a damages model capable of fairly allocating settlement funds.

Having worked diligently for more than five-and-a-half years and having received fees representing only a fraction of the professional services provided to date, Class Counsel should now be awarded a fair and reasonable fee of $34.88 million, or approximately 23.57% of the monetary value of the settlement amounts. This request is objectively fair and reasonable because it is consistent with the graduated fee scale that Plaintiff CalSTRS negotiated with Class Counsel before joining this case. *See* Part I.A *infra*. The request is also qualitatively reasonable because it satisfies all six *Goldberger* factors used to evaluate attorneys' fees in this Circuit (*see* Part I.C-D *infra*) and is consistent with fee awards in other similarly complex class actions. *See* Part I.B *infra*.

Class Counsel does not seek reimbursement for the $223,272.66 in out-of-pocket expenses incurred since September 1, 2016. These expenses, described in the accompanying declaration of Geoffrey M. Horn ("Horn Decl."), and those of additional Plaintiffs' Counsel,[4] were incurred for

[4] *See* Declaration of Benjamin M. Jaccarino, Esq. (Lovell Stewart Halebian Jacobson LLP); Declaration of Todd A. Seaver, Esq. (Berman Tabacco); Jennifer W. Sprengel, Esq. (Cafferty Clobes Meriwether & Sprengel LLP); and Linda Nussbaum, Esq. (Nussbaum Law Group, P.C.).

the Class's benefit and predominantly consist of discovery costs, expert work, mediation, travel, and research expenses. These expenses have been paid or will be paid from the litigation expense fund established by this Court's prior order approving settlements with Citibank, N.A., Citigroup Inc., Citibank Japan Ltd., Citigroup Global Markets Japan Inc. (collectively, "Citi") and HSBC Holdings plc, HSBC Bank plc (collectively, "HSBC"). *See* ECF No. 297 ¶ 3.

THE WORK UNDERTAKEN BY CLASS COUNSEL

These additional settlements in *Laydon* and *Sonterra* are the products of the continued investigation, diligence and skill of some of the country's most experienced commodity manipulation lawyers and experts. Class Counsel has continued to shoulder the financial risk of litigating these actions and has continued to productively use its resources to generate beneficial results for Plaintiffs and the Class. The work undertaken for the Class is fully described in previous filings with the Court (see ECF Nos. 188-89, 261-63, 278-79, 281-87, 337-38) and the accompanying declaration of Vincent Briganti ("Briganti Decl."). Below is a summary of that work, with attention on the efforts undertaken since September 1, 2016.

A. Initial Case Investigation and the *Laydon* Complaints

Class Counsel began investigating the alleged manipulative conduct in the Euroyen-Based Derivatives market more than five years ago, after UBS revealed it had entered the Department of Justice's "ACPERA"[5] leniency program by self-reporting criminal cartel activity involving Yen-LIBOR and Euroyen TIBOR. *See* Briganti Decl. ¶¶ 2-3.

Class Counsel filed the initial Class Action Complaint ("CAC") (*Laydon,* ECF No. 1) on behalf of Jeffrey Laydon on April 30, 2012, asserting claims under the Sherman Act, Commodity Exchange Act ("CEA"), and several states' laws against twenty-five Defendants that were members of the Yen-LIBOR and/or Euroyen TIBOR panels. *Id.* ¶ 4. In June 2012, Barclays became the first

[5] Antitrust Criminal Penalty Enhancement and Reform Act of 2004, Pub. L. 108-237.

Defendant to settle with global regulators. *Id.* ¶ 10. Class Counsel filed the First Amended Complaint ("FAC") on December 3, 2012. The FAC incorporated information from Barclays' government settlements and expanded the CAC's allegations by more than 100 pages with 48 charts, graphs, and tables reflecting new economic evidence from a leading expert in benchmark manipulation retained by Class Counsel. *Id.* ¶ 11. Based on information from UBS's and RBS's government settlements, Class Counsel filed an enhanced Second Amended Complaint ("SAC"), replete with detailed allegations describing a conspiracy to manipulate Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives, including the Euroyen TIBOR futures contracts that Plaintiff Laydon traded on the Chicago Mercantile Exchange ("CME"). *Id.* ¶¶ 12-14.

Defendants filed thirteen separate memoranda of law in support of their motions to dismiss the SAC on June 14, 2013. *Id.* ¶ 17. Class Counsel filed an omnibus opposition to Defendants' motions to dismiss the SAC on August 13, 2013. *Id.* After a full day of oral argument on March 5, 2014, the Court granted-in-part and denied-in-part Defendants' motion to dismiss on March 28, 2014, dismissing Plaintiff's antitrust claims but sustaining CEA claims. *Id.* ¶ 19.

Class Counsel moved for leave to amend and filed a Proposed Third Amended Complaint ("PTAC") on June 17, 2014. *Id.* ¶ 21. The PTAC reflected Class Counsel's continuing investigation and sought to add four newly-identified Defendants. It also sought to add two named plaintiffs, Oklahoma Police Pension & Retirement System ("OPPRS") and Stephen Sullivan ("Sullivan") who transacted in Euroyen-Based Derivatives directly with several Defendants. *Id.* ¶ 22. The PTAC included new claims for breach of the implied covenant of good faith and fair dealing, and renewed claims for unjust enrichment based on these direct dealings. *Id.* The PTAC also added claims for violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO") based in part on Defendant Rabobank's traders' recent guilty pleas to wire fraud in connection with the manipulation of Yen-LIBOR and Euroyen TIBOR. *Id.* ¶ 23.

On August 7, 2014, fourteen Defendants filed eight new motions to dismiss the SAC under Rule 12(b)(2), arguing that the Supreme Court's seven-month old decision in *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), created a previously-unavailable personal jurisdiction defense. *Id.* ¶ 24. Class Counsel opposed these motions arguing, *inter alia*, that Defendants had waived their personal jurisdiction defenses by not raising them sooner. *Id.* ¶ 26.

Defendants filed their opposition to Plaintiff's motion for leave to amend four days later. *Id.* ¶ 25. While Class Counsel was preparing Plaintiff's response, CalSTRS retained Class Counsel to prosecute claims based on its Euroyen-Based Derivatives transactions with certain Defendants. *Id.* ¶ 27. As described fully in the accompanying declaration of CalSTRS's general counsel, Brian J. Bartow, before joining the case, CalSTRS negotiated a graduated fee schedule with Class Counsel that provided for a 25% fee on the first $100 million recovered, 23% on the next $200 million recovered, and lower fee percentages on subsequent amounts added to the common fund. *See* Declaration of Brian J. Bartow ("Bartow Decl."), ¶ 7. The fee agreement also limited the amount of fees Class Counsel could request to 3.5 times the aggregate lodestar of all Plaintiffs' Counsel. *Id.* Class Counsel then drafted detailed allegations, including examples of how Defendants' misconduct impacted CalSTRS's transactions. These new allegations were included with Plaintiff's reply brief to avoid the need for an additional round of motion to amend briefing. *See* Briganti Decl. ¶ 27.

On March 31, 2015, the Court partially granted Plaintiff's motion for leave to amend the complaint to add the four new Defendants but denied leave to include the new plaintiffs and RICO and state law claims. *Id.* ¶ 28. CalSTRS's request to join the action was also denied but it was permitted to renew its application by letter within 30 days. The Court denied ten Defendants' motions to dismiss the SAC, holding they had waived their personal jurisdiction defenses. *Id.*

B. The Sonterra Complaint

CalSTRS filed a letter motion to intervene in *Laydon* on April 29, 2015. *Id.* ¶ 33. While that motion was pending, Class Counsel initiated the *Sonterra* action on behalf of two U.S.-based investment funds—Sonterra and Hayman Capital Management L.P. ("Hayman Management"). *Id.* ¶ 35. Like CalSTRS, Sonterra and Hayman Management transacted in over-the-counter Euroyen-Based Derivatives, including Yen-LIBOR-based interest rate swaps and Yen foreign exchange forward agreements, directly with several Defendants. *Id.* Class Counsel related this new case to *Laydon* and quickly moved to consolidate the actions as the cases involved overlapping facts, occurrences, and law, and the same Defendants, government settlements, Euroyen-Based Derivatives, and economic evidence of manipulation and price artificiality. *Id.*

The Court addressed both CalSTRS's motion to intervene and the *Sonterra* Plaintiffs' motion to consolidate on October 8, 2015. *Id.* ¶ 38. First, the Court denied Plaintiff's motion to consolidate the *Laydon* and *Sonterra* actions without prejudice, explaining that it would reconsider whether consolidation was appropriate after all Defendants had either answered or filed motions to dismiss in both cases. *Id.* Next, the Court denied CalSTRS's motion to intervene in *Laydon* and instructed CalSTRS to file its own complaint. *Id.* ¶ 39. To avoid unnecessarily spending resources on a new complaint and a round of motion to dismiss briefing, Class Counsel suggested adding CalSTRS to the *Sonterra* action. *Id.* ¶ 39. The Court agreed and ordered the *Sonterra* plaintiffs to file an amended complaint including CalSTRS by December 1, 2015. After a brief extension, amended complaints were filed in *Sonterra* on December 18, 2015. *Id.* ¶ 41.

C. *Laydon* TAC

Plaintiff filed his TAC in *Laydon* on December 18, 2015. *Id.* ¶ 41. Defendants subsequently moved to strike the TAC on the ground that it did not comply with the Court's order granting leave to amend because, *inter alia*, it included claims that were previously dismissed in order to preserve

those claims for appeal. *Id.* ¶ 43. The Court granted this motion, instructing Class Counsel to submit a new PTAC with a letter seeking leave to file that complaint. *Id.* Plaintiff filed his motion for leave to file the new PTAC, which Defendants opposed, arguing that it too violated the Court's order granting leave to amend and that the amendment was futile because it added time-barred claims. *Id.* ¶ 44. The Court granted Plaintiff's motion and Class Counsel filed a new TAC on February 29, 2016. Defendants' subsequent attempts to strike that complaint were denied. *Id.*

Twenty-one Defendants (the "Legacy Defendants") filed 16 answers to the TAC on May 16, 2016 totaling over 2,000 pages. *Id.* ¶ 45. After meeting and conferring with the Legacy Defendants regarding their answers, four Defendants filed amended answers on November 14, 2016. *Id.*

On May 16, 2016, the Legacy Defendants filed a motion to partially dismiss claims in the TAC arising during the last six months of the Class Period (January 1, 2011 through June 30, 2011) as time-barred. *Id.* ¶ 47. After the motion was fully briefed, the Court held oral argument on October 25, 2016. *Id.* The Court granted the Legacy Defendants' motion on May 10, 2017. *Id.*

Also on May 16, 2016, three Defendants added to the TAC ("Newly-Added *Laydon* Defendants") filed motions to dismiss for lack of personal jurisdiction. *Id.* ¶ 46. Plaintiff filed his opposition on July 18, 2016 and the Newly-Added *Laydon* Defendants filed their reply on August 16, 2016. *Id.* After the parties completed briefing, but before oral argument, the Second Circuit decided *Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016). The parties submitted letter briefing on the impact of *Waldman* on the pending motion to dismiss. *Id.* The Court held oral argument on October 25, 2016. *Id.* On March 10, 2017, the Court granted the Newly-Added *Laydon* Defendants' motions to dismiss. *Id.*

Based on the *Waldman* decision, certain Defendants filed motions with the Court seeking revision and relief from the Court's November 10, 2014 and March 31, 2015 Orders finding certain Defendants waived their personal jurisdiction defense, or, alternatively certification of the Orders to

the Second Circuit. *Id.* ¶ 48. Plaintiffs opposed the motions. *Id.* After the motions were fully briefed, the Court denied certain Defendants' motions on May 19, 2017. *Id.*

D. Motion to Dismiss Ruling in the *Sonterra* Action

On February 1, 2016, the *Sonterra* Defendants filed at least five briefs and more than 30 declarations in support of their motions to dismiss arguing, *inter alia*, that the Court should dismiss Plaintiffs' claims for lack of personal jurisdiction, lack of antitrust standing and antitrust injury, and because they involve an extraterritorial application of United States law. *Id.* ¶¶ 49-51. On May 5, 2016, the Court held an all-day oral argument at which Class Counsel delivered a multi-hour presentation in opposition to Defendants' arguments with documentary evidence. *Id.* ¶ 52.

On March 10, 2017, the Court entered a Memorandum Decision and Order, dismissing the *Sonterra* Action against the non-settling Defendants for lack of subject matter jurisdiction and declining to exercise supplemental jurisdiction over the *Sonterra* Plaintiffs' state law claims. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844, 2017 WL 1091983 (S.D.N.Y. Mar. 10, 2017) (the "Opinion"). In the Opinion, the Court acknowledged that Deutsche Bank and JPMorgan had withdrawn their motions to dismiss. *Id.* at *1 n.1. The Court also entered judgment on the same day, closing the case. Briganti Decl. ¶ 52. Class Counsel filed a timely notice of appeal to the United States Court of Appeals for the Second Circuit. *Id.* ¶ 53. On May 2, 2017, the Second Circuit placed the appeal on its Expedited Calendar, with briefing due June 6, 2017.

The dismissal of the action in its entirety, entry of judgment and appeal created uncertainty among the settling parties about the Court's ability to entertain a motion for seeking approval of the settlements. Briganti Decl. ¶ 54. While Plaintiff drafted its appellate brief, Class Counsel engaged in numerous phone calls with the Settling Defendants regarding the best procedure to follow to obtain preliminary approval of the Settlements. *Id.*

Plaintiffs, with consent from Settling Defendants, filed a motion for an indicative ruling pursuant to Federal Rule 62.1. Briganti Decl. ¶ 54. On May 24, 2017, the Court granted the motion for an indicative ruling under Rule 62.1 in the *Sonterra* Action, indicating that it intended to "amend the Judgment (ECF No. 315) entered in this action on March 10, 2017, pursuant to Federal Rule of Civil Procedure 60, to exclude Deutsche Bank and JPMorgan from the Judgment, and retain and exercise jurisdiction over Deutsche Bank and JPMorgan in order to consider approval in this action [of] their settlements with Plaintiffs." ECF No. 324, at 2; Briganti Decl. ¶ 54.

Class Counsel then filed a motion on consent of Deutsche Bank and JPMorgan for remand pursuant to Fed. R. App. P. 12.1 in the Second Circuit. *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.*, No. 17-944 (2d Cir. May 25, 2017), ECF No. 140. The Second Circuit granted the motion on June 13, 2017. *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.*, No. 17-944 (2d Cir. June 13, 2017), ECF No. 151.[6] On June 19, 2017, this Court amended the Judgment to exclude Deutsche Bank and JPMorgan. ECF No. 335, at 2. Finally, Class Counsel filed the preliminary approval motions in both the *Laydon* Action and the *Sonterra* Action (ECF No. 336-39; *Laydon*, ECF No. 773-76), which the Court granted on August 3, 2017 (ECF No. 345; *Laydon*, ECF No. 782). The Court issued a superseding order granting preliminary approval of the Settlements on September 14, 2017. ECF No. 355. While the Settlements are considered, Plaintiffs' appeal is stayed. Briganti Decl. ¶ 54.

E. Discovery Efforts in the *Laydon* Action

Plaintiff served his first discovery request on Defendants in June 2014, shortly after the Court's March 28, 2014 decision in *Laydon*. Briganti Decl. ¶ 55. Immediately, Class Counsel began negotiating for all documents produced by Defendants in the course of global regulatory investigations into Yen-LIBOR and Euroyen TIBOR manipulation. *Id.* These preliminary conferences produced the Joint Initial Report and discovery plan filed on August 4, 2014. *Id.* ¶ 56.

[6] Pursuant to the June 13, 2017 Order, Plaintiffs have been updating the Second Circuit every 30 days on the status of this Court's proceedings consistent with the indicative ruling. *See* Briganti Decl. ¶ 54.

That discovery plan was delayed first by a stay issued on account of Defendants' second Rule 12 motions, then by the Department of Justice's ("DOJ") request that that the Court extend the stay of discovery for at least eight months to protect the ongoing grand jury investigation. *Id.*

Meeting and conferring with Defendants about their responses and objections to Plaintiff's first discovery request lasted months and involved more than 45 conferences with 20 Defendants. By the summer of 2015, the parties had isolated a single issue for resolution by the Court: whether foreign data privacy and bank secrecy laws prohibited disclosure of certain documents. *Id.* ¶ 58. After extensive briefing and expert submissions, Class Counsel defeated certain Defendants' first motion to withhold documents under U.K. data privacy and bank secrecy laws, substantially accelerating discovery. *Id.* ¶ 58. Class Counsel negotiated agreements with certain other Defendants to address data privacy objections. *Id.* ¶¶ 58-59.

Plaintiff served his second discovery request on Defendants between March and July 2016. *Id.* ¶ 60. Plaintiffs met with Defendants concerning objections and responses to the second discovery request beginning in August 2016, holding at least 75 conferences and exchanging numerous letters with individual Defendants over 15 months to address objections, negotiate search terms, address data privacy law objections and reach agreement on the relevant custodians to search. *Id.* ¶ 61. After certain Defendants refused to produce documents held by employees who traded Euroyen-Based Derivatives ("Euroyen-Based Derivatives traders"), Plaintiff asked the Court for a pre-motion conference in advance of moving to compel certain Defendants to produce these documents. *Id.* ¶ 62. After receiving certain Defendants' opposition and holding an oral argument, Magistrate Judge Pitman issued an order requiring these Defendants to produce the non-privileged, responsive documents and communications from 10% of each Defendants' Euroyen-Based Derivatives traders, without prejudice to Plaintiff's right to compel the production of additional

documents from traders. *Id.*; *Laydon*, ECF No. 802. Meet-and-confers continue to this date with every non-settling Defendant to address discovery issues. Briganti Decl. ¶ 63.

Class Counsel leveraged its in-house technological expertise to locally deploy Relativity, a sophisticated document review platform to process, analyze, and review Defendants' productions as soon as possible once the discovery stay expired. *Id.* ¶ 64. In addition to avoiding unnecessary external document hosting costs, a measure projected to save the Class millions of dollars over the course of this litigation, this decision gave Class Counsel unlimited access to Relativity's powerful analytics engine. *Id.* Developing an analytics-based workflow has allowed Class Counsel to effectively manage over 10.8 million pages and over 100,000 audio files that Defendants produced by suppressing duplicates and promoting documents involving key custodians, keywords, and other factors obtained from the litigation. *Id.* As a large number of documents were produced in foreign languages, Class Counsel leveraged the language skills of attorneys at Plaintiffs' Counsel speaking French, German and Japanese and used vendors to translate key documents to further augment Class Counsel's knowledge concerning the scope of Defendants' alleged manipulation. *Id.*

F. Expert Work and Developing a Plan of Allocation

Class Counsel started working with Dr. Craig Pirrong to develop evidence of impact and damages. Class Counsel worked with Dr. Pirrong to develop a model based on actual Euroyen market transactions, determining the amount of artificiality by analyzing the rates Defendants actually paid to borrow Yen during the Class Period in relation to what they reported. Briganti Decl. ¶ 72. This model is being used to carry out the Plan of Allocation and to ensure a fair claims process.

To develop a damages model, Class Counsel used its technological expertise to leverage various datasets, which collectively included millions of records. Class Counsel developed proprietary software to traverse the datasets and extract the appropriate information. *Id.* Class Counsel deputized a separate team to track down all cost of funding data. *Id.* This group utilized

Relativity's analytics tools to segregate documents containing this transactional data and converted thousands of trade confirmations from images and PDFs into a machine-readable database by manually inputting all necessary data fields. *Id.* These additional data points supplemented the transactional records received as settlement cooperation to produce a credible model capable of calculating, on a formulaic basis, the damages suffered by each member of the Class.

G. Mediation and Settlements

Class Counsel achieved Settlements with Deutsche Bank, JPMorgan, HSBC, Citi, and R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd. (collectively "R.P. Martin") after months of arm's-length negotiations, at which counsel on both sides presented the strengths and weaknesses of the claims and defenses. Briganti Decl. ¶¶ 65-70, 76-79. In Deutsche Bank's and HSBC's case, this process culminated in a full-day mediation with CalSTRS present. Briganti Decl. ¶¶ 69, 77; Bartow Decl. ¶ 11; *see also* ECF No. 280 (Bartow Decl.) ¶ 11. As a result, Class Counsel was well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the case when each settlement was executed. Briganti Decl. ¶¶ 68-69, 76.

The Citi and HSBC settlements created a common fund of $58 million. *Id.* ¶ 71. The Deutsche Bank and JPMorgan deals will augment the common fund by an additional $148 million, providing 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. *Id.* ¶ 81.

Class Counsel retained Kenneth Feinberg, Esq., to oversee the allocation process and ensure a fair and reasonable distribution of settlement funds to Class members. *See* ECF No. 287 (Declaration of Kenneth R. Feinberg) ¶ 11. As part of this process, Class Counsel appointed separate allocation counsel to represent the interests of settlement Class members that transacted in different types of Euroyen-Based Derivatives. *Id.* at ¶ 12. 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 Class members' claims. *Id.* at ¶ 15.

ARGUMENT

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

"Attorneys whose work created a common fund for the benefit of a group of plaintiffs may receive reasonable' attorneys' fees from the fund." *See In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *16 (S.D.N.Y. April 26, 2016) ("*CDS Litig.*"). Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method" although "the trend in this Circuit is toward the percentage method." *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). Class Counsel's request is reasonable under either approach because it: (1) is consistent with the fee schedule that CalSTRS negotiated at arm's-length when it first retained Class Counsel in connection with this action; (2) is within this Circuit's range of "percentage method" fee awards; and (3) satisfies all six factors from *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000) ("*Goldberger*"), including the lodestar "cross-check."

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

The touchstone of "reasonableness" when evaluating attorneys' fees is "what a reasonable, paying client would be willing to pay" for counsel's services. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections,* 522 F.3d 182, 184 (2d Cir. 2008); *see also Goldberger*, 209 F.3d at 52 ("market rates, where available, are the ideal proxy for [class counsel's] compensation."). Consistent with this measure, courts give great weight to negotiated fee agreements between lead plaintiffs and class counsel because they typically reflect actual market rates. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("In many cases, the agreed-upon fee will offer the best indication of the market rate."). For example, there is a well-

recognized rebuttable "presumption of correctness"[7] given to the terms of an *ex ante* fee agreement between class counsel and lead plaintiffs applied in antitrust cases where the fee was negotiated by a "sophisticated benefits fund with fiduciary obligations to its members and where that fund has a sizeable stake in the litigation." *CDS Litig.*, 2016 WL 2731524, at *16 (citing *Flanagan*, 814 F.3d at 659 and *In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir.2001)).

The attorneys' fees requested here are calculated directly from the retainer agreement that CalSTRS negotiated with Class Counsel before moving to join *Laydon* in September 2014. *See* Bartow Decl. ¶ 7. CalSTRS is a "sophisticated benefits fund" with an investment portfolio of approximately $213.5 billion. *Id.* ¶ 4. It is the second-largest pension fund in the United States and the largest educator-only pension fund in the world. *Id.* CalSTRS owes a fiduciary duty to its more than one million members. *Id.* ¶¶ 4-5. This duty not only motivated CalSTRS to negotiate at arm's-length a fair and reasonable fee arrangement with Class Counsel, but also to remain an active participant in the litigation. For example, CalSTRS's general counsel Brian Bartow was directly involved in settlement discussions with Deutsche Bank and traveled from California to New York to participate in the parties' January 2017 mediation. *Id.* ¶ 11. CalSTRS's high level of involvement is commensurate with its "sizable stake in the litigation" having engaged in tens of thousands of Euroyen-Based Derivatives transactions with nine Defendants. *Id.* ¶¶ 5, 8-12. CalSTRS's *ex ante* judgment about an appropriate attorneys' fee in this case, therefore, satisfies the three factors the *CDS* court identified and is entitled to a presumption of reasonableness.

Moreover, CalSTRS supports the fee request based on its active monitoring of Class Counsel's work and the results Class Counsel achieved. *Id.* ¶ 16. As a result of its involvement in the case, CalSTRS has an intimate understanding of this litigation's complexity and difficulty. Its *ex post*

[7] *See Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Employees Ret. Sys.*, 814 F.3d 652, 659 (2d Cir. 2016).

support of this fee request demonstrates that it is fair and reasonable. CalSTRS's judgment, expertise and involvement support a presumption of correctness applying to the negotiated fee agreement.

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

The reasonableness of the requested fee is confirmed by cases applying the "percentage method" of fee calculation favored in this Circuit. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) ("The trend in this Circuit is toward the percentage method") (citation omitted); *see also In re Beacon Assoc. Litig.*, No. 09 Civ. 777(CM), 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) (explaining that "percentage of recovery" is "the preferred method of calculating the award for class counsel in common funds cases"). Courts prefer the "percentage method" because it is easy to administer and avoids the "dubious merits of the lodestar approach." *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008) (noting that it absolves district courts from taking on the cumbersome task of computing a lodestar); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 485 (S.D.N.Y. 1998) ("*NASDAQ III*") (noting that the percentage method is easy to administer). It also "aligns the interests of the class and its counsel" while incentivizing "the efficient prosecution and early resolution of litigation." *Hall v. Children's Place Retail Stores Inc.*, 669 F. Supp. 2d 399, 401 (S.D.N.Y. 2009) (citation omitted). Furthermore, the reasonableness of the requested fee can be ensured by cross-checking the percentage fee against counsel's lodestar. *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 667-68 (S.D.N.Y. 2015). *See* Part I.D, *infra*.

Pursuant to the graduated fee structure with CalSTRS, Class Counsel requests approximately 23.57% of the common fund, reflecting the blended average of 25% on $42 million (the remaining balance under the first $100 million threshold)[8] and 23% on $106 million. This

[8] *See* Bartow Decl. ¶ 7. Previous settlements with Citi and HSBC totaled $58 million, of which the Court awarded 25% ($14.5 million) as attorneys' fees. *See* ECF No. 296 ¶ 3.

percentage is well within the range of reasonable attorneys' fees approved in other complex class actions in this Circuit. *See, e.g., City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *10-12 (S.D.N.Y. May 9, 2014) (awarding 33% in attorneys' fees); *In re Amaranth Natural Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding 33.33% attorneys' fees in a complex CEA class action); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999) (awarding 27.5% attorneys' fees in a complex CEA and RICO class action). It is particularly significant that the fee here is a lesser percentage than many of the approved fees in complex common fund class actions where "courts have sometimes awarded contingency fees exceeding 30% of the overall fund." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 447 n.11 (E.D.N.Y. 2014) ("*Interchange Fee Litig.*").

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

The requested fees are supported by the application of the six-factor reasonableness test set forth in *Goldberger*. Under that standard, courts must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation . . . ; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger,* 209 F.3d at 50. As the time and labor Class Counsel expended is detailed above (*see supra* at 3-13) and in the supporting declarations, factors 2 through 6 will be addressed.

1. The Risk of the Litigation

The risk of the litigation is the preeminent *Goldberger* factor. *See Interchange Fee Litig.*, 991 F. Supp. 2d at 440 ("The most important *Goldberger* factor is often the case's risk"); *Goldberger,* 209 F.3d at 54 ("We have historically labeled the risk of success as 'perhaps the foremost' factor to be considered in determining whether to award an enhancement.") (citation omitted). While all cases involve some level of risk, this case involved a particularly high level of risk for several reasons.

Risk of Prosecuting the Case as Sole Lead Counsel: Class Counsel is the sole Lead Counsel bringing claims on behalf of the Euroyen-Based Derivatives investors represented here. The choice to litigate against 44 of the world's largest financial institutions, which have significant resources and could continue this case for years at the trial and appellate levels, presented a substantial risk that Class Counsel was and remains prepared to shoulder. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting "substantial risk" where counsel bore the "risk of defeat").

Risk of Establishing Liability: When *Laydon* and *Sonterra* were filed, no court had ruled that conspiring to fix LIBOR was an antitrust violation. In fact, Defendants argued (and several courts in this District agreed) that, because of the allegedly "cooperative" nature of the LIBOR rate-setting process, manipulating LIBOR did not cause antitrust injury. Class Counsel litigated this case for more than four years before the Second Circuit rejected Defendants' competing arguments and validated Plaintiffs' legal theory that fixing Yen-LIBOR and Euroyen TIBOR, which serve as a component of price in the derivatives Plaintiffs traded, is a *per se* antitrust violation. *See Gelboim v. Bank of America Corporation*, 823 F.3d 759 (2d Cir. 2016). Further, prior to the recent decision in *Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG*, no court in this District had ruled that foreign-based financial institutions who conspire to manipulate "IBOR" rates are subject to personal jurisdiction when they trade derivatives with investors in the United States that are priced based on those manipulated rates. No. 15-cv-00871, 2017 WL 4250480, at *50 (S.D.N.Y. Sept. 25, 2017). Additionally, this Court dismissed the *Sonterra* Action, finding Plaintiffs lacked standing. ECF Nos. 314, 335. This decision is currently on appeal to the Second Circuit.

Risk of Establishing Damages: There were also risks associated with establishing a class-wide damages model. *See In re Platinum and Palladium Commodities Litig.,* No. 10 CV 3617, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). For example, Plaintiffs' case

depended on showing what Yen-LIBOR and Euroyen TIBOR would have been absent Defendants' alleged manipulation. While both rates are intended to reflect Defendants' cost of borrowing Yen in the interbank money market, data reflecting these funding transactions is not public and was unavailable at the start of the litigation. Class Counsel had to develop the data necessary to build a credible damages model through settlements and discovery. *See supra* at 11-12.

In spite of these risks, Plaintiffs' Counsel took this case on a fully-contingent basis, with Class Counsel itself devoting more than 70,000 hours and a substantial percentage of the firm's resources to litigating this case for over five-and-a-half years. As Judge Gleeson aptly noted: "Counsel should be rewarded for undertaking [the above noted risks] and for achieving substantial value for the class. If not for the attorneys' willingness to endure for many years the risk that their extraordinary efforts would go uncompensated, the settlement would not exist." *Interchange Fee Litig.*, 991 F. Supp. 2d at 441.

2. The Magnitude and Complexity of the Case

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

Complexity: *Laydon* and *Sonterra* involve a conspiracy among multiple banks and interdealer brokers to fix Euroyen-Based Derivatives prices over a five-and-a-half year Class Period through multiple means, including, *inter alia*: (1) making false Yen-LIBOR and Euroyen TIBOR submissions; (2) "spoofing" the market with false bids and offers; (3) sending fake run-throughs with artificial Yen cash prices; (4) publishing false rates on electronic screens maintained by interdealer brokers;

and (5) rewarding co-conspirators through an intricate kickback and bribery system. *Laydon*, ECF No. 580 (TAC) ¶¶ 31-33, 387, 715, 965. *See Wal-Mart Stores*, 396 F.3d. at 122 (noting that the case was particularly large and complicated as it involved nearly every U.S. bank and over five million class members). Defendants often used multiple means at the same time to achieve the goal of their conspiracy. *See*, *e.g.*, *Laydon*, ECF No. 580 ¶¶ 647-654 (describing the "Turn Campaign"). The amount of work required to reverse-engineer the inner workings of a cartel with this level of sophistication was "extraordinary" in both its "complexity and scope" and required Class Counsel to master the properties of complex financial instruments and markets by working with seasoned experts. *See In re Holocaust Victim Assets Litig.*, No. CV 06-0983 (FB)(JO), 2007 WL 805768, at *46 (E.D.N.Y. Mar. 15, 2007).

Magnitude: This is a massive case. Over the course of five-and-a-half years of litigation involving 44 Defendants, the parties in *Laydon* and *Sonterra* have produced hundreds of docket entries associated with four amended complaints, including more than 50 memoranda and reply memoranda of law in support of and in opposition to at least 15 motions to dismiss as well as 16 answers. There have been numerous contentious discovery objections, including, *inter alia*, to the relevant time period, phases of discovery, foreign bank secrecy and data privacy laws, and confidentiality and privilege objections. These objections have led to more than 120 meet-and-confers, three discovery motions, and dozens of letters. The scope of discovery produced to date is just as large. The *Laydon* Defendants have now produced close to eleven million pages of documents, including over one hundred thousand audio files, and transaction records from hundreds of custodians. This number is likely to grow as certain Defendants have yet to produce the majority of documents from their Yen-LIBOR and Euroyen-TIBOR submitters and Euroyen-Based Derivatives traders, and well as certain documents pursuant to foreign data privacy laws. The global

nature, duration, size of the case, complexity of the financial instruments, and sophistication and the depth of the conspiracy weigh heavily in favor of approving the requested fee.

3. Quality of Representation

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

Results Obtained: The settlements reached so far provide significant value to the Class. A total of $206 million in monetary compensation has been obtained from Deutsche Bank, JPMorgan, Citi and HSBC. Class Counsel's ability to recover for the Class highlights the extraordinary nature of the results reached here. These funds will provide Class members with an immediate recovery and ensure funding of the litigation so that Class Counsel can continue to pursue claims against the remaining Defendants in the *Laydon* and *Sonterra* actions.

Beyond monetary compensation, Class Counsel also secured significant cooperation from the Settling Defendants. *See supra* at 12; Briganti Decl. ¶¶ 67, 71, 81. The R.P. Martin deal also produced one of the most valuable pieces of information obtained to date—the "BOSS" transaction database—which contained millions of records, including the "wash trades" R.P. Martin brokered on behalf of Defendants UBS, RBS, and JPMorgan. *See, e.g.*, ECF No. 580 (TAC) ¶¶ 392-94. The transaction data and information contained in Defendants' documents produced so far have helped Class Counsel specifically identify the names of Yen traders and submitters who were active participants in the alleged manipulation and aided the development of a class-wide damages model and Plan of Allocation. *See supra* at 11-12.

The value of this non-monetary compensation and result obtained by Class Counsel is further highlighted by Plaintiffs' settlement with HSBC. Documents obtained as settlement cooperation from R.P. Martin played a crucial role in Class Counsel's negotiations and the eventual

mediation with HSBC, allowing them to present a compelling case on liability at the mediation that would have been impossible using only public documents.

Background of Lawyers Involved: Class Counsel has extensive experience prosecuting some of the largest commodities manipulation cases, including what were at the time, the first, second, third, and fourth largest class action recoveries in the history of the CEA.[9] This includes specific expertise in benchmark manipulation as demonstrated by Class Counsel's current tenure as lead counsel in cases alleging anticompetitive and manipulative conduct for several "IBOR" rates and the London Silver Fix.[10] Additional examples of Class Counsel's more than 50 years of experience with complex litigation are detailed in Lowey's firm resume.[11]

Another consideration for assessing the quality of the representation is "[t]he quality of the opposing counsel" in the case. *See Maley v. Del Global Techns. Corp.*, 186 F. Supp. 2d. 358, 373 (S.D.N.Y. 2002). The valuable settlement that Class Counsel secured cannot be understated given the caliber of defense counsel in this action. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries"); *NASDAQ III*, 187 F.R.D. at 488 (approving attorneys' fee award where defendants were represented by "several dozen of the nation's biggest and most highly regarded defense law firms."). The fact that Class Counsel was able to successfully prosecute this action for five-and-a-half years against such formidable opponents further reflects the quality of representation provided.

[9] ECF No. 338-7, at 2-4.

[10] *See, e.g.*, *Sonterra Capital Master Fund Ltd. et al. v. Credit Suisse Group AG et al.*, No. 15-cv-871 (SHS) (S.D.N.Y.) (Swiss franc LIBOR); *Sullivan et al. v. Barclays PLC et al.*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (Euribor); and *In re: London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573 (VEC) (S.D.N.Y.).

[11] ECF No. 338-7.

4. The Fee is Reasonable in Relation to the Settlements

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

First, Class Counsel's request for a blended average of approximately 23.57% of the common fund comes directly from the graduated fee scale that CalSTRS negotiated before joining the action. *See* Bartow Decl. ¶ 7. This satisfies a key legal "guidepost" that Judge Gleeson identified in large class action cases—that "the percentage of the fund awarded should scale back as the size of the fund increases"—and supports the reasonableness of Class Counsel's request. *See Interchange Fee Litig.*, 991 F. Supp. 2d at 444.

Second, the graduated fee CalSTRS negotiated is between the fees that were approved in two recent "guidepost" cases. *See id.* at 443. For example, in both *CDS Litig.*, 2016 WL 2731524, at *17 n.24, and *Interchange Fee Litig.*, 991 F. Supp. 2d at 445, courts in this District approved fee awards in large class cases based on a graduated fee scale. The fee agreement approved in *Interchange Fee Litig.*, awarded counsel an average percentage fee of 23.9% for the first $200 million recovered, greater than the blended average fee of 23.57% requested here.[12] The requested fee is reasonable in relation to the settlement achieved here and compares favorably to other concrete "guideposts" such as the fees awarded in analogous cases.

[12] In *CDS Litig.*, the court approved a fee award based on a graduated fee structure that started with payment of 18% of the first $200 million of the common fund as attorneys' fees. 2016 WL 2731524, at *17

5. Public Policy Supports Approval

Had Class Counsel not taken on the risk of this lawsuit in April 2012, before any Defendant had entered into government settlements, the Class would have been left without recompense for their losses. Despite the subsequent government investigations and certain Defendants' admissions of wrongdoing, investors who were actually harmed by the alleged conspiracy would not have received any money at all. *See e.g., In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014) ("providing lawyers with sufficient incentive to bring common fund cases that serve the public interest") (citations omitted).

Public policy encourages enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws."). Awarding a reasonable percentage of the common fund further ensures that Class Counsel retains the ability and incentive to pursue antitrust violations through trial, at their own expense and while recovery is uncertain. *See Goldberger*, 209 F.3d at 51 ("There is . . . commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.").

D. The Lodestar Cross-Check Supports the Requested Fee

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

First, in negotiating a graduated fee scale, CalSTRS capped any fee request by Class Counsel to 3.5 times the aggregate lodestar incurred by Plaintiffs' Counsel in the case. As with the percentage fee method, this negotiated rate should be given great weight in evaluating attorneys' fees. *Alderman v. Pan Am World Airways*, 169 F.3d 99, 103 (2d Cir. 1999) ("[A] court should seek to enforce the parties' intentions in a contingent fee agreement, as with any contract."). Plaintiffs' Counsel have spent 105,775.61 hours working on *Laydon* and *Sonterra* as of September 30, 2017, for an aggregate lodestar of $54,532,316.55. *See* Briganti Decl. ¶ 90. The blended average of the 23.57% or $34.88 million fee requested, when combined with the $14.5 million fee previously received, only compensates Plaintiffs' Counsel for approximately 91% of their aggregate lodestar and does not implicate the 3.5 times multiplier cap in the CalSTRS's agreement, demonstrating that a full fee will not result in an "unwarranted windfall." In continuing their work to prosecute the cases since Plaintiffs settled with Citi and HSBC, and in achieving the settlements with Deutsche Bank and JPMorgan, Plaintiffs' Counsel have worked 36,749.75 hours, reflecting a lodestar value of $17,447,929.00. *Id.* ¶¶ 83, 86-89. The product of Plaintiffs' Counsel's continued diligence is evident in the settlements with Deutsche Bank and JPMorgan totaling $148 million, which is more than 2.5 times larger than the Citi and HSBC settlements.

Second, the 3.5 times multiplier CalSTRS negotiated is reasonable because it is consistent with the range of multipliers approved in this and other circuits. *See, e.g.*, *CDS Litig.*, 2016 WL 2731524, at *17 (approving a lodestar of "just over 6" in a complex antitrust class action); *Beckman v. KeyBank N.A.,* 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (approving a multiplier of 6.3 in class action, explaining that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Maley*, 186 F. Supp. 2d at 371 (holding that a 4.65 lodestar multiplier is modest, fair, and reasonable); *see also Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (listing nationwide class action settlements where the lodestar multiplier ranged up to 8.5).

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

II. CLASS COUNSEL'S EXPENSES

"An attorney who has created a common fund . . . is entitled to reimbursement of reasonable expenses from that fund." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. 12 cv 1609, 2015 WL 965696, at *11 (W.D. La. Mar. 3, 2015); *see also In re Arakis Energy Corp. Sec. Litig.*, No. 95 CV 3431(ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). As detailed in the accompanying declarations, Plaintiffs' Counsel incurred $223,272.66 in expenses prosecuting this case between September 1, 2016 and September 30, 2017. *See* Briganti Decl. ¶¶ 91-95; Horn Decl. ¶ 6; *see supra* at 2 n.4. This amount is less than the amount listed in the disclosures in the Court-approved notice sent to settlement Class members. *See* Affidavit of Eric J. Miller, Ex. A, Mailed Notice at 8. These expenses, as well as $28,464.69 in unreimbursed expenses accrued prior to September 1, 2016 and previously disclosed to the Court, have or will be paid from the litigation fund established upon the entry of the Citi and HSBC settlements. Briganti Decl. ¶¶ 96-97.

These costs and expenses were "incidental and necessary to the representation of the Class," and should be reimbursed. *See Carpenter v. Paige Hospitality Grp., LLC*, No. 13-cv-4009(GBD), 2015 U.S. Dist. LEXIS 82771, at *5 (S.D.N.Y. June 2, 2015). The majority of the expenses incurred in this matter involve discovery costs, expert work, research, mediation, and travel expenses for the meetings and mediations that resulted in settlement. Since September 1, 2016, $157,711.45 (or 70.6% of the Plaintiffs' Counsel's total costs) went towards hosting and utilizing Relativity software for discovery and towards expert and mediation services. As the litigation fund is not yet depleted, no further reimbursement for expenses is requested at this time.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve Plaintiffs' application for attorneys' fees in the amount set forth above.

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White Plains, New York

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