

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

RICHARD DENNIS, SONTERRA CAPITAL MASTER FUND, LTD., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT ASIAN EVENT DRIVEN FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., AND ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM, on behalf of themselves and all others similarly situated,

Docket No. 16-cv-06496 (LAK)

*Plaintiffs,*

*-against-*

JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., BNP PARIBAS, S.A., THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS N.V., RBS GROUP (AUSTRALIA) PTY LIMITED, UBS AG, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, WESTPAC BANKING CORPORATION, DEUTSCHE BANK AG, HSBC HOLDINGS PLC, HSBC BANK AUSTRALIA LIMITED, LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, MACQUARIE GROUP LTD., MACQUARIE BANK LTD., ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, MORGAN STANLEY, MORGAN STANLEY AUSTRALIA LIMITED, CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, ICAP PLC, ICAP AUSTRALIA PTY LTD., TULLETT PREBON PLC, TULLETT PREBON (AUSTRALIA) PTY LTD., AND JOHN DOES NOS. 1-50.

*Defendants.*

**DECLARATION OF TODD A. SEAVER ON BEHALF OF BERMAN TABACCO  
IN SUPPORT OF PLAINTIFFS' COUNSEL'S MOTION FOR AWARD OF  
ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Todd A. Seaver, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner with the law firm Berman Tabacco. I respectfully submit this Declaration in support of Plaintiffs' Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Expenses (the "Fee and Expense Application") in connection with the services rendered in the Action and the proposed class action settlements with Settling Defendants.\*

2. The statements herein are true to the best of my personal knowledge, information and belief based on Berman Tabacco's books and records and information received from its attorneys and staff. Berman Tabacco's time and expense records are prepared and maintained in the ordinary course of business.

3. Berman Tabacco serves as Additional Plaintiffs' Counsel and is counsel of record for Orange County Employees Retirement System ("OCERS") who serves as a named Plaintiff in the Action.

4. I am the attorney who oversaw my firm's involvement in the Action. Berman Tabacco's time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform to Berman Tabacco's agreement with OCERS, directions from Plaintiffs' Counsel,

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\* "Settling Defendants" means Australia and New Zealand Banking Group Limited; Commonwealth Bank of Australia; National Australia Bank Limited; Morgan Stanley and Morgan Stanley Australia Limited; Westpac Banking Corporation; JPMorgan Chase & Co. and JPMorgan Chase Bank; Credit Suisse AG and Credit Suisse Group AG; BNP Paribas, S.A.; Deutsche Bank AG; Royal Bank of Canada; The Royal Bank of Scotland plc (n/k/a NatWest Markets plc); and UBS AG.

or my firm's practice. As a result of this review and related reductions, the time reflected in Berman Tabacco's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and resolve the settlements before the Court. In addition, these fees and expenses are often charged by Berman Tabacco to its fee-paying clients.

5. During the course of this litigation, and as detailed herein, Berman Tabacco worked on assignments that it was specifically directed to perform by Plaintiffs' Counsel.

6. Set forth below and in the attached Exhibit A is a summary reflecting the amount of time (after any applicable reductions) Berman Tabacco attorneys and professional staff who worked on the Action from the inception of the case through June 30, 2022, the historical billing rates applicable to such work, a representation of the blended hourly rate, and the corresponding lodestar value of that work. The schedule in Exhibit A was prepared based upon daily time records maintained by Berman Tabacco attorneys and professional support staff in the ordinary course of business, and the lodestar calculations are based on the firm's historical hourly billing rates.

7. The services Berman Tabacco performed on behalf of the putative class include, but are not limited to, the following:

- a. Advise and counsel OCERS at Board and Board-Committee levels regarding all material aspects of the litigation, in conjunction with Plaintiffs' Counsel;
- b. Provide input on all strategic matters in conjunction with Plaintiffs' Counsel, including investigations, research, and drafting concerning the Second Amended Complaint and research and drafting the opposition to Defendants' motions to dismiss, motions for reconsideration, and motions for judgment on the pleadings;
- c. Conduct sensitive negotiations with numerous third parties which act, or during the Class Period had acted, as OCERS' external asset managers authorized to enter BBSW Derivative transactions on OCERS' behalf in

order to collect and analyze master trading agreements between the asset managers and the Defendants, material provisions of which were alleged in the Second Amended Complaint to establish a basis for the Court to exercise personal jurisdiction over multiple Defendants;

- d. Participate in settlement negotiations and draft settlement documents;
- e. Engage in numerous discovery conferences, and related legal research and correspondence, with Defendants' counsel regarding OCERS' document and data productions and responses to Defendants' document requests; and
- f. Substantial document review of Defendants' and OCERS' documents and data.

8. A summary of the services provided by each Berman Tabacco attorney and member of the professional staff is provided in the attached Exhibit B. Further detail regarding each timekeeper's work performed is provided below:

- a. Joseph J. Tabacco, Jr. (Partner)—provide input on strategic matters in conjunction with Plaintiffs' Counsel;
- b. Nicole Lavalley (Partner)—provide input on strategic matters in conjunction with Plaintiffs' Counsel;
- c. Todd A. Seaver (Partner)—oversee Berman Tabacco's involvement in the Action; advise and counsel OCERS regarding all material aspects of the litigation; participation in Rule 12 briefing;
- d. Patrick Egan (Partner)—advise and counsel OCERS regarding all material aspects of the litigation; participation in Rule 12 briefing; involved in discovery meet and confer conferences and correspondence related to OCERS' collection and production of documents;
- e. Carl Hammarskjold (Partner)—advise and counsel OCERS regarding discovery; collect and analyze OCERS' master trading agreements for allegations in the Second Amended Complaint; contribute to oppositions to Defendants' Rule 12 motions and motions for reconsideration; quality-control review of OCERS' documents; manage OCERS' discovery responses and discovery negotiations with Defendants;
- f. Sarah McGrath (Of Counsel)—discrete discovery project involving Defendants' documents;
- g. Chowning Poppler (Associate)—discrete research regarding personal jurisdiction in connection with Defendants' Rule 12(b)(2) motions;

- h. Mackline Bastien (Staff Attorney)—review, analyze, and code Defendants’ documents; review OCERS’ documents for responsiveness and privilege;
- i. Berna Lee (Staff Attorney)—review, analyze, and code Defendants’ documents; review OCERS’ documents for responsiveness and privilege;
- j. Karen Didrickson (Staff Attorney)—review OCERS’ documents for responsiveness and privilege;
- k. Brian Drake (Staff Attorney)—review OCERS’ documents for responsiveness and privilege;
- l. Ellee McKim (Staff Attorney)—review OCERS’ documents for responsiveness and privilege;
- m. Laura Falardeau (Project Attorney)—review OCERS’ documents for responsiveness and privilege;
- n. Jessica Misra (Financial Analyst)—collect and analyze OCERS’ transactional data and help answer Defendants’ questions about that data;
- o. Katherine Nolan (Investigator Researcher)—factual research concerning information about OCERS provided to Defendants;
- p. Kathy Becker (Paralegal)—litigation support; and
- q. Beto Segura (Paralegal)—litigation support.

9. The total time for which my firm is requesting an award of legal fees is 6,029.85 hours. The total lodestar value of these professional services is \$2,708,348.00.

10. The above hourly rates for Berman Tabacco’s attorneys and professional support staff are the firm’s historical hourly rates. The hourly rates for attorneys and professional support staff in my firm are the same as or less than the regular rates charged for their services in contingent fee matters. Timekeepers with less than 15 hours were excluded. The time and lodestar spent preparing the Fee and Expense Application were also excluded from the above values. Berman Tabacco did not employ any contract lawyers in this matter. Each lawyer and paralegal listed above was a full-time employee of the firm.

11. The firm's lodestar figures do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the firm's historical billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

12. As detailed and categorized in the attached Exhibit C, Berman Tabacco has incurred a total of \$5,609.79 in expenses from inception through August 5, 2022 for which it seeks to be reimbursed from the Settlement Fund.

13. The attached Exhibit C was prepared based upon expense records reflected in the books and records of Berman Tabacco. These books and records are prepared from expense vouchers, check records, receipts, and other source materials.

14. Berman Tabacco's travel expenses are chiefly for an in-person briefing for the OCERS' board and Plaintiff's Counsel-approved attendance at a case management conference. Certain expense items were governed by caps and restrictions imposed by Plaintiffs' Counsel. Short-duration air travel from San Francisco to Orange County was restricted to coach-class rates. The per-page rate for in-house copies was capped at \$0.10 per page.

15. Attached hereto as Exhibit D are the biographies of the Berman Tabacco attorneys and professional staff who worked on the Action from the inception of the case through June 30, 2022.

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

Executed on August 18, 2022  
San Francisco, CA

/s/ Todd A. Seaver

Todd A. Seaver

# **EXHIBIT A**

**Exhibit A*****Dennis, et al. v. JPMorgan Chase & Co., et al., 16-CV-6496 (LAK) (S.D.N.Y.)*****Lodestar Chart by Timekeeper**

<b>Timekeeper/Title</b>	<b>Hours</b>	<b>(Blended Rate)* Historic Rate</b>	<b>Lodestar at Historic Rate</b>
Bastien, Mackline Staff Attorney	1,942.20	(\$350.00)	\$679,770.00
2020	68.50	\$350.00	\$23,975.00
2021	1,628.10	\$350.00	\$569,835.00
2022	245.60	\$350.00	\$85,960.00
Becker, Kathy Paralegal	21.65	(\$200.00)	\$4,330.00
2017	1.35	\$200.00	\$270.00
2018	7.90	\$200.00	\$1,580.00
2019	3.70	\$200.00	\$740.00
2020	4.60	\$200.00	\$920.00
2021	2.50	\$200.00	\$500.00
2022	1.60	\$200.00	\$320.00
Didrickson, Karen Staff Attorney	47.00	(\$350.00)	\$16,450.00
2020	47.00	\$350.00	\$16,450.00
Drake, Brian Staff Attorney	40.00	(\$350.00)	\$14,000.00
2020	40.00	\$350.00	\$14,000.00
Egan, Patrick Partner	356.50	(\$887.44)	\$316,371.00
2018	59.20	\$800.00	\$47,360.00
2019	24.80	\$840.00	\$20,832.00
2020	139.70	\$880.00	\$122,936.00
2021	79.40	\$925.00	\$73,445.00
2022	53.40	\$970.00	\$51,798.00
Falardeau, Laura Project Attorney	48.50	(\$350.00)	\$16,975.00
2020	48.50	\$350.00	\$16,975.00
Hammarskjold, Carl Partner	923.30	(\$560.66)	\$517,655.50
2018	88.10	\$490.00	\$43,169.00
2019	73.90	\$515.00	\$38,058.50
2020	517.40	\$540.00	\$279,396.00
2021	228.30	\$640.00	\$146,112.00
2022	15.60	\$700.00	\$10,920.00
Lavallee, Nicole Partner	44.40	(\$875.81)	\$38,886.00
2017	1.90	\$875.00	\$1,662.50
2018	41.70	\$875.00	\$589,750.00
2019	0.80	\$920.00	\$736.00
Lee, Berna Staff Attorney	1,860.00	(\$350.00)	\$651,000.00

<b>Timekeeper/Title</b>	<b>Hours</b>	<b>(Blended Rate)* Historic Rate</b>	<b>Lodestar at Historic Rate</b>
2020	72.30	\$350.00	\$25,305.00
2021	1,685.00	\$350.00	\$589,750.00
2022	102.70	\$350.00	\$35,945.00
McGrath, Sarah Of Counsel	23.60	(\$550.00)	\$12,980.00
2022	23.60	\$550.00	\$12,980.00
McKim, Ellee Staff Attorney	220.30	(\$350.00)	\$77,105.00
2020	65.00	\$350.00	\$22,750.00
2021	155.30	\$350.00	\$54,355.00
Misra, Jessica Financial Analyst	71.40	(\$493.11)	\$35,208.00
2020	44.00	\$475.00	\$20,900.00
2021	25.00	\$520.00	\$13,000.00
2022	2.40	\$545.00	\$1,308.00
Nolan, Katherine Investigator Researcher	31.00	(\$200.00)	\$6,200.00
2019	3.00	\$200.00	\$600.00
2020	8.00	\$200.00	\$1,600.00
2021	20.00	\$200.00	\$4,000.00
Poppler, Chowning Associate	39.60	(\$550.00)	\$21,780.00
2020	39.60	\$550	\$21,780.00
Seaver, Todd Partner	325.90	(\$858.80)	\$279,883.00
2017	2.90	\$760.00	\$2,204.00
2018	89.60	\$800.00	\$71,680.00
2019	51.20	\$840.00	\$43,008.00
2020	133.30	\$880.00	\$117,304.00
2021	38.80	\$925.00	\$35,890.00
2022	10.10	\$970.00	\$9,797.00
Segura, Beto Paralegal	17.70	(\$200.00)	\$3,540.00
2020	17.70	\$200.00	\$3,540.00
Tabacco Jr., Joseph Partner	16.80	(\$965.15)	\$16,214.50
2018	5.90	\$895.00	\$5,280.50
2019	3.50	\$940.00	\$3,290.00
2020	2.80	\$985.00	\$2,758.00
2021	2.10	\$1,035.00	\$2,173.50
2022	2.50	\$1,085.00	\$2,712.50
<b>GRAND TOTAL</b>	<b>6,029.85</b>		<b>\$2,708,348.00</b>

\* The blended hourly rate is the total lodestar divided by total hours.

# **EXHIBIT B**





<b>Timekeeper</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>13</b>	<b>14</b>	<b>15</b>	<b>Hours</b>
Tabacco Jr., Joseph – Partner			3.50	5.90	1.30		2.70			3.40						16.80
<b>Total</b>	125.55	0.00	181.00	255.10	504.20	4,168.20	644.50	0.00	0.00	139.60	0.00	0.00	11.70	0.00	0.00	6029.85

# **EXHIBIT C**

**Exhibit C*****Dennis, et al. v. JPMorgan Chase & Co., et al., 16-CV-6496 (LAK) (S.D.N.Y.)***  
**Expenses Chart by Category**

<b>Expense Categories</b>	<b>Cumulative Expenses</b>
Court Costs	\$425.00
Computer Research	\$1,485.24
Photocopies – in House	\$601.90
Postage	\$6.34
Telephone/Telecopier	\$129.33
Travel	\$2,961.98
<b>TOTAL</b>	<b>\$5,609.79</b>

# **EXHIBIT D**

## THE FIRM

Berman Tabacco is a national law firm with 34 attorneys located in offices in Boston and San Francisco. Since its founding in 1982, the firm has devoted its practice to complex litigation, primarily representing plaintiffs seeking redress under U.S. federal and state securities, antitrust and consumer laws.

Over the past almost four decades, Berman Tabacco's attorneys have prosecuted hundreds of class actions, recovering billions of dollars on behalf of the firm's clients and the classes they represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies. Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2021)*.<sup>1</sup> According to ISS Securities Class Action Services' "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.<sup>2</sup> SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012). The firm currently holds leadership positions in securities, antitrust and consumer cases around the country.

Berman Tabacco is rated AV Preeminent® by *Martindale-Hubbell*®. *Benchmark Litigation* ranked the firm as a *Top Ten Plaintiffs' Firm* for its work "on behalf of individuals and institutions who have suffered financial harm due to violations of securities or antitrust laws" for the sixth consecutive year (2017-2022). *Benchmark Litigation* also ranked the firm as *Highly Recommended* in 2022 – the eleventh consecutive time the firm has received that distinction.<sup>3</sup> *The Legal 500* also ranked the firm as *recommended* in securities litigation in its 2017-2022 U.S. editions and as *recommended* in antitrust litigation in its 2019-2022 U.S. editions, noting in 2019 that the firm is known for its "soup-to-nuts excellence, from legal analysis through to trial preparation and trial," and that clients had noted that the firm makes a "very comprehensive effort, with no stone left unturned." In 2020, *The Legal 500* reported client praise for Berman including that the firm has "[a]n excellent team from top to bottom. It provides superb responsiveness and is able to dig in hard at a moment's notice." And further that, the team is "always prepared and [has] deep knowledge of the issue. It is a pleasure to observe a team that so well coordinated." Additionally, *Chambers USA* recognized the firm in its *Securities Litigation – Mainly Plaintiff* category in 2021 and 2022 in both its *USA Nationwide* and *California* editions. The firm was previously recognized by *Chambers USA* in the same category in 2017 and 2018 in its *USA Nationwide* edition. Berman Tabacco was also recognized in both securities and antitrust litigation by *U.S. News & World Report—Best Lawyers* in the twelfth Edition of the *Best Law Firms* rankings (2022 ed.) and was previously recognized in antitrust (2019-2021) and securities (2020-2021)

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<sup>1</sup> *Top 100 U.S. Class Action Settlements of All Time as of December 31, 2021*, pp. 13, 18 (ISS SCAS 2022), <http://www.bermantabacco.com/wp-content/uploads/2022/01/SCAS-Top-100-US-Settlements-of-All-Time-as-of-2021-12-31.pdf>.

<sup>2</sup> ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015*, at p. 4 (May 2016), <https://www.bermantabacco.com/wp-content/uploads/2018/05/scastop502015.pdf>.

<sup>3</sup> See <https://www.benchmarklitigation.com/Firm/Berman-Tabacco-California/Profile/109234#review>.

litigation. Berman Tabacco's lawyers are frequently singled out for favorable comments by our clients, presiding judges and opposing counsel.

## ANTITRUST PRACTICE

Berman Tabacco has a national reputation for our work prosecuting antitrust class actions involving price-fixing, market allocation agreements, patent misuse, monopolization and group boycotts among other types of anticompetitive conduct. Representing clients ranging from Fortune 500 companies and public pension funds to individual consumers, the experienced senior attorneys in our Antitrust Practice Group have engineered substantial settlements and changed business practices of defendant companies, recovering more than \$1 billion for our clients overall.

Berman Tabacco has played a major role in the prosecution of numerous landmark antitrust cases. For example, the firm was lead counsel in the Toys "R" Us litigation, which developed the antitrust laws with respect to "hub and spoke" conspiracies and resulted in a \$56 million settlement. Berman Tabacco brought the first action centered on so-called "reverse payments" between a brand name drug maker and a generic drug maker, resulting in an \$80 million settlement from the drug makers, which had been accused of keeping a generic version of their blood pressure medication off the market.

The firm's victories for victims of antitrust violations have come at the trial court level and also through landmark appellate court victories, which have contributed to shaping private enforcement of antitrust law. For example, in the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a *per se* unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

In the firm's case against diamond giant De Beers, the Third Circuit, sitting *en banc*, vacated an earlier panel decision and upheld the certification of a nationwide settlement class, removing the last obstacle to final approval of an historic \$295 million settlement. The Third Circuit's important decision provides a roadmap for obtaining settlement class certification in complex, nationwide class actions involving laws of numerous states.

In 2016, the firm won reversal of a grant of summary judgment for defendant automakers in a group boycott-conspiracy case involving the export of new motor vehicles from Canada to the U.S. The California Court of Appeal found that plaintiffs had presented evidence of "patently anticompetitive conduct" with evidence gathered in the pre-trial phase, which was powerful enough to go to a jury. The ruling is a rare example of an appellate court analyzing and reversing a trial court's evidentiary rulings to find evidence of a conspiracy.

Today the firm currently represents clients in significant antitrust class actions around the country, including actively representing major public pension funds in prosecuting price-fixing in the financial derivatives and commodities markets in the Euribor and Yen LIBOR actions and the Foreign Currency Exchange Rate action.

While the majority of antitrust cases settle, our attorneys have experience taking antitrust class actions to trial. Because we represent only plaintiffs in antitrust matters, we do not have the conflicts of interest of other national law firms that represent both plaintiffs and defendants. Our experience also allows us to counsel medium and larger-sized corporations considering whether to participate as a class member or opt-out and pursue an individual strategy.

## RESULTS

### ANTITRUST SETTLEMENTS

Over the past nearly three decades, Berman Tabacco has actively prosecuted scores of complex antitrust cases that led to substantial settlements for its clients. These include:

*In re NASDAQ Market-Makers Antitrust Litigation*, No. 94-cv-3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

*In re Foreign Currency Conversion Fee Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.). Berman Tabacco, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

*In re DRAM Antitrust Litigation*, No. M:02-cv-01486 (N.D. Cal.). As liaison counsel, the firm actively participated in this multidistrict litigation, which ultimately resulted in significant settlements with some of the world's leading manufacturers of Dynamic Random Access Memory (DRAM) chips. The defendant chip-makers allegedly conspired to fix prices of the DRAM memory chips sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

*Sullivan v. DB Investments, Inc.*, No. 04-02819 (D.N.J.). Berman Tabacco represented a class of diamond resellers, such as diamond jewelry stores, in this case alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class members of \$295 million, an agreement by De Beers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery but also because previous efforts to obtain jurisdiction over De Beers in both private and government actions had failed. On August 27, 2010, the United States Court of Appeals for the Third Circuit agreed to hear arguments over whether to uphold the district court's certification of the settlement class. By agreeing to schedule an *en banc* appeal before the full court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. On February 23, 2011, the Third Circuit, sitting *en banc*, again heard oral argument from the parties. On

December 20, 2011, the *en banc* Third Circuit handed down its decision affirming the district court in all respects.

*In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.). As co-lead class counsel for Direct Purchaser Plaintiffs (“DPPs”) in this multidistrict antitrust litigation, the firm achieved settlements totaling \$139.3 million. The litigation arose from an alleged worldwide conspiracy to fix prices of lithium-ion rechargeable batteries (“LiBs”). LiBs are components of LiB camcorders, digital cameras and laptop computers. The alleged conspiracy involved some of the largest companies in the world—Sony, Samsung SDI, Panasonic, Sanyo, LG Chem, Toshiba, Hitachi Maxell and NEC Corp. The lawsuit alleges that defendants participated in a conspiracy to fix the prices of LiBs, which affected the prices paid for the batteries and certain products in which the batteries are used. Plaintiffs successfully defeated multiple motions to dismiss involving complex issues of antitrust standing and the pleading of conspiracy allegations. Berman Tabacco and the team negotiated multiple settlements totaling \$139.3 million. The court granted final approval on May 16, 2018.

*In re Sorbates Direct Purchaser Antitrust Litigation*, No. C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

*In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). The firm acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

*In re Cardizem CD Antitrust Litigation*, No. 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman Tabacco, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class. The firm achieved a significant appellate victory in a first of its kind ruling that the brand name drugmaker’s payment of \$40 million per year for the generic company to delay bringing its generic version of blood-pressure medication Cardizem CD to market constituted an agreement not to compete that is a *per se* violation of the antitrust laws.

*In re Toys “R” Us Antitrust Litigation*, MDL No. 1211 (E.D.N.Y.). Berman Tabacco negotiated a \$56 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a “hub and spoke” conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys “R” Us to donate \$36 million worth of toys to needy children throughout the United States over a three-year period.

*In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, MDL No. 05-1671 (C.D. Cal.). Berman Tabacco, as co-lead counsel, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The noteworthy settlement delivered to consumers a combination of clean air benefits and funding for alternative fuel research.

*In re Abbott Laboratories Norvir Antitrust Litigation*, Nos. 04-1511, 04-4203 (N.D. Cal.). Berman Tabacco acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

*Automotive Refinishing Paint Antitrust*, J.C.C.P. No. 4199 (Cal. Super. Ct.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

## OUR ATTORNEYS

### Partners

#### PATRICK T. EGAN



A partner in Boston, Patrick T. Egan focuses his practice on securities litigation. Mr. Egan has litigated numerous cases to successful resolution, recovering hundreds of millions of dollars on behalf of defrauded investors.

Mr. Egan was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He was also a lead attorney representing the Michigan State Retirement Systems in the *In re Bear Stearns Companies* litigation stemming

from the 2008 collapse of the company. Plaintiffs successfully recovered \$294.9 million for former Bear Stearns shareholders.

Mr. Egan has worked on a number of important cases, including *Lernout & Hauspie* and the related case, *Quaak v. Dexia, S.A. (In re Lernout & Hauspie Sec. Litig., No. 00c-11589 (D. Mass.))*, and *Quaak v. Dexia, S.A., No. 03-11566 (D. Mass.)*. Those cases stem from a massive accounting fraud scheme at Lernout & Hauspie Speech Products, N.V., a bankrupt Belgian software company. As co-lead counsel, the firm recovered more than \$180 million on behalf of former Lernout & Hauspie shareholders. In addition, Mr. Egan was one of the attorneys at Berman Tabacco representing CalPERS against credit ratings agency Moody's, based on Moody's misrepresentations regarding the creditworthiness of three structured investment vehicles, which settled for \$255 million. *California Public Employees' Ret. Sys. v. Moody's Corp., No. CGC-09-490241 (Cal. Super. Ct. San Francisco County)*. Recently, Mr. Egan served as a lead partner (i) representing the sole Lead Plaintiff Utah Retirement Systems ("URS") in *Koch v. Healthcare Services Group, Inc., et al., No. 2:19-cv-01227-ER (E.D. Pa.)*, a class action that alleged that defendants issued materially false and misleading statements and failed to disclose "earnings management" practices that allowed HCSG to consistently meet or beat earnings per share estimates that, in turn, caused the price of the company's stock to be artificially inflated (case settled for \$16.8 million, which was approved by the court on January 12, 2022); and (ii) representing the sole Lead Plaintiff Oklahoma Police Pension and Retirement System in *Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc., et al., No. 2:20-cv-10490 (E.D. Mich.)*, a class action which alleged that defendants issued materially untrue and misleading statements concerning, *inter alia*, the Sterling's loan underwriting, risk management, compliance and internal controls, including regarding the Company's Advantage Loan Program, the Company's largest lending program (case settled for \$12.5 million, which was approved by the court on September 23, 2021).

Mr. Egan currently serves as one of the partners representing sole Lead Plaintiff Alameda County Employees' Retirement Association in *Hayden v. Portola Pharmaceuticals, Inc., et al., No. 3:20-cv-00367-VC (N.D. Cal.)*, a class action brought on behalf of investors in Portola Pharmaceuticals, Inc. ("Portola"), a biopharmaceutical company that develops and commercializes treatments for thrombosis and other hematologic diseases. The complaint alleges that defendants issued materially false and misleading statements related to the sales of Andexxa, Portola's primary product, a reversal drug for apixaban- and

rivaroxaban-treated patients with life-threatening or uncontrolled bleeding. In addition, currently, Mr. Egan is one of the lead attorneys for the firm representing: (i) plaintiffs and the \$240 billion pension fund California State Teachers' Retirement System in the ongoing *Euribor (Sullivan v. Barclays PLC, et al., No. 13-cv-2811 (S.D.N.Y.))* and *Yen Libor (Laydon v. Mizuho Bank, Ltd., No. 1:12-cv-03419 (GBD) (S.D.N.Y.))*, and *Sonterra Capital Master Fund, Ltd. v. UBS AG, No. 1:15-cv-05844 (GBD) (S.D.N.Y.))* antitrust cases involving U.S., European, and Japanese banks' manipulation of interest rate benchmarks and agreements to fix bid-ask spread prices on interest rate derivatives (*Euribor* has yielded \$491.5 million in settlements to date, and *Yen Libor* \$307 million); and (ii) Orange County Employees' Retirement System in *Dennis v. JP Morgan Chase & Co., No. 16-cv-06496-LAK (S.D.N.Y.)*, an ongoing antitrust class action alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors.

Mr. Egan also represents whistleblowers who provide information and assistance to the U.S. Securities and Exchange Commission, U.S. Commodities Futures Trading Commission, U.S. Internal Revenue Service and state regulators in connection with their enforcement of the federal and state laws. Mr. Egan also represents whistleblowers in actions filed under the Federal False Claims Act.

Prior to joining the firm in 1999 and being named partner in 2006, Mr. Egan worked at the U.S. Department of Labor, where he served as an attorney advisor for the Office of Administrative Law Judges. Mr. Egan was also an Adjunct Faculty member of the Business Studies department at Assumption College, where he taught a course on Corporate Governance and White-Collar Crime.

Mr. Egan has been ranked by *Benchmark Litigation* as a *Local Litigation Star* (2013-2015, 2021-2022) and as a *Massachusetts State Litigation Star* (2018-2020) in *Competition* and *Securities*.

Mr. Egan received a B.A. in Political Science *cum laude* from Providence College in 1993. In 1997, he graduated *cum laude* from Suffolk University Law School. While at Suffolk, Mr. Egan served on the editorial board of the *Suffolk University Law Review* and authored a note entitled, *Virtual Community Standards: Should Obscenity Law Recognize the Contemporary Community Standard of Cyberspace*, 30 Suffolk University L. Rev. 117 (1996).

Mr. Egan is a member in good standing in the Commonwealth of Massachusetts, the states of Connecticut and New York, as well as the U.S. District Courts for the District of Massachusetts, the Southern District of New York, Eastern District of New York and the Eastern District of Michigan. He is also admitted to practice before the U.S. Supreme Court and U.S. Courts of Appeals in the First, Second and Fourth Circuits.

## CARL HAMMARSKJOLD



A partner in the firm's San Francisco office, Carl Hammarskjold focuses his practice on antitrust and securities cases. Mr. Hammarskjold represents the firm's clients and class plaintiffs in several financial market manipulation and antitrust class actions on behalf of investors alleging that major banks colluded to fix the prices of bonds and derivatives. These cases include *In re Mexican Government Bonds Antitrust Litigation*, No. 18-cv-02830 (S.D.N.Y.), *Euribor (Sullivan v. Barclays PLC, et al., No. 13-cv-2811 (S.D.N.Y.))*, *Yen Libor (Sonterra Capital Master Fund, LTD. v. UBS AG, et al., No. 15-cv-5844*

(S.D.N.Y.), Australian Dollar (*Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (S.D.N.Y)), and *In re GSE Bonds Antitrust Litigation*, No. 19-cv-01704 (S.D.N.Y.). Plaintiffs in *GSE Bonds* reached settlements with all defendants totaling \$386.5 million. He also represents the firm's client and class plaintiffs in a nationwide antitrust class action on behalf of direct purchasers of lithium ion rechargeable batteries that resulted in settlements totaling \$139.3 million. *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-02420-YGR (N.D. Cal.).

Mr. Hammarskjold also represents Lead Plaintiff and class plaintiffs in Sterling Bancorp, Inc. Securities Litigation (*Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc, et al.*, No. 5:20-Cv-10490-JEL-EAS (E.D. Mich.)), which recently settled for \$12.5 million, which was approved by the court on September 23, 2021.

During his prior work in the plaintiffs' bar, Mr. Hammarskjold represented class plaintiffs in *Kleen Products, LLC, et al. v. Packaging Corp. of America, et al.*, No. 10-cv-05711 (N.D. Ill.) (containerboard antitrust litigation) and was part of the appellate team whose work resulted in a published Ninth Circuit opinion in *Bozzio v. EMI Group Ltd, et al.*, No. 13-15685 (9th Cir.).

Prior to joining Berman Tabacco in 2018, Mr. Hammarskjold worked for a San Francisco-based plaintiffs' law firm specializing in antitrust class actions and other complex, multidistrict litigation in federal court. He was also a business litigator at a large, national law firm.

Mr. Hammarskjold serves on the Executive Committee of the Antitrust & Business Regulation Section of the San Francisco Bar Association.

Mr. Hammarskjold is rated AV Preeminent® by *Martindale-Hubbell*® and was selected by *Northern California Super Lawyers* magazine as a *Rising Star* in 2016-2021. He was also recognized in *The Best Lawyers in America*® for *Mass Tort Litigation / Class Actions – Plaintiffs* (2021-2022).

Mr. Hammarskjold earned his J.D., *summa cum laude*, from the University of San Francisco School of Law, where he graduated first in his class and received the Academic Excellence Award for Extraordinary Contribution to the Intellectual Life of the School. During law school, he served as an extern for the Honorable William H. Alsup at the U.S. District Court for the Northern District of California. Mr. Hammarskjold has a B.A. from Pomona College.

Mr. Hammarskjold is a member in good standing of the state bar of California, the U.S. District Court for the Northern and Central Districts of California, and the Ninth Circuit of the U.S. Court of Appeals.

## NICOLE LAVALLEE



Nicole Lavallee, the managing partner of the firm's San Francisco office and member of the firm's Executive Committee, focuses her practice on prosecuting securities and derivative actions. She is also an integral member of the firm's New Case Investigations Team, which oversees the firm's portfolio monitoring program and investigates potential securities law violations to determine whether a case meets the firm's exacting standards.

Since the enactment of the PSLRA, Ms. Lavallee has prosecuted numerous high-profile securities fraud cases for the firm. For example, she was one of the lead attorneys overseeing the *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-cv-4583 (S.D.N.Y.), which settled for \$346 million – one of the largest private MBS recoveries on record and the largest of any case where the issuer bank was in bankruptcy.

Over the years, Ms. Lavallee has been the lead partner managing the day-to-day prosecution of numerous other cases, where she handled or oversaw case investigation and factual development and briefing (including appeal briefing), conducted depositions, argued key motions (including motions to dismiss, motions for summary judgment and/or discovery motions), and participated in settlement negotiations. Examples that resulted in favorable judicial commentary include: (i) *In re KLA-Tencor Corp. Securities Litigation*, No. C06-04065 (N.D. Cal.), an options-backdating class action, representing co-lead plaintiff the Louisiana Municipal Police Employees' Retirement System, which settled for \$65 million; (ii) *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), on behalf of the co-lead plaintiff Massachusetts Laborers' Pension Fund, alleging manipulation of the company's financial results, which settled for \$90 million in 2009; and (iii) *Oracle Cases*, Coordination Proceeding, Special Title (Rule 1550(b)), No. JCCP 4180 (Cal. Super. Ct. San Mateo Cty.), a derivative case alleging that Lawrence Ellison engaged in illicit insider trading, and which settled weeks before trial when Defendant Larry Ellison agreed to make \$100 million in charitable donations in Oracle's name.

Ms. Lavallee also represented numerous institutional clients in opt-out actions, including *State of Oregon v. McKesson HBOC, Inc.*, Master File No. 307619 (Cal. Super. Ct. San Francisco Cty.), an individual opt-out action brought on behalf of the retirement systems for Colorado, Utah, and Minnesota, and opt-out actions on behalf of State of Michigan Retirement System and Fresno County Employees' Retirement Association against Countrywide Financial Corp. (*State Treasurer of The State of Michigan v. Countrywide Financial Corp.*, No. CV-11-00809 (C.D. Cal.) and *Fresno County Employees Retirement Association v. Countrywide Financial Corp.*, No. CV-11-00811 (C.D. Cal.)). She has also worked on several securities-fraud trials over the past 25 years.

Currently, Ms. Lavallee is a lead partner at Berman Tabacco on several class action securities fraud cases. She is overseeing *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 18-cv-04993-NRB (S.D.N.Y.), where the firm is lead counsel representing lead plaintiff the Utah Retirement Systems and has reached a proposed partial settlements with two of the four defendants for a total of \$29.8 million plus cooperation, which were preliminarily approved by the court on June 3, 2022; and *Hayden v. Portola Pharmaceuticals, Inc., et al.*, No. 3:20-cv-00367-VC (N.D. Cal.), in which the firm is lead counsel representing court-appointed lead plaintiff Alameda County Employees' Retirement Association. She is also co-lead counsel representing court-appointed lead plaintiff Plymouth County Retirement Association in *In re*

*Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.), an action alleging that defendants Aqua Metals, Inc. and company executives falsely misled investors about the status of its implementation of and operations of its AquaRefining technology, which the company claimed had the potential to revolutionize lead recycling and make lead-acid batteries the only truly sustainable battery technology. The case settled for \$7 million, which was approved by the court on March 2, 2022. Further, Ms. Lavalée is also involved in the prosecution of several derivative actions including *Teamsters Local 443 Health Services & Ins. Plan, et al. v. Chou*, No. 2019-0816 (Del. Ch.), involving AmerisourceBergen Corp. asserting that the Company's executives breached their fiduciary duties in connection with the Company's subsidiary's alleged illegal scheme to produce and market unapproved prefilled syringes ("PFS") in violation of federal and state laws. In 2017, Amerisource entered a guilty plea related to the alleged illegal PFS scheme and has paid more than \$875 million in penalties and fines to settle related civil and criminal claims.

In 2021 and 2022, Ms. Lavalée was ranked by *Chambers USA* in California under *Litigation-Securities*, which quoted an opposing counsel as stating that "Nicole is a good adversary, she is smart and puts up a good fight for her clients." She has been ranked by *Benchmark Litigation* as a *California State Litigation Star (2020-2022)*, *San Francisco Litigation Star (2020-2022)*, and *Noted Star (2019-2020)* in *Plaintiff Work and Securities*. She was also recognized in *The Best Lawyers in America*® for *Litigation-Securities (2021-2022)* and in the *Northern California Best Lawyers* for *Litigation-Securities (2021)*. In 2021, Nicole was ranked as one of the *Top Women Lawyers* in California by the *Daily Journal*. *Northern California Super Lawyers* magazine named her to their lists of the *Top 100 attorneys* in California (2021) and the *Top 50 Women attorneys* in California (2021). She has also been named a *Super Lawyer* by *Northern California Super Lawyers* magazine (2017-2022) and was included in *San Francisco Magazine's Top Women Attorneys in Northern California (2017-2021)*. Ms. Lavalée has an AV Preeminent® rating from *Martindale-Hubbell*® and was selected for the *Martindale-Hubbell*® *Bar Register of Preeminent Women Lawyers*™. *Martindale-Hubbell*® also selected her as a *Top-Rated Litigator (2019)* and as one of its *Women Leaders In Law (2021)*. Ms. Lavalée was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021).

Ms. Lavalée has authored numerous articles and lectured on securities litigation. She was co-chair for the 2016 Cross-Border Litigation Forum, a gathering of the most senior legal practitioners in U.S./Canada cross-border litigation (was also on the Steering Committee for the 2012 and 2014 forums), and she is currently on the Steering Committee for the 2020 Cambridge Forum on Plaintiffs' Class Action Litigation (where she previously served on the Steering Committee for the 2019 forum). Further, Ms. Lavalée is active in the Bar Association of San Francisco ("BASF"), serving on the Steering Committee of the Women's Impact Network: No Glass Ceiling 2.0 and as a Member of BASF's Policy Impact Working Group of the Women's Impact Network.

A native of Canada, Ms. Lavalée is a 1989 graduate of the French Civil Law School at Université de Montréal and obtained her a Common Law degree from Osgoode Hall Law School in Toronto in 1991. She received her undergraduate degree in Health Sciences and in Pure and Applied Sciences from Vanier College in Montreal in 1986.

Ms. Lavalée is a member in good standing of the state bar of California, all federal courts in the Ninth Circuit and the Ninth Circuit of the U.S. Courts of Appeals.

## TODD A. SEAVER



A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and investment-related matters, with a primary focus on developing and litigating antitrust cases. He has led the day-to-day management of one of the largest antitrust class actions in history, and has litigated antitrust cases involving varied industries of high-tech, pharmaceuticals, autos, chemicals, consumer electronics, biotech, diamonds and online retailing. He is a leader of the firm's antitrust practice group, marshalling the firm's extensive investigative resources and then litigating the cases.

Currently, Mr. Seaver is co-lead counsel for consumer plaintiffs in an antitrust class action against American Express, *Oliver v. American Express Co.*, No. 1:19-cv-00566-NGG (E.D.N.Y.). The action is at the forefront of the payments industry and is now shaped by the landmark ruling in *Ohio v. American Express Co.*, 138 S. Ct. 2274 (2018), in which the U.S. Supreme Court articulated a new analytical framework for so-called "two-sided" markets.

Mr. Seaver is also presently counsel for plaintiffs and represents California State Teachers' Retirement System (CalSTRS) in the Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and Yen Libor (*Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.)), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.) antitrust cases involving Wall Street banks' manipulation of interest rate benchmarks and bid-ask spread price fixing on interest rate derivatives. He also currently represents Orange County Employees' Retirement System (OCERS) in an ongoing antitrust class action (*Dennis v. JP Morgan Chase & Co.*, No. 16-cv-06496-LAK (S.D.N.Y.)) alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors. He also currently represents Fresno County Employees' Retirement Association (FCERA) in *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (S.D.N.Y.), an antitrust class action against Wall Street banks for manipulating a foreign currency exchange rate benchmark and fixing bid-ask spreads on trillions of dollars of foreign currency exchange transactions.

He also leads plaintiffs' efforts in *In re New Motor Vehicles Canadian Export Antitrust Litigation*, in which Berman Tabacco is lead counsel. The case alleges that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The case has partially settled with Toyota Motor Sales U.S.A. for \$35 million and with General Motors of Canada for \$20.15 million. The litigation is ongoing in California state court, with the California Court of Appeal having recently reversed the trial court's grant of summary judgment in favor of defendant Ford Canada.

Mr. Seaver recently had a leading role in several cases, including, *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), where the firm was co-lead counsel for direct purchaser plaintiffs. Settlements were reached totaling \$139.3 million for the direct purchaser class (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries were used and which the defendants sold. Mr. Seaver argued and defeated motions to dismiss

and deposed fact witnesses and defendants' expert economist and made the oral argument in opposition to defendants' *Daubert* motions to exclude plaintiffs' expert economist's opinions at class certification.

Mr. Seaver led efforts for the firm in an action against Netflix and Wal-Mart, *In re Online DVD Rental Antitrust Litigation*, in which Berman Tabacco was among lead counsel. He was responsible for managing many aspects of discovery, class certification and summary judgment, as well as for achieving partial settlement with defendant Wal-Mart. He successfully argued in Ninth Circuit Court of Appeals for that case on an issue of first impression regarding the Class Action Fairness Act and settlements involving a mix of cash consideration and electronic store gift cards. He was also one of the lead counsel in *In re Optical Disk Drive Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million. In the *Cardizem CD* case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a per se unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

Mr. Seaver spearheaded the landmark case against the major credit rating agencies (Standard & Poor's and Moody's), *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System (CalPERS), was groundbreaking litigation that held the rating agencies financially responsible for negligent misrepresentations in rating structured investment vehicles. Moody's and Standard & Poor's agreed to pay a total of \$255 million (\$130 million and \$125 million, respectively) to settle CalPERS' claim that "Aaa" ratings on three SIVs were negligent misrepresentations under California law. This case was groundbreaking in that (i) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages; and (ii) it resulted in a published appellate court opinion finding that rating agencies can, contrary to decades of jurisprudence, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was an adjunct Professor of Law with the New England School of Law in 2003, teaching Appellate Advocacy.

Mr. Seaver is a member of the American Bar Association's Antitrust Section and served a two-year term as a Director for the San Francisco Bar Association's Antitrust Committee in 2012-2013.

Mr. Seaver was ranked by *Benchmark Litigation* as a *California Litigation Star* (2022), *Local Litigation Star* (2019-2020, 2022), *California Future Star* (2020-2021), and *Noted Star* (2019-2021) in *Plaintiff Work and Securities*. He was also named a *Super Lawyer* by *Northern California Super Lawyers Magazine* (2017-2022), and has been recognized by *Global Competition Review's Who's Who Legal: Competition* (2017-2019). *Who's Who Legal* has also named Mr. Seaver a *Thought Leader* in *Competition* (2019-2020, 2022). He was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). In 2020, *The Legal 500* reported a client's praise for Mr. Seaver stating that he "displays deep knowledge of specialized finance."

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999. While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

Mr. Seaver is a member in good standing in the Commonwealth of Massachusetts, the states of California and New Hampshire, as well as the U.S. District Courts for the District of Massachusetts, the District of New Hampshire, and the Northern, Eastern, Central and Southern Districts of California.

## JOSEPH J. TABACCO, JR.



Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office and member of the firm's Executive Committee, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco currently oversees the firm's class action litigation teams in the firm's price-fixing/market manipulation cases alleging that major banks colluded to fix the prices of derivatives and other financial instruments by manipulating numerous financial benchmark rates. This includes representing California State Teachers' Retirement System, one of the country's largest public pension funds, in (i) *Sullivan v. Barclays PLC et al.*, No. 13-cv-2811 (S.D.N.Y.), a class action against numerous Wall Street banks for price-fixing financial instruments tied to the Euro Interbank Offered Rate (the "Euribor"), which has total approved settlements in the amount of \$491.5 million; and (ii) *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y), two related class actions against numerous financial institutions for price-fixing financial instruments tied to the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and the Euroyen Tokyo Interbank Offered Rate ("TIBOR"), which have total approved settlements in the amount of \$307 million.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held

credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies.

Mr. Tabacco recently oversaw *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), which achieved settlements in the total amount of \$139.3 million for a class of direct purchasers of lithium-ion rechargeable batteries (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly traded company internet retailer. He is Chair of the Board's Nominating & Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He has also served as a member of the American Antitrust Institute Advisory Board since 2008. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 16 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* (2007-2021) and is also AV Preeminent® rated by *Martindale-Hubbell*®. Mr. Tabacco has been featured by the *Daily Journal* as one of the *Top Antitrust Lawyers in California* in 2020, as one of the *Top Plaintiffs Lawyers in California* in 2017, and as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars. He was also recognized by *Global Competition Review's Who's Who Legal: Competition*, most recently in 2021 – a designation he has received for the past 8 years since the creation of the publication's Plaintiffs section. Additionally, for 19 consecutive years, Mr. Tabacco has been named a *Super Lawyer* by *Northern California Super Lawyers Magazine*, which features the top 5% of attorneys in the region (2004-2022). Additionally, Mr. Tabacco was ranked in the *Top 100 list* of attorneys in California in the *Northern California Super Lawyers Magazine* (2019-2022). He was ranked by *Benchmark Litigation* as a *California State Litigation Star* (2019-2022), *San Francisco Local Litigation Star* (2017-2022), *Noted Star in Plaintiff Work* (2020-2021), and *Noted Star in Antitrust, Intellectual Property, and Securities* (2019-2020). *The Best Lawyers in America*® recognized Joe as *Lawyer of the Year in Litigation-Securities* for 2022. He has further been recognized by *The Best Lawyers in America*® for *Litigation-Antitrust* (2018-2022) and for *Litigation-Securities* (2019-2022). He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2021), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2021). Mr. Tabacco has also been singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar." In 2019, *Chambers USA* hailed Mr. Tabacco as "a formidable plaintiff-side litigator, with a wealth of experience handling securities class actions. A market source describes him as 'a master of orchestrating lawsuits and striking settlements,' adding: 'He strikes fear in the heart of defendants.'" *Chambers* has previously noted a client's praise for Mr. Tabacco: "His legal knowledge and skills are at the highest level. His combined intelligence and experience results in well-reasoned and thoughtful arguments to further our case."

Mr. Tabacco earned a J.D., *with honors*, from George Washington School of Law in 1974, and a B.A. in Government from University of Massachusetts-Amherst in 1971.

Mr. Tabacco is a member in good standing in the states of California and New York, and the Commonwealth of Massachusetts, as well as the U.S. District Courts for all districts in California, the District of Massachusetts, the District of Colorado (currently inactive), Eastern District of Michigan, the Southern and Eastern Districts of New York, the District of Columbia (currently inactive), the First, Second, Third, Sixth and Ninth Circuits of the U.S. Courts of Appeal and the U.S. Supreme Court.

## Associates

### A. CHOWNING POPPLER



Chowning Poppler focuses her practice on securities, derivative, and consumer litigation. Some of Ms. Poppler's representative cases include *Carlin v. DairyAmerica*, No. 09-cv-00430 (E.D. Cal.), *In re Aegean Marine Petroleum Network Inc. Securities Litigation*, No. 1:18-cv-04993 (S.D.N.Y.), *In re Alphabet, Inc. Shareholder Derivative Litigation*, No. 19-cv-341522 (Santa Clara Superior Court), and *Teamsters Local 443 Health Services and Insurance Plan v. John G. Chou, et al.*, C.A. No. 2019-0816-SG (Del. Ch.). She also has experience advising and working with public pension funds in complex litigation and discovery matters.

Prior to joining the firm in 2015, Ms. Poppler established her practice as a class action litigator at a San Francisco law firm representing workers in employment-related matters in state and federal court.

Staying current on trends in the securities arena has further strengthened Ms. Poppler's practice. She is co-author of several articles, including *The Currency of Capitalism with a Social Conscience* (June 2018) and *Snap Judgment – S&P Dow Jones and FTSE Russell Indices Ensure that Investors Retain Voting Rights* (October 2017), both of which were published in *Financier Worldwide Magazine*.

Northern California *Super Lawyers* magazine named Ms. Poppler a Rising Star in 2017-2022. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2017-2021. She was also recognized in *The Best Lawyers in America*® for *Mass Tort Litigation / Class Actions – Plaintiffs* (2021-2022) and *Northern California Best Lawyers* under *Ones To Watch for Mass Tort Litigation / Class Actions – Plaintiffs* (2021).

Ms. Poppler graduated from the University of Southern California with a Bachelor of Arts degree in Political Science and Social Science-Economics. She received her Juris Doctor from the University of San Diego School of Law in 2010, where she was a member of the *San Diego International Law Journal*. While in law school, Ms. Poppler interned at the Public Integrity Bureau of the State of New York Office of the Attorney General where she investigated alleged corruption and fraud in local governments. She also oversaw and coordinated volunteers to assist tenants facing eviction, while serving on her law school's Pro Bono Legal Advocates board. Ms. Poppler's commitment to social justice is ongoing; she has served on the board of the ACLU of Northern California since 2018.

Ms. Poppler is a member in good standing of the state bar of California and the U.S. District Courts for the Northern, Central, and Eastern Districts of California, as well as the U.S. Court of Appeals for the Ninth Circuit.

### *Of Counsel*

## SARAH KHORASANEE MCGRATH



Of counsel in the firm's San Francisco office, Sarah Khorasanee McGrath focuses her practice on antitrust litigation. Ms. McGrath joined Berman Tabacco in 2010 after working as a contract attorney for the Department of Justice, Antitrust Division. Prior to that, she was an attorney volunteer with the City and County of San Francisco Office of the Public Defender and the Eviction Defense Center.

Northern California *Super Lawyers Magazine* named Ms. McGrath a *Rising Star* in 2013-2015 and 2017-2019. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2013-2015 and 2017-2019.

Ms. McGrath was the 2020 President of the Federal Bar Association, Northern District of California Chapter (FBA) and was previously the FBA's President-Elect in 2019, Treasurer in 2018, Vice President in 2016-2017 and Co-Chair of their Young Lawyers Division for the Northern District of California from 2013-2015.

Ms. McGrath earned a B.A. in Communications from the University of California at San Diego in 2002 and a J.D. from the New England School of Law in 2008. While in law school, Ms. McGrath worked as a judicial extern to the Honorable Eric Taylor, Superior Court of California, County of Los Angeles.

Ms. McGrath is a member in good standing of the state bar of California, the U.S. District Court for the Northern and Central Districts of California and the U.S. Court of Appeals for the Ninth Circuit.

### *Staff Attorneys*

## MACKLINE BASTIEN



Mackline Bastien joined the firm in 2015 as a staff attorney. Prior to joining Berman Tabacco, Ms. Bastien managed a solo practice in the Boston area where she represented clients in family law, business formation and housing matters. In addition, she represented an individual in a civil dispute as well as a buyer purchasing a business.

Ms. Bastien received her J.D. from Thomas M. Cooley Law School in 2005 and her L.L.M. from Boston University School of Law in 2008. While in law school, Ms. Bastien completed an externship at Hubbard Law Offices, P.C., in Lansing, Michigan where she assisted the general counsel for the Michigan Association of County Drain

Commissioner regarding land-use issues and property rights matters. She received her B.S. in Business Administration from Columbia Union College in 2001.

She is a member in good standing in the Commonwealth of Massachusetts.

## BRIAN J. DRAKE



A staff attorney at the firm's Boston office, Brian Drake focuses his practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Mr. Drake also represents whistleblowers who provide information and assistance to the U.S. Securities and Exchange Commission in connection with their enforcement of the federal securities laws.

Prior to Berman Tabacco, Mr. Drake was a staff attorney at a number of prominent law firms in Washington, D.C. and Boston, where he developed a broad range of expertise, primarily in the areas of anti-trust and tax litigation.

Mr. Drake received his J.D. from the George Washington University Law School and his B.S. in Mechanical Engineering from the University of California, San Diego in 1994.

Mr. Drake is a member in good standing of the state bars Virginia and the District of Columbia.

## BERNA M. LEE



A staff attorney in the firm's Boston office, Berna Lee joined the firm in 2015, prior to which, Ms. Lee worked as an associate at a number of New York law firms.

Ms. Lee earned a B.A. in English Literature from Dartmouth College in 1993. She received her J.D., *cum laude*, from the Georgetown University Law Center in 1999, where she served on the *Georgetown Journal of Legal Ethics*, was a member of the Appellate Litigation Clinic and interned for the Honorable Gladys Kessler of the U.S. District Court for the District of Columbia.

Ms. Lee is a member in good standing of the state bars of Rhode Island and New York, as well as the U.S. District Courts of the Southern and Eastern Districts of New York.

## ELLE K. MCKIM



A staff attorney in the firm's Boston office, Ellee K. McKim focuses her practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Prior to joining the firm, Ms. McKim served as an associate attorney at a commercial litigation firm in Boston.

Ms. McKim earned a J.D. from Northeastern University School of Law in 2009. At Northeastern University School of Law, Ms. McKim interned for Judge Joyce London Alexander of the United States District Court for the District of Massachusetts. She also served as lawyering fellow for the law school's social justice program. She earned an M.A. in Political Science from the University of Chicago in 2005 and a B.A. in Political Science from the University of Missouri in 2001.

Ms. McKim is a member in good standing in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit.

## *Project Attorneys*

## KAREN DIDRICKSON

Karen Didrickson joined the San Francisco office of Berman Tabacco as a project attorney in 2019. She has over a decade of experience in complex litigation and discovery matters. Ms. Didrickson has worked on a wide range of cases, including antitrust and securities litigation. Ms. Didrickson also has experience as an ERISA attorney at the global human resources consulting firms Mercer and Willis Towers Watson, and the multinational accounting firm Deloitte. In addition, she was an instructor at Golden Gate University School of Law where she taught a course on employee benefits law, with an emphasis on qualified plans.

Ms. Didrickson earned her B.A. in Political Science from Willamette University in 1982 and her J.D. (1994) and LL.M. (1995 in Taxation) from the Golden Gate University School of Law.

Ms. Didrickson is a member in good standing of the state bar of California.

## LAURA M. FALARDEAU



A project attorney in the firm's Boston office, Laura M. Falardeau focuses her practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Recently, Ms. Falardeau's cases have involved complex market manipulation brought under the antitrust laws and predatory lending claims under RICO.

Ms. Falardeau joined the firm in 2011 after working at several major law firms in Boston, primarily in securities litigation. Earlier in her career, Ms. Falardeau served as an associate attorney at a law firm in the Boston area focusing on

probate and bankruptcy.

Ms. Falardeau earned her B.A. in Economics and History from the University of Massachusetts, Amherst in 2000 and her J.D. from Northeastern University School of Law in 2006. At Northeastern University School of Law, Ms. Falardeau interned for Judge Peter W. Agnes, Jr. of the Massachusetts Superior Court. During law school Ms. Falardeau also represented victims of domestic violence at Greater Boston Legal Services and served as a Hearings Officer at the Boston Public Health Commission.

Ms. Falardeau is a member in good standing in the Commonwealth of Massachusetts.

## *Portfolio Analysts*

### JESSICA MISRA



Jessica Misra is an integral member of the Firm's portfolio analyst team. She specializes in performing securities monitoring for U.S. and non-U.S. litigation, as well as sophisticated loss analysis. Her loss analysis duties include analyzing transactional data to determine trading losses for a wide variety of investments, including securities, bonds and commodities. In addition, Ms. Misra has a lead role in the Firm's team that proactively monitors the financial markets for potential securities fraud and corporate mismanagement that may negatively impact shareholder value. Prior to joining Berman Tabacco, Ms. Misra served as an Equity Fundamentals and Estimate Data Analyst at

Bloomberg.

## *Paralegals*

### KATHY BECKER



Kathy Becker is the senior paralegal in the Firm's San Francisco and plays an integral role in many of the Firm's cases. Ms. Becker has over three decades of complex litigation experience and has been working on securities, antitrust and consumer class action cases for over two decades. Prior to joining Berman Tabacco in 2012, Ms. Becker worked at several San Francisco Bay Area firms focusing on plaintiff-side consumer and securities class action cases. She also has significant trial experience, having assisted on six federal and state trials. In 2017, Ms. Becker was selected Paralegal of the Year by the Bar Association of San Francisco. Ms. Becker has a B.A. (with distinction) in

Humanistic Studies from the McGill University in Montreal, Quebec.

## BETO SEGURA



Beto Segura is a Paralegal in the Firm's San Francisco office dedicated to the Firm's efforts to monitor and evaluate Non-U.S. securities litigation. Mr. Segura assists the team primarily by monitoring non-U.S. litigation, obtaining and compiling relevant documentation and tracking client outreach. Mr. Segura has a B.A. in Political Science from the University of California, Berkeley.