

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 BRIAN J. BARTOW IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
WITH DEFENDANTS BANK OF TOKYO-MITSUBISHI UFJ, LTD. AND
MITSUBISHI UFJ TRUST AND BANKING CORPORATION AND CLASS COUNSEL'S
MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, Brian J. Bartow, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am General Counsel and Chief Compliance Officer of the California State Teachers' Retirement System ("CalSTRS"). I joined CalSTRS in 2008 as Assistant General Counsel and served as Acting General Counsel before being appointed to my current role in 2010.

2. I have personal knowledge of the facts set forth in this Declaration, which I make in support of Plaintiffs' motion for final approval of the class action settlements with Defendants The Bank of Tokyo-Mitsubishi UFJ, Ltd. (now known as MUFG Bank, Ltd.) ("BTMU") and Mitsubishi UFJ Trust and Banking Corporation ("MUTB") (collectively, the "Settling Defendants") and Class Counsel's motion for approval of an award of attorneys' fees and expenses, now before the Court in *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*").

3. As CalSTRS General Counsel, I am the chief legal advisor to the Teachers' Retirement Board, which sets CalSTRS's policies, oversees CalSTRS investments, and makes rules for the system, in addition to ensuring that members' and beneficiaries' benefits are paid in accordance with law. One of my principal duties in this capacity is to evaluate, recommend, and supervise all complex CalSTRS litigation, including securities and antitrust litigation involving CalSTRS's investment portfolio.

4. **Background:** CalSTRS was established by legislation in 1913 to provide retirement benefits to California's public school educators from prekindergarten through community college. CalSTRS has grown significantly since its inception and, as of April 30, 2018, was the largest educator-only pension fund in the world and the second largest pension fund in the United States, serving more than 933,000 public school educators and their families and with an investment portfolio worth approximately \$224.8 billion.

5. **Retention of Counsel and Negotiated Fee Agreement:** As a fiduciary to its members in the management of their retirement assets, CalSTRS has a strong interest in ensuring that financial markets, including the market for financial instruments priced, benchmarked and/or settled based on Yen-LIBOR and Euroyen TIBOR (“Euroyen-based derivatives”), are free from anticompetitive practices and are not being manipulated. When I learned of the *Laydon* action and alleged wrongdoing in the Euroyen-based derivatives market, I recognized that CalSTRS would have a strong interest in both pursuing damages and in helping to ensure that the Euroyen-based derivatives market is free from anticompetitive and manipulative behavior. My staff and I recommended to the full Board of Directors of CalSTRS that it move to join the litigation as a named plaintiff. The Board approved my recommendation to join the litigation.

6. Based upon a careful review of the experience and qualifications of counsel, CalSTRS decided to retain Lowey Dannenberg, P.C. (“Class Counsel”) and Berman Tabacco (“Berman”) (collectively “Counsel”) in September 2014 to prosecute claims related to the tens of thousands of Euroyen-based derivatives, including those that CalSTRS transacted directly with several Defendants, including, UBS, Citibank, Deutsche Bank, RBS, HSBC, JPMorgan, Société Générale, and Barclays.

7. Consistent with its regular practice in complex cases, CalSTRS negotiated a contingent fee structure at arm’s-length with Counsel prior to their retention.¹ This fee structure employs a graduated fee scale that provides for a 25% fee on the first \$100 million recovered, 23% on the next \$200 million recovered, and lower fee percentages on subsequent amounts. It also caps the maximum amount of fees requested by Class Counsel at 3.5 times the value of aggregate lodestar reasonably incurred by all plaintiffs’ counsel in the case. While these terms are similar to fee agreements CalSTRS has negotiated in other engagements with outside counsel, the fee agreement

¹ Should the Court request, CalSTRS is prepared to submit its fee agreement with Counsel for *in camera* review.

here was carefully calibrated to capture the unique challenges and substantial risks associated with this specific case. I and representatives of Counsel extensively discussed the posture of the litigation, its risk profile, CalSTRS's approach to negotiating legal fees, the historical levels of fees to which CalSTRS has agreed to, and fees for comparable legal services prior to arriving at the negotiated fee structure.

8. As a fiduciary for thousands of current and retired California public school teachers CalSTRS scrupulously and vigorously protects the rights of its teacher members. For this reason CalSTRS has one of the toughest corporate governance surveillance programs of any public pension fund. For the same reason CalSTRS also adheres to strict conflicts-of-interest policies intended to avoid the least suggestion of political or other influence on its operations and discharge of its fiduciary obligations. For example, CalSTRS has had for several years among the strictest prohibitions on not accepting vendor gifts including political and other contributions from any of its contracted vendors. CalSTRS requires detailed, annual publicly-available filings by each of its vendors confirming compliance. The office of General Counsel at CalSTRS oversees all such compliance.

9. **CalSTRS's Oversight of the Litigation:** Since September 2014 when CalSTRS joined the litigation, CalSTRS has actively overseen the work of Counsel and has participated in all aspects of litigation, beginning with Plaintiffs' reply brief in support of leave of amend Laydon's Second Amended Complaint ("SAC") - the first time CalSTRS sought to join the Laydon action. *See Laydon* ECF Nos. 387, 388-1 (including allegations regarding CalSTRS's Euroyen-based derivatives transactions).

10. Since then, I have reviewed the significant pleadings in *Laydon* and *Sonterra*, where CalSTRS is now a lead plaintiff, and have had numerous telephonic and face to face discussions and

email communications with Counsel regarding the allegations made and arguments raised in opposition to Defendants' several motions to dismiss.

11. I have received updates regarding the status of the litigation from Counsel on a regular basis and conferred with Counsel, both in person and telephonically, prior to settlement discussions and important court hearings. I previously traveled from California to New York to personally participate in mediated settlement negotiations that led to Plaintiffs' settlements with HSBC and Deutsche Bank in these actions.

12. I played a direct role in Plaintiffs' settlement negotiations with BTMU and MUTB, participating in extensive discussions with Counsel regarding the strengths and weaknesses of Plaintiffs' claims, potential defenses and litigation strategy relevant to a potential settlement with BTMU and MUTB. As negotiations progressed with BTMU and MUTB, Class Counsel communicated all relevant developments, and I provided CalSTRS's view on the fairness and adequacy of the proposals. I ultimately authorized acceptance of the \$30 million settlement with BTMU and MUTB.

13. CalSTRS's legal and investment staff were also involved in this process and, at my direction, worked closely with Class Counsel to identify its Euroyen-based derivatives transactions, analyzing account statements and other transactions records covered by the Class Period in *Laydon* and *Sonterra*. In addition, CalSTRS Deputy Chief Investment Officer offered sworn testimony in the form of a declaration to provide factual support for the claims being advanced on behalf of the Class.

14. As General Counsel I insist upon complete hands-on management of any litigation in which CalSTRS becomes involved. In this Action, I require and receive detailed briefings from Counsel on substantive legal issues and litigation and settlement strategy. Indeed, the Berman Tabacco firm has been selected to represent CalSTRS in a number of different matters and is in very

frequent, sometimes daily, contact with the office of General Counsel, including discussions of strategy about this Action. I personally review the time records of outside attorneys that CalSTRS retains, even those employed, as here, on a percentage contingent fee basis. I review the detailed time records so that I can discharge my supervisory obligations as a plaintiff and a putative class representative of the Class and also to monitor litigation activities in which the lawyers are engaged.

15. **CalSTRS Supports the Proposed Settlements and Fee Request:** Throughout this litigation I have had numerous discussions with Counsel regarding the work of its experts and the preliminary damages model constructed in this case. Based on my experience overseeing complex securities and antitrust class action litigation for CalSTRS, I understand that constructing a rigorous, data-driven damages model is a challenging process that requires extensive expert work and analysis. I also recognize the risks posed by litigating complex class action cases, like this one, where Plaintiffs must ultimately prove damages on a class-wide basis, through class certification and trial.

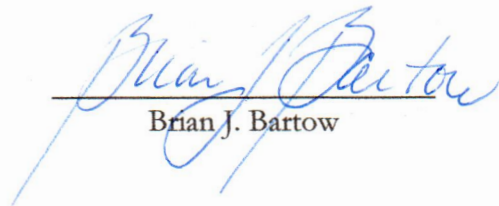
16. Given this experience, I consider the partial settlement obtained here to be an important and valuable step for CalSTRS and the Class. I expect the monetary compensation received in connection with the BTMU and MUTB settlement will provide an immediate measure of compensation for the Class Member's claims. I recognize that the additional non-monetary consideration, most importantly the cooperation provided by BTMU and MUTB, combined with the cooperation already provided through the Deutsche Bank, JPMorgan, R.P. Martin, Citibank and HSBC settlements, have significantly aided, and will continue to aid, in the prosecution of the actions.

17. In light of these factors, CalSTRS supports Plaintiffs' motion for final approval of this settlement.

18. I have also reviewed Class Counsel's motion for an award of attorneys' fees and expenses. The attorneys' fees requested exactly match the fee schedule that is part of the retainer agreement that CalSTRS negotiated with Counsel before becoming involved in the litigation. Thus, CalSTRS believes that such an award of attorneys' fees is fair and reasonable to the Class.

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

Executed on May 31, 2018



Brian J. Bartow