

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

No. 12-cv-3419 (GBD)

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

No. 15-cv-5844 (GBD)

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**DECLARATION OF VINCENT BRIGANTI, ESQ.**

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

1. I am a shareholder with the law firm Lowey Dannenberg, P.C. (“Lowey Dannenberg”). I submit this Declaration in connection with the pending Motion for Preliminary Approval of the Class Action Settlement with Defendants Deutsche Bank AG, DB Group Services (UK) Ltd., and their subsidiaries and affiliates (collectively, “Deutsche Bank”) and the Class Action Settlement with Defendants JPMorgan Chase & Co., JPMorgan Chase Bank, National Association, J.P. Morgan Securities plc, and their subsidiaries and affiliates (collectively, “JPMorgan”).

2. A true and correct copy of the Stipulation and Agreement of Settlement between Plaintiffs<sup>1</sup> and Deutsche Bank, dated July 21, 2017, is attached as Exhibit 1.

3. A true and correct copy of the Stipulation and Agreement of Settlement between Plaintiffs and JPMorgan, dated July 21, 2017, is attached as Exhibit 2.

4. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit of the Linda Young, dated July 21, 2017.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Proposed Mailed Notice.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Proposed Publication Notice.

7. Attached hereto as Exhibit 6 is a true and correct copy of the Proof of Claim and Release form.

8. **Experience.** At the time the proposed Settlements with Deutsche Bank and JPMorgan (collectively, the “Settlements”) were being negotiated, my firm and I were experienced in prosecuting claims under the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1 *et seq.*, Sherman

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<sup>1</sup> The “Plaintiffs” are Jeffrey Laydon, Sonterra Capital Master Fund, Ltd., Hayman Capital Master Fund, L.P., Japan Macro Opportunities Master Fund, L.P., and the California State Teachers’ Retirement System.

Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961 *et seq.* See Lowey Dannenberg Resume, attached as Exhibit 7.

9. **Well-Informed.** Before reaching the Settlements, Interim Lead Counsel<sup>2</sup> was well-informed regarding the strengths and weaknesses of the Plaintiffs’ claims. Lowey Dannenberg extensively reviewed and analyzed the following documents and information: (i) settlement cooperation provided by Defendants R.P. Martin Holdings Limited and Martin Brokers (UK) Ltd. (collectively, “R.P. Martin”), Citigroup Inc., Citibank, N.A., Citibank Japan Ltd., and Citigroup Global Markets Japan Inc. (collectively, “Citi”), and HSBC Holdings plc and HSBC Bank plc (collectively, “HSBC”); (ii) government settlements, including plea, non-prosecution, and deferred prosecution agreements; (iii) publicly-available information relating to the conduct alleged in Plaintiffs’ complaints; (iv) expert and industry research regarding Yen-LIBOR, Euroyen TIBOR, and Euroyen-Based Derivatives in the futures and over-the-counter markets; and (v) discovery produced to date in *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (S.D.N.Y.) (GBD) (“*Laydon*”). In addition, Lowey Dannenberg: (a) conducted an extensive investigation into the facts and legal issues in the Actions; (b) engaged in extensive negotiations with Deutsche Bank and JPMorgan; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims, including ongoing consultations with a leading commodity manipulation consulting expert.

10. **Procedural History.** The procedural history of the Actions detailed in my prior declarations in support of preliminary approval of the settlements with R.P. Martin and Citi (ECF No. 189 ¶¶ 10-20),<sup>3</sup> the settlement with HSBC (ECF No. 262 ¶¶ 5-12), and in support of final approval of the R.P. Martin, Citi, and HSBC settlements (ECF No. 279 ¶¶ 2-55), is hereby

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<sup>2</sup> Unless otherwise defined, capitalized terms shall have the same meanings as defined in the Deutsche Bank Settlement Agreement and the JPMorgan Settlement Agreement.

<sup>3</sup> Unless otherwise noted, all citations herein are to the docket in *Sonterra, et al. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y.) (GBD) (“*Sonterra*”).

incorporated by reference. Since my prior declarations, the following events have occurred in the Actions:

11. On October 25, 2016, the Court held oral argument on Defendants' motion to partially dismiss the Third Amended Complaint ("TAC") in *Laydon* and Defendants ICAP Europe Limited, Tullett Prebon plc, and Lloyds Banking Group plc's motion to dismiss the TAC for lack of personal jurisdiction.

12. On November 10, 2016, the Court granted Plaintiffs' motion for final approval of the settlements with R.P. Martin, Citi, and HSBC (ECF No. 298) and entered a final judgment and order dismissing R.P. Martin, Citi, and HSBC from the Actions with prejudice. ECF No. 299. The Court also awarded Class Counsel attorneys' fees (ECF No. 296) and reimbursement of expenses, as well as incentive awards for the class representatives. ECF No. 298.

13. On January 24, 2017, after Plaintiffs and Deutsche Bank executed a binding settlement Term Sheet, Deutsche Bank withdrew its pending motion to dismiss the *Sonterra* Action and the parties jointly requested a stay of all litigation proceedings and deadlines against Deutsche Bank in the Actions. *See* Ltr. from Vincent Briganti to the Hon. George B. Daniels, dated Jan. 24, 2017.

14. On January 26, 2017, after Plaintiffs and JPMorgan executed a binding settlement Term Sheet, JPMorgan withdrew its pending motion to dismiss the *Sonterra* Action and the parties jointly requested a stay of all litigation proceedings and deadlines against JPMorgan in the Actions. *See* Ltr. from Vincent Briganti to the Hon. George B. Daniels, dated Jan. 26, 2017.

15. On March 10, 2017, the Court granted Defendants Barclays Bank plc, Barclays Capital Inc., Barclays plc, Bank of America Corporation, Bank of America, N.A., The Bank of Tokyo-Mitsubishi UFJ, Ltd., Coöperatieve Rabobank U.A. (f/k/a Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.), ICAP Europe Ltd., ICAP plc, Lloyds Bank plc, Lloyds Banking Group plc,

Mitsubishi UFJ Trust and Banking Corporation, Mizuho Bank, Ltd., Mizuho Corporate Bank Ltd., Mizuho Trust and Banking Co., Ltd., The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, RBS Securities Inc., RBS Securities Japan Limited, Resona Bank, Ltd., Shinkin Central Bank, Société Générale S.A., Sumitomo Mitsui Banking Corporation, Sumitomo Mitsui Trust Bank Limited (f/k/a The Sumitomo Trust & Banking Co. Ltd.), The Bank of Yokohama, Ltd., The Norinchukin Bank, The Shoko Chukin Bank, Ltd., Tullett Prebon plc, UBS AG, and UBS Securities Japan Co., Ltd.'s motion to dismiss the Amended Complaint in the *Sonterra* Action on the ground that the Plaintiffs lacked Article III standing. ECF No. 314.

16. On March 10, 2017, the Court granted Defendants Barclays Bank plc, The Bank of Tokyo-Mitsubishi UFJ, Ltd., Coöperatieve Rabobank U.A. (f/k/a Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A.), Mitsubishi UFJ Trust and Banking Corporation, Mizuho Corporate Bank Ltd., Shinkin Central Bank, Société Générale S.A., Sumitomo Mitsui Banking Corporation, Sumitomo Mitsui Trust Bank Limited (f/k/a The Sumitomo Trust & Banking Co. Ltd.), The Bank of Yokohama, Ltd., The Norinchukin Bank, The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, RBS Securities Japan Limited, The Shoko Chukin Bank, Ltd., UBS AG, and UBS Securities Japan Co., Ltd.'s motion to partially dismiss the TAC in *Laydon*, dismissing CEA claims for the period of January 1, 2011 through June 30, 2011. *Laydon*, ECF No. 749. That same day, the Court dismissed Defendants ICAP Europe Limited, Tullett Prebon plc, and Lloyds Banking Group plc from the *Laydon* action for lack of personal jurisdiction. *Id.*, ECF No. 750.

17. On April 3, 2017, Plaintiffs filed a notice of appeal from the Court's decision in the *Sonterra* Action. ECF No. 317.

18. On May 22, 2017, the *Sonterra* Plaintiffs filed a 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. ECF No. 322-323.

19. On May 24, 2017, the Court issued an Order on 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, stating that "[i]f the United States Court of Appeals for the Second Circuit remands the case back to this Court, this Court would 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 their settlements with Plaintiffs." ECF No. 324.

20. On May 25, 2017, the *Sonterra* Plaintiffs filed a Motion on Consent of Deutsche Bank and JPMorgan for Remand Pursuant to FED. R. APP. P. 12.1 in the United States Court of Appeals for the Second Circuit. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944 (2d Cir. May 25, 2017), ECF No. 140. The Second Circuit granted the *Sonterra* Plaintiffs' motion on June 13, 2017, remanding the *Sonterra* action to this Court. *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 17-944 (2d Cir. June 13, 2017), ECF No. 151.

21. On June 15, 2017, the *Sonterra* Plaintiffs filed a Motion to Amend the March 10, 2017 Judgment Pursuant to FED. R. CIV. P. 60(a) and 60(b). ECF No. 334. On June 19, 2017, the Court entered the Amended Judgment, excluding Deutsche Bank and JPMorgan from the Amended Judgment in order to consider approval of the Settlements. ECF No. 335.

22. **Arm's-Length.** Negotiations leading to each of the Settlements were entirely non-collusive and strictly arm's-length. During the course of negotiations, Plaintiffs had the benefit of developing information from various sources, including the R.P. Martin settlement cooperation, the Citi settlement cooperation, the HSBC settlement cooperation, discovery produced to date in *Laydon*, Defendants' government settlements and orders, other public accounts of manipulation involving Yen-LIBOR, Euroyen TIBOR, and the prices of Euroyen-Based Derivatives, Interim

Lead Counsel's investigation into Plaintiffs' claims, industry and expert analysis, and information shared by Deutsche Bank and JPMorgan during the course of negotiating the Settlements. I was involved in all aspects of the settlement negotiations on behalf of Plaintiffs.

23. **Deutsche Bank Settlement Negotiations.** The negotiations with Deutsche Bank took place over 20 months, starting approximately in November 2015 and continuing until the Settlement Agreement was executed on July 21, 2017.

24. Following an initial phone call, Plaintiffs met with Deutsche Bank's counsel in November 2015 for preliminary settlement discussions. The November 2015 meeting did not result in a settlement.

25. Plaintiffs continued to have settlement discussions with Deutsche Bank in early 2016, but the settlement negotiations had ceased by June of 2016.

26. On August 30, 2016, Deutsche Bank and Interim Lead Counsel resumed settlement negotiations. Over the next several months, Interim Lead Counsel and counsel for Deutsche Bank had numerous in-person meetings and phone calls during which they continued to present to each other the perceived strengths and weaknesses of the Actions.

27. By December 2016, the parties had reached an impasse in their settlement negotiations. At this time, the parties agreed to participate in a mediation session before the Honorable Daniel Weinstein.

28. On January 9, 2017, Interim Lead 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 immediately began negotiating the provisions of a Term Sheet.

29. On January 24, 2017, Interim Lead Counsel and counsel for Deutsche Bank signed a binding Term Sheet. The Term Sheet set forth the terms on which Plaintiffs and Deutsche Bank agreed to settle Plaintiffs' claims against Deutsche Bank. At the time the Term Sheet was executed, Interim Lead Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims asserted in the Actions.

30. Following months of arm's-length negotiations, consisting of in-person meetings and presentations to Deutsche Bank, teleconferences, and exchanges of draft settlement terms, Interim Lead Counsel, on behalf of Plaintiffs, and Deutsche Bank executed a Settlement Agreement on July 21, 2017.

31. **JPMorgan Settlement Negotiations.** The negotiations with JPMorgan took place over 20 months, starting approximately in November 2015 and continuing until the Settlement Agreement was executed on July 21, 2017.

32. Following an initial phone call, Plaintiffs met with JPMorgan's counsel in November 2015 for preliminary settlement discussions. The November 2015 meeting did not result in a settlement.

33. Plaintiffs continued to have settlement discussions with JPMorgan in early 2016, but the settlement negotiations had ceased by June of 2016.

34. In November 2016, JPMorgan's counsel called Interim Lead Counsel to resume settlement negotiations. On November 10, 2016, Interim Lead Counsel met with JPMorgan's counsel at the New York offices of Simpson Thacher & Bartlett LLP ("Simpson Thacher"). At the November 10 meeting, JPMorgan shared its views of the Actions and its alleged conduct.

35. On December 2, 2016, Interim Lead Counsel had a follow-up meeting with JPMorgan's counsel at the New York offices of Simpson Thacher. At that meeting, Plaintiffs

presented their view of the Actions and JPMorgan's alleged role in the conspiracy alleged in the Actions.

36. Interim Lead Counsel and counsel for JPMorgan had another meeting at the New York offices of Simpson Thacher on December 19, 2016. The December 19 meeting did not result in a settlement.

37. Following the series of in-person meetings, Interim Lead Counsel and JPMorgan's counsel had numerous phone calls over the following weeks. On January 23, 2017, Plaintiffs and JPMorgan reached an agreement in principle to settle the claims in the Actions and immediately began drafting a Term Sheet.

38. On January 26, 2017, Interim Lead Counsel and JPMorgan executed a binding Term Sheet. The Term Sheet set forth the terms on which Plaintiffs and JPMorgan agreed to settle Plaintiffs' claims against JPMorgan. At the time the Term Sheet was executed, Interim Lead Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Actions.

39. Following months of arm's-length negotiations, consisting of in-person meetings and presentations to JPMorgan, teleconferences, and exchanges of draft settlement terms, Interim Lead Counsel, on behalf of Plaintiffs, and JPMorgan executed a Settlement Agreement on July 21, 2017.

40. The Deutsche Bank Settlement and JPMorgan Settlement were not the product of collusion. Before any financial numbers were discussed in the settlement negotiations with Deutsche Bank and JPMorgan and before any demand or counter-offer was ever made, I was well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Plaintiffs' claims against Deutsche Bank and JPMorgan.

41. Both Settlements involve a structure and terms that are common in class action settlements in this District.

42. The consideration that Deutsche Bank and JPMorgan have agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval.

43. Lowey Dannenberg has strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Bank of International Settlements which shows that trillions of dollars of Euroyen-based interest rate swaps and forward rate agreements were traded within the United States from 2006 through 2011, as well as data from the settlement cooperation produced to date by R.P. Martin, Citi, and HSBC.

44. Lowey Dannenberg has diligently represented the interests of the Class in the Actions. The firm investigated and brought the Actions. Lowey Dannenberg preserved the statute of limitations. Lowey Dannenberg negotiated the Settlements with Deutsche Bank and JPMorgan. The firm performed all of the necessary work to prosecute this litigation for over five years. Lowey Dannenberg will continue to zealously represent the Class to prosecute the Class's claims against the remaining Defendants.

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

Executed on July 21, 2017  
White Plains, New York

  
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Vincent Briganti