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, - 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.	Docket No. 13-cv-02811 (PKC) ECF Case

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

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Pursuant to this Court's December 4, 2018 Order,[1] Class Counsel respectfully move pursuant to Rule 23(h) of the Federal Rules of Civil Procedure for an award of 19% ($34.675 million) in attorneys' fees from the $182,500,000 common fund established by Plaintiffs'[2] settlement with Citi[3] and JPMorgan[4] (the "Settlement") and reimbursement of $1,074,649.83 in litigation expenses. Plaintiffs do not seek incentive awards at this time but reserve the right to seek incentive awards at the time of distribution or if there is another settlement in this Action.

INTRODUCTION

The requested fee is fair and reasonable for multiple reasons. First, the fee request is objectively fair and reasonable because it is the agreed-upon percentage CalSTRS negotiated in retaining Class Counsel prior to CalSTRS' participation in the Action. *See also Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany and Albany Cty. Bd. of Elections,* 522 F.3d 182, 184 (2d Cir. 2008) (a "reasonable" fee reflects "what a reasonable, paying client would be willing to pay" for counsel's services); *see* Part I.A. *infra*. The CalSTRS fee agreement, as detailed below, features declining percentages of attorneys' fees as the size of the recovery from inception increases. Courts give great weight to negotiated fee agreements, recognizing a rebuttable "presumption of correctness" where the terms are negotiated by a "sophisticated benefits fund"—such as CalSTRS—"with fiduciary obligations to its members and . . . a sizeable stake in the litigation." *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *16 (S.D.N.Y. April 26, 2016)

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[1] Order Preliminarily Approving Proposed Settlement with JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., Citigroup Inc. and Citibank, N.A., Scheduling Hearing for Final Approval Thereof, and Approving the Proposed Form and Program of Notice to the Class (S.D.N.Y. Dec. 19, 2018), ECF No. 454.

[2] "Plaintiffs" are Stephen Sullivan, White Oak Fund LP, California State Teachers' Retirement System ("CalSTRS"), Sonterra Capital Master Fund, Ltd., FrontPoint Partners Trading Fund, L.P., and FrontPoint Australian Opportunities Trust ("FrontPoint"). Unless otherwise defined, capitalized terms herein have the same meaning as in the Settlement Agreement. ECF No. 452-1.

[3] "Citi" means Citigroup Inc. and Citibank, N.A.

[4] "JPMorgan" means JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. Together, Citi and JPMorgan are referred to as the "Settling Defendants."

("*CDS Litig.*") (quoting *Flanagan, Lieberman, Hoffman & Swaim v. Ohio Pub. Employees Ret. Sys.*, 814 F.3d 652, 659 (2d Cir. 2016)).

Second, in addition to CalSTRS' *ex ante* negotiation of the fee, CalSTRS regularly monitored Class Counsel's time and efforts, participated in the prosecution of the claim, and observed first-hand the risks of continued prosecution, skillfulness of Class Counsel's efforts, and quality of their work in obtaining the Settlement. Based upon these factors, CalSTRS also now offers well-informed, *post hoc* support for the requested fee. Declaration of Brian J. Bartow ("Bartow Decl.") ¶¶ 10-29.

Third, the requested fee is fair and reasonable because, if granted, the resulting risk multiplier (approximately 1.54) will be far less than the 3.5 cap on the risk multiplier negotiated by CalSTRS. *See id.* ¶ 7. In this context, the negotiated fee is an "ideal proxy" for the fee that should be awarded. *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). The requested fee fully satisfies all six *Goldberger* factors used to evaluate attorneys' fees in this Circuit. *See* Part I.B-D *infra.*

Fourth, in performing substantial services under time pressures, Class Counsel faced greater risks in prosecuting the claims against the Settling Defendants than against the other Settling Defendants.[5] For example, Citigroup was never charged by any governmental body with wrongdoing concerning Euribor. JPMorgan had not been charged when the case was commenced. JPMorgan still disputes the subsequent government charges and continue to contest the fine assessed against it. Despite these greater risks, the percentage of the Settlement which Class Counsel have requested is significantly less than that which was awarded with respect to the recovery from the Other Settling Defendants. This is due directly to the constraints of the declining fee schedule which CalSTRS negotiated with Class Counsel.

[5] The "Other Settling Defendants" are Barclays plc, Barclays Bank plc and Barclays Capital Inc. ("Barclays"), Deutsche Bank AG and DB Group Services (UK) Ltd. ("Deutsche Bank"), HSBC Holdings plc, and HSBC Bank plc. ("HSBC").

Relatedly, the Settlement submitted for final approval increases the total amount of compensation recovered for the Class by almost 60% to $491,500,000. It is rare, to say the least, for a class action in which no competing applications for lead counsel are made, to produce settlements of almost half a billion dollars. But the complexity and high risks in prosecuting these complex claims deterred any competing class action from being filed.

To achieve this extraordinary result, Plaintiffs' Counsel spent close to 140,000 total hours litigating this case, including over 31,000 hours just since February 28, 2018 (the cutoff date in Class Counsel's last fee motion, *see* ECF No. 403) to take this case from the start of discovery to deep into the class certification process. The collective work of Plaintiffs' Counsel throughout this action was essential in developing the detailed factual record necessary to certify a class in a conspiracy case of this scale given the tight 16-month timeline ordered by this Court. *See* ECF Nos. 337, 377, 398. To achieve this Settlement, Plaintiffs' Counsel had to develop, under time pressure, evidence against each of these Defendants at a tremendous cost, including substantial attorney time and the assistance of four economists, two consulting firms, and an Euribor and Euro interbank market expert.

Class Counsel dispatched teams of attorneys, including those with specialized experience in derivatives data, to analyze hundreds of thousands of documents and transaction records received as cooperation from the Other Settling Defendants to effectively negotiate the scope of discovery during the meet and confer process with JPMorgan and Citi. This proved to be extremely challenging and required navigating both complex issues of foreign data privacy law, as the relevant documents and transaction records were located all over the world, as well as the logistical challenges associated with differences in how data was stored and formatted by each Defendant.

Next, Class Counsel had to synthesize all the information gathered, with the help of leading economists and former traders, into a cohesive set of evidence to prove Plaintiffs' case on a class-

wide basis. This exercise proved essential in developing the economic models and analyses that Class Counsel believes show, among other things, that the Defendants' alleged conspiracy to manipulate Euribor had a common impact on the Class. The resulting data was invaluable to Plaintiffs' class certification experts in drafting their initial reports, responding to JPMorgan and Citi's expert's opinions, and preparing for depositions. Both class certification experts were ultimately deposed by Defendants, following over a week of intensive preparation by Class Counsel.

The challenges presented by the compressed timeline in this case only increased when—just one month before Plaintiffs were due to serve their class certification expert reports—Judge Buchwald issued the first class certification decision in a benchmark interest rate case. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 299 F. Supp. 3d 430 (S.D.N.Y. 2018) ("*LIBOR VII*"). Plaintiffs' Counsel immediately began analyzing this several hundred page decision and worked to ensure that the approach taken in this case would satisfy *LIBOR VII*'s class certification "roadmap."

Class Counsel engaged in on and off settlement discussions with JPMorgan and Citi. Such negotiations were hard-fought and continued for over nine months while the parties actively litigated liability and class certification issues. Indeed, settlement talks broke down in late 2017, only to be reinitiated later once discovery was underway, and *LIBOR VII* had been decided. Throughout the process, Class Counsel drafted multiple mediation briefs and attended several full-day mediation sessions, each of which was personally attended by Plaintiff CalSTRS's General Counsel. *See* Joint Declaration of Vincent Briganti and Christopher Lovell ("Joint Decl.") ¶¶ 53-60.

While Class Counsel exerted substantial effort to achieve the Settlement, Class Counsel's proposed 19% fee request is *lower* than the 22.24% fee request awarded in connection with the Barclays, Deutsche Bank and HSBC settlements. *See* ECF No. 425.

Additionally, Class Counsel seeks reimbursement for $1,074,649.73 in out-of-pocket expenses incurred since the inception of the case. These expenses, described in the accompanying

declarations of Geoffrey M. Horn ("Horn Decl."), Christopher M. McGrath ("McGrath Decl."), and those of additional Plaintiffs' Counsel,[6] were incurred for the Class's benefit and predominantly consisted of expert work, mediation, travel and discovery-related costs.

WORK PERFORMED BY CLASS COUNSEL

A. The Retainer Agreement Negotiated by CalSTRS with Class Counsel

CalSTRS is the largest educator-only pension fund in the world and the second largest pension fund in the United States, with more than 950,000 members and beneficiaries, and an investment portfolio currently valued at $226.5 billion. Bartow Decl. ¶ 4. A sophisticated market participant with a keen interest in protecting its members and ensuring financial markets are free from manipulative and anticompetitive forces, CalSTRS' regular practice prior to entering a complex litigation is to negotiate a retainer agreement with a contingent fee structure. *Id.* ¶ 7. In this case, recognizing the attendant risks of the litigation, CalSTRS negotiated a graduated fee structure that provides for a fee of 23% for the common fund on the first $100 million recovered, 22% on the next $200 million recovered, 19% on the next $200 million recovered and a lower fee percentage on any recoveries above $500 million. *Id.*

B. The Review by CalSTRS' General Counsel of Class Counsel's Work

Since 2014, CalSTRS has been an active and engaged named Plaintiff, involved in nearly every aspect of the litigation. *See* Bartow Decl. ¶ 10. For example, Class Counsel collaborated with CalSTRS' staff to understand the impact of Euribor manipulation on CalSTRS' investments and draft allegations for the Third Amended Complaint. Joint Dec. ¶ 6. CalSTRS reviewed all significant pleadings and briefings. *Id.*.; Bartow Decl. ¶ 11. It also regularly received updates concerning

[6] "Plaintiffs' Counsel" includes Class Counsel and Berman Tabacco; Glancy Prongay & Murray LLP ("Glancy"); Kirby McInerney LLP ("Kirby"); Cafferty Clobes Meriwether & Sprengel LLP ("Cafferty"); and Nussbaum Law Group ("NLG"). The Declarations of Todd A. Seaver (Berman Tabacco); David E. Kovel (Kirby); Jennifer W. Sprengel (Cafferty); and Linda Nussbaum (NLG) accompany this motion. Glancy previously provided the Declaration of Lee Albert in support of Class Counsel's previous Motion for Award of Attorneys' Fees and Reimbursement of Expenses in connection with the Barclays, Deutsche Bank and HSBC settlements. ECF No. 407.

substantive legal issues, litigation and settlement strategy, and reviewed detailed time records. Bartow Decl. ¶ 24. CalSTRS' General Counsel has scrutinized every aspect of Class Counsel's work and independently concluded that it supports both the motion for final approval and the requested award of attorneys' fees. *See id.* ¶¶ 28-29.

C. Class Counsel's Review Under Time Pressure of the Documents

The Court's April 10, 2017 Scheduling Order placed discovery in this complex antitrust case on a compressed timeline. *See* ECF No. 337. Citi and JPMorgan were to produce their full regulatory productions by June 9, 2017, document requests to be served by August 1, 2017, and depositions to begin in December 2017. *Id.* The initial expert discovery deadline was June 28, 2018, later extended to August 10, 2018. *Id.*; *see also* ECF No. 398. All fact discovery was to be completed by December 4, 2018. ECF No. 337.

Plaintiffs' Discovery Efforts

To achieve maximum results in minimal time, Class Counsel deployed all of its resources, human and technological, to obtaining and analyzing all available documents and data from Citi, JPMorgan and Other Settling Defendants. Joint Decl. ¶ 18. Class Counsel reviewed over one million pages of documents, and tens of thousands of audio files and other data. *Id.* ¶ 32.

Lowey leveraged in-house technological expertise to locally deploy Relativity, a sophisticated document review platform. Developing an analytics-based workflow enabled Lowey to greatly reduce the hours required for review and to prioritize the most relevant files. *Id.* ¶ 21. Additionally, Lowey avoided unnecessary document hosting costs by deploying Relativity locally. *Id.* Lovell used sophisticated document review software to exploit potential key terms through smart searches, "relational searching" and other analytic tools. These tools identified relevant documents, followed themes and dates of conversations, and cross-referenced and matched them to significant individuals. Lovell identified over 1,400 potential instances of agreement or manipulation, over 400

instances of potential admissions of manipulation, and over 100,000 relevant documents. *Id.* ¶ 22.

Cooperation from the previously settling defendants was valuable in assisting Class Counsel to quickly analyze Citi's and JPMorgan's productions. The instances of manipulation found in the Barclays and Deutsche Bank productions enabled Class Counsel to make targeted searches of Citi's and JPMorgan's productions to assess each Settling Defendant's alleged involvement with particular cartel members and on particular dates. *Id.* ¶ 24.

Equally important, information from Barclays' and Deutsche Bank's productions helped Class Counsel negotiate the scope of Settling Defendants' productions. *Id.* ¶ 25. Class Counsel aggressively pursued issues in regular, extensive meet and confers until they were satisfactorily resolved. *Id.* In addition, after Citi served its initial production, which was to have consisted of all documents previously produced to regulators relating to Euribor manipulation, Class Counsel identified that Citi's production had been limited to documents dated within the Class Period. *Id.* ¶ 26. Class Counsel took the position that the Court's order imposed no such limitation. After several months and additional meet and confers, Citi ultimately agreed to and did produce the remaining regulatory materials in March 2018. *Id.* In October 2017, Class Counsel requested that Citi provide organizational charts relating to the relevant Euribor traders and submitters. *Id.* ¶ 27. After renewing its request in February 2018, Class Counsel received organizational charts from Citi in April 2018. *Id.* As part of a separate October 2017 meet and confer, Class Counsel requested from both Citi and JPMorgan documents reflecting risk analyses, exposure reports and profit and loss statements relevant to the Euribor manipulation. *Id.* ¶ 28. After additional negotiations, JPMorgan produced its profit and loss reports in March 2018. Citi provided exposure reports and profit and loss statements in April 2018. *Id.*

One-third of JPMorgan's documents and more than 90% of Citi's documents were produced in 2018, including during the months leading up to service of the expert reports. *Id.* ¶ 33.

Class Counsel pored over the Settling Defendants' production, reviewing almost 30,000 documents, consisting of 134,000 pages and more than one gigabyte of data consisting of hundreds of thousands of transactions. *Id.* Some of these documents and data were subject to foreign data privacy laws that required Class Counsel to develop creative solutions with Citi and JPMorgan to ensure necessary documents could be produced. *Id.* ¶ 29. Upon receiving data productions, Class Counsel had to synthesize data sets that were stored differently due to applicable data privacy laws and the use of differing computer programs and systems. *Id.* ¶¶ 29, 35.

Plaintiffs served their Rule 30(b)(6) Notices upon Settling Defendants, seeking targeted information on topics including policies and procedures concerning the trading of Euribor Products, Euribor submission or the fixing of Euribor; violations of such policies and procedures; whether position reports were made available to traders; compensation structure for relevant individuals; and financial reports. *Id.* ¶¶ 36-37. After extensive negotiations with Settling Defendants, Plaintiffs agreed to accept written answers to a number of the topics in their Rule 30(b)(6) Notices. Citi and JPMorgan produced 120 pages of answers. *Id.* ¶¶ 37-38. Class Counsel reviewed these responses and followed up with additional questions for Citi and JPMorgan where needed. *Id.* ¶ 38.

To complement the insights gained from its discovery work, Lowey sent lawyers to observe the trial in the United Kingdom involving current and former employees of Barclays and Deutsche Bank accused of manipulating Euribor. Lowey attorneys and investigators were able to quickly analyze evidence and testimony for new areas of investigation and report back to the teams stateside conducting the day-to-day discovery work. *Id.* ¶ 31.

With the help of experts, Class Counsel identified the relevant sources of transaction data to develop a class-wide model of price impact of Euribor manipulation. *Id.* ¶ 35. The transaction data provided critical information about the size of Citi's and JPMorgan's Euribor Products positions, and therefore their alleged motivations on any particular day to move Euribor in their favor. *Id.* The

first challenge was to get a near-uniform set of data that could be used to compare positions within and across banks. *Id.* Class Counsel combed through the productions to find the appropriate data set for their experts, and when such data set was missing, renewed requests with the producing party or obtained alternate data sources. *Id.*

As discovery progressed, Class Counsel began preparing witness lists, correlating witnesses to significant documents. *Id.* ¶ 34. Teams of attorneys also identified documents to support Class Counsel's experts' analyses, including Defendants' codes of conduct, and relevant industry-wide statistics and practices. *Id.*

Plaintiffs' Responsive Discovery Efforts

Class Counsel performed its prosecutorial work while also complying with its own discovery obligations. Class Counsel worked closely with CalSTRS and FrontPoint to identify documents responsive to Settling Defendants' requests. *Id.* ¶ 39.

Lowey worked with former FrontPoint personnel to identify and collect relevant documents, involving both a hard copy and electronic review of documents and data stored at an offsite physical location. *Id.* ¶¶ 40-41. Lowey reviewed boxes of documents held in storage for information responsive to Settling Defendants' document requests and interrogatories. *Id.* ¶ 41. Additionally, Class Counsel took forensic images of FrontPoint hard drives and uploaded over 457,000 documents of potentially relevant documents to Relativity. *Id.* ¶ 42. Attorneys then performed targeted searches of key dates, personnel and transactions to identify responsive documents. *Id.* Between January 31, 2018 and June 12, 2018, over 44,000 pages of FrontPoint documents were produced to Settling Defendants. *Id.* ¶ 43. Lowey also began preparing a witness to serve as the FrontPoint Rule 30(b)(6) corporate representative. *Id.*

Class Counsel and Berman Tabacco engaged in ongoing discussions with CalSTRS' in-house portfolio managers to collect responsive transactional data and respond to the questions raised by

the data. Joint Decl. ¶ 44; Bartow Dec. ¶ 14. In addition, CalSTRS built a historical document repository to collect potentially responsive documents. Joint Decl. ¶ 44; Bartow Dec. ¶ 15. Class Counsel and Berman Tabacco reviewed numerous documents and produced approximately 5,000 pages. Joint Decl. ¶ 44.

In total, FrontPoint and CalSTRS produced 3,901 documents, totaling more than 49,000 pages. *Id.* ¶ 45. Class Counsel responded to Citi and JPMorgan's ongoing inquiries regarding Plaintiffs' document productions and specific interrogatory responses through early July 2018, via multiple meet-and-confer calls and written correspondence. *Id.*

D. Development of the Class-Wide Models of Alleged Violative Conduct and Price Impact and Preparation of Class Certification Reports

Even before all the necessary data and documents were available, Class Counsel engaged in comprehensive discussions with industry and economic experts to outline a strategy for class certification. Class Counsel decided to use two experts to develop reports relating to (1) Settling Defendants' alleged violations of customs and standards in the euro-denominated interbank loan market and the Euribor-based derivatives market, and (2) common impact and common proof of damages. *Id.* ¶ 46.

To assist the expert preparing the report on Settling Defendants' alleged violations of market customs and standards, Class Counsel provided relevant policy and procedure guides produced by Citi and JPMorgan, as well as related communications. *Id.* ¶ 47. These documents were used to support his ultimate opinion. *Id.* Class Counsel reviewed his report several times, with a particular eye toward identifying and addressing any potential *Daubert* concerns. *Id.*

Plaintiffs' second expert elected to employ a benchmark comparison approach to attempt to demonstrate how Plaintiffs could show common impact and common proof of damages. *Id.* ¶ 48. Class Counsel obtained nearly a decade's worth of historical Euribor submissions data and benchmark data that could be used to demonstrate the artificiality caused by Euribor manipulation.

Id. Plaintiffs' expert recommended applying a regression analysis of the relationship between Euribor and the benchmark during the alleged manipulated and unmanipulated periods to assess where artificiality could be objectively observed. *Id.* To ensure that this model was defensible, Lovell researched the use of regression analysis in expert reports and identified the commonly accepted characteristics of such analysis. *Id.* Lovell also researched the use of control periods in expert analysis to understand the standards applied to such data. *Id.* This research helped Class Counsel to ensure the expert report properly framed the inquiry and would ultimately be deemed reliable. *Id.*

E. The Depositions of Plaintiffs' Experts and Defendants' Expert Report

Citi and JPMorgan deposed Plaintiffs' expert witnesses during two separate all-day depositions. Class Counsel prepared and defended each witness at the depositions. *Id.* ¶ 50.

Following service of Plaintiffs' expert reports on April 23, 2018, Class Counsel conducted deposition preparation for Plaintiffs' experts prior to their respective June 1, 2018 and June 8, 2018 deposition dates. Class Counsel spent more than a week total with each expert examining them about the contents of his report and posing difficult hypotheticals and questions which Class Counsel believed the experts would likely face. *Id.* ¶ 51.

After their depositions, Plaintiffs' experts assisted Class Counsel both in formulating rebuttal expert reports and with preparations to depose Settling Defendants' expert. *Id.* ¶ 52.

F. Mediation Briefs and Settlement Negotiations with Citi and JPMorgan

Citi first approached Plaintiffs regarding a potential settlement in 2015. Joint Decl. ¶ 53. On June 4, 2015, Class Counsel met with Citi's counsel for preliminary settlement discussions, which continued over the next several months. *Id.* Plaintiffs described their analysis of the developing case law in benchmark litigation actions, and how such law supported their arguments. Citi repeatedly asserted that it was not liable for the alleged misconduct. *Id.* By October 2016, the parties' negotiations had stalled. *Id.*

On April 28, 2017, Plaintiffs, Citi, and JPMorgan informed the Court of their agreement to pursue private mediation. *Id.* ¶ 54. The parties selected nationally recognized mediator David Geronemus, Esq. *Id.* On November 21, 2017, Mr. Geronemus held an in-person mediation session between Plaintiffs, Citi, and JPMorgan. Brian J. Bartow, CalSTRS' General Counsel, also attended. *Id.* This first mediation session ended in an impasse. *Id.* ¶ 56.

Following the exchange of expert reports and the depositions of Plaintiffs' experts, but before Citi and JPMorgan's expert was deposed, the parties met again on July 11 and 12, 2018 for a second and third mediation session with Mr. Geronemus. *Id.* ¶ 57. Mr. Bartow again traveled to New York to attend. *Id.* ¶ 60. Class Counsel now had expert reports developed both by Plaintiffs and Settling Defendants, a well-developed discovery record from Citi and JPMorgan, and analysis of recent cases evaluating similar claims. *Id.* Plaintiffs' experts also attended the mediations in July 2018 to provide advice and rebut Citi and JPMorgan's expert analyses. *Id.*

In preparation for the July 11-12 mediation, Class Counsel prepared and served a comprehensive mediation statement that presented a data-driven analysis allegedly linking Citi and JPMorgan to the manipulation of Euribor. *Id.* ¶ 58. This mediation statement built on all of the work Class Counsel performed in discovery and in preparation of the expert reports. *Id.*

The mediation statement also previewed Plaintiffs' forthcoming motion to certify the Class and described in detail how the Class met requirements for certification under Rule 23. *Id.* ¶ 59. In particular, Class Counsel's analysis concluding that Plaintiffs satisfied the requirements for class certification was based on the then-recent decision in *LIBOR VII*. *LIBOR VII* confirmed, among other things, that finding proof of a conspiracy to manipulate LIBOR was a *per se* antitrust violation subject to common proof among class members, 299 F. Supp. 3d. at 590, and netting issues did not cause individual questions to predominate over common questions. *Id.* at 594-95. Class Counsel also explained why other aspects of *LIBOR VII* did not apply in this Action.

G. After an Impasse During the Mediation, the Parties Reach a Settlement Number Just as the Deposition of Defendants' Expert Is About to Start

However, despite the progress made during the third mediation session, by its conclusion on July 12, 2018, the parties were still at an impasse. Joint Decl. ¶ 62. Class Counsel informed Citi and JPMorgan that they intended to continue with the deposition of Citi and JPMorgan's expert witness on July 17, 2018 at 9:30 a.m. While Class Counsel prepared for the deposition and consulted with Plaintiffs' experts on strategy, the parties agreed to continue negotiations on their own. *Id.* ¶¶ 63-64. Plaintiffs, Citi, and JPMorgan resumed negotiating on Friday, July 13, 2018, continuing until 9:30 a.m. on Tuesday, July 17, 2018, when Plaintiffs, Citi, and JPMorgan reached an agreement in principle to settle the case, just minutes before the start of the deposition. *Id.* ¶¶ 64-65.

H. Class Counsel's Additional Work Needed to Produce the Settlement

Between late July 2018 and October 4, 2018, Plaintiffs and Settling Defendants further engaged in difficult negotiations over, among other items, the availability, scope and timing of cooperation, and access to witnesses. *Id.* ¶ 66. Plaintiffs and Settling Defendants worked collaboratively and creatively to resolve their disputes. *Id.*

On October 4, 2018, counsel for Plaintiffs, Citi, and JPMorgan signed a Term Sheet. *Id.* ¶ 67. In addition to paying $182,500,000 to Plaintiffs and the Class, Citi and JPMorgan agreed to provide cooperation that may assist with reinstituting the claims against Defendants previously dismissed from this Action on personal jurisdiction grounds. *See* ECF No. 452-1 (Settlement Agreement) at 16-21. On October 5, 2018, the Parties reported to the Court that a settlement had been reached. Joint Decl. ¶ 68. Following additional weeks of arm's-length negotiations, Class Plaintiffs and Settling Defendants executed the Settlement Agreement on November 21, 2018. *Id.* ¶ 69.

While Class Counsel's work since February 28, 2018 (the cutoff date for Plaintiffs' last fee motion, *see* ECF No. 403) was integral in achieving the Settlement, it built upon Class Counsel's previous work, described in the declarations filed in connection with prior settlements. *See* ECF

Nos. 403-04, 411. Class Counsel's earlier efforts laid the foundation for this Settlement.

ARGUMENT

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

"[A] litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also CDS Litig.*, 2016 WL 2731524, at *16 (quoting *Victor v. Argent Classic Convertible Arbitrage Fund L.P.*, 623 F.3d 82, 86 (2d Cir. 2010)). 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) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)). Class Counsel's attorneys' fee request is reasonable under either approach because it: (1) is consistent with the fee schedule CalSTRS negotiated at arm's-length when it first retained Class Counsel; (2) is within the range of "percentage method" fee awards made in this Circuit; and (3) satisfies all six *Goldberger* factors, including the lodestar "cross-check." *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

A. The Fee Request Is Determined by the Fee Scale Negotiated by CalSTRS and Class Counsel's Work Has Been Reviewed and Approved 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*, 522 F.3d at 184 n.2; *see also Goldberger*, 209 F.3d at 52 ("market rates, where available, are the ideal proxy for [class counsel's] compensation."). Courts accordingly give great weight to negotiated fee agreements 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 a market rate."). For example, there is "a well-recognized rebuttable 'presumption of correctness' 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 (quoting *Flanagan*, 814 F.3d at 659); *see also In re Cendant Corp. Litig.*, 264 F.3d 201, 282 (3d Cir. 2001).

The attorneys' fees requested are calculated directly from the retainer agreement that CalSTRS negotiated with Class Counsel before joining the Action in September 2014. *See* Bartow Decl. ¶¶ 6-7; Joint Decl. ¶ 73. CalSTRS is a large and sophisticated benefits fund with a reputation for striving to protect its members' interests. CalSTRS is very experienced with class action litigation. Accordingly, CalSTRS' negotiation with Class Counsel of the declining percentage fee, constitutes "an ideal proxy for [Class Counsel] compensation." *Goldberger,* 209 F.3d at 52.

Second, CalSTRS' General Counsel has reviewed Class Counsel's time on a monthly basis, and actively observed as well as participated in the prosecution of the claims here. Bartow Decl. ¶ 24; Joint Decl. ¶ 75. Based upon Mr. Bartow's knowledge of the risks of continued prosecution and the skillfulness of Class Counsel's prosecution of the claims in light of those risks, Mr. Bartow has also submitted a declaration supporting the requested fee. Bartow Decl. ¶¶ 24-25. CalSTRS' *ex ante* judgment about the attorneys' fees in this case, as well as CalSTRS' *post hoc* support, after all the facts were known of the actual fee request, amply exceed the factors identified by the *CDS* court to create a presumption of reasonableness here.

Third, the CalSTRS retainer agreement further limits any fee to Class Counsel to a risk multiplier of 3.5. Class Counsel respectfully submits that this cap by CalSTRS is a strong indication of the appropriate risk multiplier. In fact, the risk multiplier if the fee request is awarded will be substantially less than 3.5 regardless of how it is calculated. *See* Part I.D. *infra.*

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*, 396 F.3d at 121 ("The trend in

this Circuit is toward the percentage method"); *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 fund 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 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).

Pursuant to the graduated fee structure with CalSTRS, Class Counsel requests 19% of the $182,500,000 common fund. This percentage is well within the range of reasonable attorneys' fees approved in complex class actions in this Circuit, including other "IBOR" cases.[7] The fee here is a considerably lesser percentage than many 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.*").[8] The percentage is also less than the percentage award in connection

[7] *See, e.g.*, Order Granting Class Counsel's Motion for Award of Attorneys' Fees, *Laydon v. Mizuho Bank, Ltd., et al.,* No. 12-cv-3419 (GBD) (S.D.N.Y Dec. 7, 2017), ECF No. 388 ("*Laydon* Fee Order") and Order Granting Class Counsel's Motion for Award of Attorneys' Fees, *Sonterra Capital Master Fund, Ltd., et al, v. UBS AG et al.*, No. 15-cv-5844 (GBD) (S.D.N.Y Dec. 7, 2017), ECF No. 837 ("*Sonterra* Fee Order") (awarding 23.57% of the $148 million common fund in cases settling manipulation claims relating to Yen-LIBOR and Euroyen TIBOR pursuant to CalSTRS' retainer with Class Counsel); *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% of a $15 million common fund in attorneys' fees in a securities fraud class action); *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 30% of a $77.1 million common fund as 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% of the $116.6 million common fund as attorneys' fees in complex class action).

[8] A recent study collecting empirical evidence of attorneys' fees in class action settlements likewise supports the requested fee. *See* Eisenberg, Miller & Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 952 (2017) (finding that in 19 antitrust settlements between 2009 and 2013 with a mean recovery of $501.09 million and a median recovery of $37.3 million, the mean and median fee percentages were 27% and 30%).

with the Barclays, Deutsche Bank and HSBC settlements. *See* ECF No. 425; *see also In re Interpublic Sec. Litig.,* No. 02 Civ.6527(DLC), 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) ("Graduated fees scales recognize both the benefit to the class and the investment of effort by counsel").

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*.[9] The first factor, the time and labor expended by Class Counsel, is detailed above and in the supporting declarations; factors 2 through 6 are addressed below.

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"); *see also In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 12 Civ. 5575 (SWK), MDL 1500, 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 26, 2006) (the judiciary's focus is on "fashioning a fee" that encourages lawyers to "undertake future risks for the public good"); *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). The claims against Citi and JPMorgan were particularly high risk in comparison to claims previously settled.

Risk of Prosecuting the Case as Class Counsel: When this Action was initiated, it was unclear whether a private right of action was available under antitrust laws. The risks of dismissal of private antitrust claims were realized in multiple cases shortly after filing this case. *See, e.g., In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 688 (S.D.N.Y. 2013) ("*LIBOR I*").

Plaintiffs' antitrust claims survived here because the Second Circuit's decision in *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 771-75 (2d Cir. 2016), vacated the prior consensus that private

[9] Courts evaluating whether a fee is "reasonable" 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.

plaintiffs did not have antitrust claims for benchmark rate manipulation. *See Sullivan v. Barclays plc*, No. 13-cv-2811, 2017 WL 685570, at *13 (S.D.N.Y. Feb. 21, 2017). When *Gelboim* was decided, Class Counsel had already been prosecuting these claims in high risk conditions for thirty-nine months. *Gelboim* did not, however, mitigate other risks such as personal jurisdiction and the inherent difficulty of litigating against some of the world's largest financial institutions with the financial resources and ability to prolong this case for years.

Due to these high risks and despite the presence of an ACPERA applicant, no companion or tag along class actions were filed. Accordingly, Class Counsel assumed all of the foregoing risks alone, bearing the costs and potential loss on a contingent basis. *See In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 (FSH), 2005 WL 3008808, at *14 (D.N.J. Nov. 9, 2005) (identifying "the uncertain nature of the fee, the wholly contingent outlay of large out-of-pocket sums by plaintiffs, and the fact that the risk of failure and nonpayment in an antitrust case are extremely high" as risks in an antitrust class action.).

Risk of Establishing Liability: As set forth above, there were serious risks that this case would be dismissed at the pleading stage. Even after prevailing on Citi and JPMorgan's motion to dismiss, challenges remained and in some ways were amplified. These antitrust claims involving foreign conduct are inherently complex, particularly where, as here, there are no regulatory settlements to support liability. Class Counsel invested substantial time and resources to identify ways to link Citi and JPMorgan to the conspiracy. Class Counsel also had to parse technical financial language and identify patterns and campaigns used to manipulate Euribor, involving multiple banks over extended time periods.

These risks were magnified with the dismissal of the other Defendants, who might otherwise have produced helpful documents. This information deficit was partly mitigated by the cooperation

provided by Barclays, Deutsche Bank and HSBC, but nevertheless the case was made more difficult by not being able to simultaneously prosecute Citi and JPMorgan's co-conspirators.

Risk of Establishing Damages: Citi and JPMorgan would have argued that the total damages for which they were liable was but a small fraction of the settlement payment they ultimately agreed to make. In addition, there were 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 Euribor would have been absent manipulation. Euribor is intended to reflect the cost of borrowing Euros in the interbank money market. Class Counsel, with the assistance of its experts, had to show that the Euribor was not reflective of such borrowing costs. Plaintiffs' experts opined on whether there were violations of the customs and standards in the relevant markets, and on how common impact and common proof of damages could be used to calculate class-wide damages. *See* Joint Decl. ¶ 46. These opinions were thoroughly scrutinized when Citi and JPMorgan deposed Plaintiffs' experts, and would have been further tested in Settling Defendants' rebuttal expert report had the Settlement not been reached. *See* Joint Decl. ¶¶ 51-52. While Class Counsel is confident in its position that class-wide damages could be determined, there is always uncertainty where a battle of experts is involved. *Chatelain v. Prudential-Bache Sec., Inc.,* 805 F. Supp. 209, 214 (S.D.N.Y. 1992) (noting the complexities of calculating damages in class actions); *Maley v. Del Glob. Techs. Corp.,* 186 F. Supp. 2d 358, 372 (S.D.N.Y. 2002) (citing *Chatelain* and stating the complex issue of calculating damages incurred by the Class requires a battle of the experts).

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. v. SESAC LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (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: This case involves a conspiracy among multiple banks and interdealer brokers to fix Euribor and Euribor-based derivatives prices over a Class Period of five years and nine months through multiple means, including, *inter alia*: (1) making false Euribor submissions; (2) "pushing cash" with manipulative transactions; (3) "spoofing" the market with false bids and offers; and (4) sharing proprietary information. ECF No. 174 (Fourth Amended Class Action Complaint) ¶ 18. The amount of work required to understand 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. *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 six years of litigation involving up to 20 Defendants, the parties have produced hundreds of docket entries associated with four amended complaints and motions to transfer venue, reconsider orders, and issue a request to obtain documents via The Hague Convention. The motion to dismiss briefing involved a total of 6 memoranda of law, 19 declarations, numerous exhibits, and 14 letter briefs discussing decisions issued after the motion had been fully briefed. There have been hundreds of thousands of documents, spreadsheets and audio files produced, and thousands of hours of work spent on understanding all of this information. Even more documents may still be produced as a result of the settlement cooperation to be provided by Citi and JPMorgan. 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. $309,000,000 has already been obtained from Barclays, Deutsche Bank and HSBC, in and of itself an extraordinary result by Class Counsel. The Settlement with Citi and JPMorgan will add $182,500,000, bringing the total funds available to the Class to $491,500,000. These funds will provide Class members with an immediate recovery.

The size of the Settlement Fund may continue to grow if Plaintiffs' claims against previously dismissed Defendants are reinstated. In negotiating the Settlement, Class Counsel secured significant cooperation from the Settling Defendants. *See supra* at 13. This cooperation was a significant source of contention during the preparation of the Settlement Agreement. Rather than relenting on the need for cooperation in light of the fact that the final two live Defendants were settling, Class Counsel acted in the best interests of the Class and protected Plaintiffs' potential ability to pursue claims against the dismissed Defendants.

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.[10] 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

[10] *See* ECF Nos. 452-6 (attaching Lowey's firm resume), 452-7 (attaching Lovell's firm resume).

and the London Silver Fix.[11] Additional examples of Class Counsel's more than 50 years of experience with complex litigation are detailed in Class Counsel's resumes.

Another consideration for assessing the quality of the representation is "[t]he quality of the opposing counsel" in the case. *See Maley*, 186 F. Supp. 2d. at 373. 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 successfully prosecuted this action for more than six years against such formidable opponents further reflects the quality of representation provided.

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 against other "large class cases with court-set fees"). The fee requested here is reasonable in relation to the settlement for at least two reasons:

First, Class Counsel's request for 19% of the common fund comes directly from the graduated fee scale that CalSTRS negotiated before joining the action. *See* Bartow Decl. ¶ 6-7. 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." *See Interchange Fee Litig.*, 991 F. Supp. 2d at 444.

[11] *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); *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD); and *In re: London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573 (VEC) (S.D.N.Y.).

Second, the graduated fee CalSTRS negotiated is less than the fee approved in connection with the prior $309 million settlement in this Action (22.24%) and the fees awarded in the recent *Laydon* and *Sonterra* settlements. *See Laydon* Fee Order ¶ 3; *Sonterra* Fee Order ¶ 3. Other courts in this District have approved fee awards in large antitrust class cases based on a graduated fee scale. *See CDS Litig.*, 2016 WL 2731524, at *17 n.24; *Interchange Fee Litig.*, 991 F. Supp. 2d at 445; *In re Interpublic Sec. Litig.,* 2004 WL 2397190, at *12 ("Graduated fees scales recognize both the benefit to the class and the investment of effort by counsel"). 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.

5. *Public Policy Supports Approval*

Had Class Counsel not taken on the risk of this lawsuit in February 2013, the class of investors in Euribor Products would have been left without recompense for their losses. Despite the subsequent government investigations and certain Defendants' admissions of wrongdoing, many investors who were harmed by Defendants' 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 . . . serve[s] the public interest") (citations omitted). None of the regulator's fines or settlements were allocated to private investors.

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 at their own expense even when 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. 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 "grossly disproportionate to the percentage fee award . . . ." *Id.* There is no windfall here.

In negotiating a graduated fee scale, CalSTRS capped any fee request by Class Counsel to 3.5 times the aggregate lodestar. 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 139,185.78 hours working on *Sullivan* as of February 28, 2019, for an aggregate lodestar of $66,910,561.30. *See* Joint Decl. ¶ 86. The $34.675 million fee requested, when combined with the previously-awarded fee of $68,710,000 million, compensates Plaintiffs' Counsel for approximately 155% of their aggregate lodestar and constitutes a 1.55 multiplier. This is far less than the negotiated risk multiplier cap in the CalSTRS's fee agreement, demonstrating that the full fee will not result in an "unwarranted windfall." *Goldberger v. Integrated Res., Inc.*, 209 F.3d at 49.[12]

[12] This method of calculation of the risk multiplier is appropriate under the CalSTRS fee agreement. Under such agreement, the total recovery from inception to date is used to determine the declining percentage fee that may be requested, *i.e.*, the agreement's frame of reference is to look at the case as an integrated whole. Similarly, in calculating the risk multiplier, the facts since inception should be examined as an integrated whole. That is, the reasonableness of Class Counsel's declining percentage fee should be judged by adding that fee to the earlier fee and then comparing the sum total of the total lodestar since inception.

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.[13] 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 ARE REASONABLE

"An attorney who has created a common fund . . . is entitled to reimbursement of reasonable litigation 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. March 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."). Plaintiffs' Counsel incurred $1,074,649.73 in expenses from March 1, 2018 to the present. *See* Joint Decl. ¶ 88. This amount is well below the $1.3 million Class Counsel advised in the Court-approved notice sent to Settlement Class Members. *See* ECF No. 452-3 at 7.

These costs and expenses were "incidental and necessary to the representation of the [C]lass," and should be reimbursed. *See Beckman*, 293 F.R.D. at 482. Since February 28, 2018, $841,150.23 (or 78%) of Plaintiffs' Counsel's reimbursable expenses went towards professional, consulting and expert fees, including class certification expert work and settlement mediation.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the court approve their application for attorneys' fees and costs and incentive awards in the amounts set forth above.

But even if the risk multiplier were calculated solely based on Class Counsel's incremental time since February 28, 2018 and compared to the incremental lodestar compared to the fee request in this application, the risk multiplier would be 2.39. This, also, is far less than the 3.5 cap contained in the CalSTRS fee agreement.

[13] *See, e.g.*, *CDS Litig.*, 2016 WL 2731524, at *17 (approving a lodestar multiplier 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).

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LOWEY DANNENBERG, P.C.

By: */s/ Vincent Briganti*
Vincent Briganti
Geoffrey M. Horn
Peter D. St. Phillip
44 South Broadway, Ste. 1100
White Plains, New York 10601
Tel.: 914-997-0500
Fax: 914- 997-0035
vbriganti@lowey.com
ghorn@lowey.com
pstphillip@lowey.com

LOVELL STEWART HALEBIAN JACOBSON LLP

By: */s/ Christopher Lovell*
Christopher Lovell
Gary S. Jacobson
Benjamin M. Jaccarino
500 5th Avenue, Suite 2440
New York, NY 10036
Tel.: 212-608-1900
Fax: 212-719-4677
clovell@lshllp.com
gsjacobson@lshllp.com
bjaccarino@lshllp.com

Class Counsel

Joseph J. Tabacco, Jr.
Todd A. Seaver
BERMAN TABACCO
44 Montgomery Street, Ste. 650
San Francisco, CA 94104
Tel.: 415-433-3200
Fax: 415-433-6282

Patrick T. Egan
BERMAN TABACCO
One Liberty Square
Boston, MA 02109
Tele.: 617-542-8300
Fax: 617-542-1194

Brian P. Murray
Lee Albert (pro hac vice to be filed)
GLANCY PRONGAY & MURRAY LLP
122 East 42nd Street, Suite 2920
New York, NY 10168
Tel.: 212-682-5340
Fax: 212-884-0988

David E. Kovel
KIRBY McINERNEY LLP
825 Third Avenue
New York, NY 10022
Tel.: 212-371-6600
Fax: 212-751-2540

Additional Counsel for Plaintiffs