

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

STEPHEN SULLIVAN, WHITE OAK FUND LP,
CALIFORNIA STATE TEACHERS' RETIREMENT
SYSTEM, SONTERRA CAPITAL MASTER FUND,
LTD., FRONTPOINT PARTNERS TRADING
FUND, L.P., AND FRONTPOINT AUSTRALIAN
OPPORTUNITIES TRUST on behalf of themselves
and all others similarly situated,
Plaintiffs,

Docket No. 13-cv-02811 (PKC)

- against -

BARCLAYS PLC, BARCLAYS BANK PLC,
BARCLAYS CAPITAL INC., BNP PARIBAS S.A.,
CITIGROUP, INC., CITIBANK, N.A.,
COÖPERATIEVE CENTRALE RAIFFEISEN-
BOERENLEENBANK B.A., CRÉDIT AGRICOLE
S.A., CRÉDIT AGRICOLE CIB, DEUTSCHE BANK
AG, DB GROUP SERVICES UK LIMITED, HSBC
HOLDINGS PLC, HSBC BANK PLC, ICAP PLC,
ICAP EUROPE LIMITED, J.P. MORGAN CHASE &
CO., JPMORGAN CHASE BANK, N.A., THE ROYAL
BANK OF SCOTLAND PLC, SOCIÉTÉ GÉNÉRALE
SA, UBS AG AND JOHN DOE NOS. 1-50,
Defendants.

**DECLARATION OF BRIAN J. BARTOW IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT WITH CRÉDIT
AGRICOLE S.A. AND CRÉDIT AGRICOLE CIB, CLASS COUNSEL'S MOTION FOR
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES AND
PLAINTIFFS' REQUEST FOR INCENTIVE AWARDS**

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

1. I am General Counsel 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 settlement with Crédit Agricole S.A. and Crédit Agricole CIB (collectively, "Crédit Agricole") and Class Counsel's motion for approval of an award of attorneys' fees and reimbursement of expenses and Plaintiffs' request for incentive awards now before the Court in *Sullivan v. Barclays plc et al.*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (the "Action").

3. I am the chief legal advisor to CalSTRS' Teachers' Retirement Board, which sets CalSTRS's policies, oversees CalSTRS's 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 today is the largest educator-only pension fund in the world and the second largest pension fund in the United States, with over 980,000 members and beneficiaries and an investment portfolio with a market value of \$314.8 billion as of May 31, 2022.

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 Euribor (“Euribor Products”), are free from anticompetitive practices and are not being manipulated. When I learned of the Action and alleged wrongdoing in the Euribor Products market, I recognized that CalSTRS would have a strong interest in pursuing damages and in helping to ensure that the Euribor Products market is free from anticompetitive and manipulative behavior, despite the risk of pursuing complex litigation, particularly against well-established financial institutions.

6. In light of this interest, in September 2014 CalSTRS retained Berman Tabacco, Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP (collectively “Counsel”) to prosecute claims related to tens of thousands of Euribor Products, including those that CalSTRS transacted directly with most of the Defendants, including UBS, Barclays, Citibank, Deutsche Bank, HSBC, JPMorgan, RBS, and Société Générale. By that time, the firms Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP had been prosecuting the Action for over a year. Lowey Dannenberg, P.C. and Lovell Stewart Halebian Jacobson LLP are referred to herein as “Class Counsel.”

7. Consistent with CalSTRS’ regular practice in complex cases, I negotiated a contingent fee structure at arm’s-length with Counsel prior to their retention.¹ The fee structure employs a graduated fee scale that provides for a 23% fee on the first \$100 million recovered, 22% on the next \$200 million recovered, 19% on the next \$200 million recovered and 16% of

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

any additional sums recovered. 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.

8. CalSTRS is accustomed to negotiating fee agreements with outside litigation counsel. The fee agreement here was carefully calibrated to capture the unique challenges and substantial risks associated with this specific case, especially as those risks could be measured in 2014. I took into account and discussed with Counsel 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. This Action is not the kind of litigation, and does not involve the kind of market, typically prosecuted by public institutional investors. I was cognizant of that in negotiating what I think is a fair and reasonable contingent-fee agreement.

9. 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, in addition to the existing legal strictures, CalSTRS has for many years imposed additional strict 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.

10. **CalSTRS's Oversight of the Litigation:** Since September 2014 when CalSTRS joined the Action, CalSTRS has actively overseen the work of Counsel and has participated in all aspects of litigation, beginning with Plaintiffs' Third Amended Complaint—the first time CalSTRS sought to join the Action. *See* ECF No. 139 (including allegations regarding CalSTRS' Euribor Products transactions).

11. I have reviewed and approved advance drafts of all significant pleadings in the Action 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' motion to dismiss, the approach to class certification, expert testimony, and appellate strategy. I also supervised the Office of General Counsel's participation in responding to party discovery.

12. With regard to the Third Amended Complaint, Fourth Amended Complaint and Plaintiffs' opposition to the motion to dismiss the Fourth Amended Complaint, CalSTRS's legal and investment staff were involved and, at my direction, worked closely with Counsel to identify its Euribor Products transactions. In addition, CalSTRS' Director of Fixed Income offered sworn testimony in the form of a declaration to provide factual support for the claims being advanced on behalf of the Class.

13. **Discovery:** At my direction, CalSTRS participated in party discovery. Prior to their settlement with the Class, former defendants JPMorgan and Citi directed dozens of interrogatories and document requests to CalSTRS, and noticed a Rule 30(b)(6) deposition consisting of comprehensive and complex topics for testimony.

14. To comply with requests for production of documents, CalSTRS' Office of General Counsel worked with Counsel to collect and produce CalSTRS' historical transaction

data. Efforts of various CalSTRS' in-house portfolio managers were necessary to collect and produce the transaction data, and subsequently they worked with Berman Tabacco in order to answer comprehensive questions posed by Defendants about the transaction data.

15. The Office of General Counsel, with assistance of attorneys and staff from Berman Tabacco, oversaw the creation of a historical document repository for business records and other documents created during the Class Period litigated in the Action. This repository took over half a year and countless personnel hours to build, including the efforts of staff attorneys, portfolio managers and information technology personnel employed by CalSTRS.

16. The Office of General Counsel also took steps to identify and begin to prepare witnesses who would have been designated to testify in response to the Defendants JPMorgan and Citi's 30(b)(6) notice. That deposition(s) was suspended in light of the settlement with JPMorgan and Citi.

17. **Class Certification:** Prior to reaching the settlement with Citi and JPMorgan, I personally was directly involved with Counsel to understand and approve of the approach taken at the class certification stage overall and particularly with regard to expert opinion testimony on the topics of class-wide impact and aggregate damages. I participated in two telephone conferences with Counsel and a proposed testifying expert for Plaintiffs regarding that expert's opinions, bases therefor, and methodologies. I subsequently reviewed closely the expert's draft report in advance of its service on Citi and JPMorgan.

18. **Appeal:** Following this court's dismissal of Plaintiffs' claims against Crédit Agricole and other defendants for lack of personal jurisdiction, Plaintiffs filed a timely Notice of Appeal and Crédit Agricole and other defendants filed a Notice of Cross-Appeal. These appeals were held in abeyance until early 2022, when the Second Circuit issued a mandate in a separate

LIBOR appeal. While Crédit Agricole was severed from the appeal due to the present settlement, the appeals are currently pending as to the remaining parties. In May 2022, Plaintiffs filed their Opening Brief. As part of this appeal, I have been involved in multiple discussions of strategy and have reviewed and approved draft appellate briefs and other filings.

19. **Settlement Negotiations:** As to Plaintiffs' settlement negotiations with Credit Agricole, I participated in extensive discussions with Counsel regarding the strengths and weaknesses of Plaintiffs' claims, potential defenses and litigation strategy relevant to a potential settlement.

20. The first round of negotiations with Crédit Agricole began in November 2019 and ended in March 2020. Talks resumed in November 2020 and on June 22, 2021, the parties signed a Term Sheet memorializing the agreement. At all times, I stayed in frequent contact with Counsel as the parties' respective attorneys held lawyer-to-lawyer negotiations. I remained informed through regular discussions and updates to understand and help formulate strategy regarding settlement demands, counter-offers, and the evolving litigation landscape that informed the parties' negotiations. Ultimately, I reviewed and authorized the execution of the Term Sheet and later Stipulation of Settlement memorializing the agreement with Crédit Agricole.

21. **Monitoring of Counsel's Work:** As General Counsel I insist upon complete hands-on management of any litigation in which CalSTRS becomes involved. In this Action, in addition to the direct involvement described above, 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 putative class representative of the Class and also to monitor litigation activities in which the lawyers are engaged.

22. I received updates regarding the status of the litigation from Counsel on a frequent basis when the litigation was highly active, and on a regular basis thereafter. I conferred with Counsel, both in person and telephonically, prior to settlement discussions and important court hearings. I have requested from Counsel and received long-term and short-term litigation management plans, which I required to be updated periodically to better help me monitor this complex litigation and Counsel's efforts.

23. **CalSTRS Supports the Proposed Settlement and Fee Request:** Throughout this litigation, I have had numerous discussions with Counsel regarding the scope of potential damages, and the scope of the work of damages experts. 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.

24. Given this experience, I consider the 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 Crédit Agricole settlement will provide an immediate measure of compensation for Class Member's claims. I recognize that the additional non-monetary

consideration, most importantly the cooperation provided by Crédit Agricole will aid in the continued prosecution of the Action.

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

26. I have also reviewed Class Counsel's motion for an award of attorneys' fees and reimbursement of 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.

27. I understand that Counsel will seek an incentive award to be awarded to Plaintiffs for their time and effort in litigation this action. As detailed above and in my prior declarations (ECF No. 405, 478), CalSTRS has been an active litigant in this action for nearly eight (8) years. During that time, I have actively participated in as well as supervised and approved the work carried out by CalSTRS' attorneys, investment professionals and staff in aiding the prosecution of this case. While CalSTRS takes most seriously its responsibilities as a class representative, the work required to properly oversee and supervise CalSTRS the litigation falls primarily on the Office of General Counsel. We perform these duties in addition to all of the regular duties that my office and I, as General Counsel, perform for the organization.

28. I have been asked by Counsel to estimate the hours that my staff and I have worked since our involvement in this case over seven years ago. I have reviewed available records, such as calendar entries, emails and expense reports, and have determined based on my review of these internal records and my informed estimate that CalSTRS's legal, professional investment staff, and information technology professionals have expended over 1,000 hours of

work in direct support of this litigation, including reviewing and approving pleadings and court documents, participating in strategic discussions, participating in discovery, and engaging in settlement negotiations. CalSTRS seeks reimbursement in the amount of \$226,347.12 for (a) the time I devoted to supervising and participating in the Action in the amount of \$120,400 (344 hours at \$350²); (b) the time Jennifer Yamane, Senior Counsel, devoted to this Action in the amount of \$93,775 (341 hours at \$275); (c) the time of Brian Sytsma, Special Counsel, devoted to this Action in the amount of \$4,000 (20 hours at \$200); and (d) for \$8,172.12 in out-of-pocket expenses incurred in traveling to the in-person mediations detailed in my prior declarations and to attend the May 18, 2018 settlement hearing. The expenses are consistent with CalSTRS's travel policy limitations, for example, all airfare is economy/coach and daily limits apply to meals. This request does not include many additional hours spent overseeing the litigation by CalSTRS's board and executives nor does it include hours spent by CalSTRS's financial team and information technology staff in collecting documents and data throughout this litigation. The hours spent on this case were time that we would have otherwise devoted to other professional activities.

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

Executed on August 8, 2022.



Brian J. Bartow

² CalSTRS does not maintain a billing system or charge hourly rates for its attorneys. Thus, for this declaration I have employed discounts to the hourly rates that I believe are customarily charged by experienced, business attorneys in the Sacramento area, where CalSTRS is located. For example, I have 33 years of legal experience. Based on my experience interacting with hourly-billing attorneys that perform work for CalSTRS in the Sacramento area, I understand that rates for someone with my level of experience could well exceed \$600 per hour. Recognizing my role as both a public pension attorney and fiduciary to the class, I have applied a lower rate of \$350 per hour for my time. For Attorney Yamane (over fourteen years legal experience) and Attorney Sytsma (over three years legal experience) I have applied similar discounts to estimate their comparable rates.