IN THE UNITED STATES DISTRICT COURT
FOR THE 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, 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.	Docket No. 16-cv-06496 (LAK)

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS WITH DEFENDANTS JPMORGAN CHASE & CO. AND JPMORGAN CHASE BANK, N.A., WESTPAC BANKING CORPORATION, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, MORGAN STANLEY AND MORGAN STANLEY AUSTRALIA LIMITED, 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, AND UBS AG

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In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs[1] respectfully submit this memorandum of law in support of their motion seeking approval of the Plan of Distribution, final certification of the Settlement Class and final approval of Plaintiffs' proposed class action settlements (the "Settlements") with (1) JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. ("JPMorgan"); (2) Westpac Banking Corporation ("Westpac"); (3) Australia and New Zealand Banking Group Ltd. ("ANZ"); (4) Commonwealth Bank of Australia ("CBA"); (5) National Australia Bank Limited ("NAB"); (6) Morgan Stanley and Morgan Stanley Australia Limited ("Morgan Stanley"); (7) Credit Suisse AG and Credit Suisse Group AG ("Credit Suisse"); and (8) BNP Paribas, S.A. ("BNPP"), Deutsche Bank AG ("Deutsche Bank"), Royal Bank of Canada ("RBC"), The Royal Bank of Scotland plc (n/k/a NatWest Markets plc) ("RBS"), and UBS AG ("UBS" and collectively with BNPP, Deutsche Bank, RBC, and RBS, the "Group Settling Defendants") (together, the "Settling Defendants").[2]

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[1] For purposes of this motion "Plaintiffs" means Plaintiffs Richard Dennis ("Dennis") and Orange County Employees Retirement System ("OCERS").

[2] All capitalized terms not defined herein have the same meaning as in the Stipulation and Agreement of Settlement with JPMorgan dated November 20, 2018, as amended March 1, 2021, as further amended January 13, 2022 (the "JPMorgan Settlement Agreement"), ECF No. 225-1, 452-2, 508-4; Stipulation and Agreement of Settlement with Westpac dated March 1, 2021, as amended January 13, 2022 (the "Westpac Settlement Agreement"), ECF No. 452-1, 508-5; Stipulation and Agreement of Settlement with ANZ dated December 10, 2021 (the "ANZ Settlement Agreement"), ECF No. 490-1 ; Stipulation and Agreement of Settlement with CBA dated December 10, 2021 (the "CBA Settlement Agreement"), ECF No. 490-2 ; Stipulation and Agreement of Settlement with NAB dated December 10, 2021 (the "NAB Settlement Agreement"), ECF No. 490-3 ; Stipulation and Agreement of Settlement with Morgan Stanley dated October 4, 2021, as amended January 13, 2022 (the "Morgan Stanley Settlement Agreement"), ECF No. 490-4, 508-6 ; Stipulation and Agreement of Settlement with Credit Suisse dated January 21, 2022 (the "Credit Suisse Settlement Agreement"), ECF No. 536-1 ; and Stipulation and Agreement of Settlement with the Group Settling Defendants dated April 29, 2022 (the "Group Settlement Agreement"), ECF No. 536-2 (collectively, the "Settlement Agreements"). Unless otherwise noted, ECF citations are to the docket in *Richard Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) and internal citations and quotation marks are omitted.

INTRODUCTION

After six years of hard-fought litigation, Plaintiffs have secured eight proposed Settlements that provide **$185,875,000** in non-reversionary all-cash payments for the benefit of Settlement Class, plus cooperation from each Settling Defendant that may be used to prosecute claims against any non-settling Defendants (if any remain). If all eight Settlements are finally approved by the Court, the Action will be resolved as to all non-dismissed Defendants. This is an excellent result in light of the very substantial risks involved in the continued prosecution of the highly complex claims and subject matter of this Action.

Plaintiffs' main claim, an antitrust conspiracy to fix and manipulate the Australian Bank Bill Swap rate ("BBSW") was not a claim brought by the Australian Securities & Investments Commission ("ASIC") or any other body prior to this Action. On the contrary, ASIC had made limited settlements for disparate types of conduct with various banks, settled with three separate banks for attempting to affect where BBSW set, and tried similar claims against one other bank. Defendants vigorously opposed Plaintiff's new conspiracy and other allegations in repeated motions to dismiss which, at the pleading stage, this Court repeatedly denied:

- *Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122, 167, 171 (S.D.N.Y. 2018) (holding Plaintiffs plausibly alleged Defendants conspired to fix the BBSW rate; that Plaintiffs plausibly alleged these rate manipulations adversely affected BBSW-Based Derivatives; but acknowledging "the damages calculations in this case may indeed be complex");

- *Dennis v. JPMorgan Chase & Co.*, No. 16-CV-6496 (LAK), 2018 WL 6985207 (S.D.N.Y. Dec. 20, 2018) (denying motion to reconsider the denial of motion to dismiss Plaintiffs' claims by alleged conspirator Defendants who were not on the Panel which made the daily fixes of the BBSW rate);

- *Dennis v. JPMorgan Chase & Co.*, 439 F. Supp. 3d 256 (S.D.N.Y. 2020) (denying in significant part the motion to dismiss claims directed at OCERS);

- Order dated August 4, 2020 (ECF No. 394) (denying motion by ANZ and CBA for reconsideration of the Court's Order denying motions to dismiss OCERS's claims on statute of limitations and other grounds);

- Order dated March 30, 2021 (ECF No. 458) (denying the Rule 12(c) motion by ANZ to dismiss on statute of limitations and other grounds);

- *Dennis v. JPMorgan Chase & Co.*, No. 16-CV-6496 (LAK), 2021 WL 1893988, at *2 (S.D.N.Y. May 11, 2021) (denying Rule 12(c) motion by five Defendants to dismiss Plaintiffs' claims relating to the BBSW-Based Derivatives consisting of FX forwards because the claims had been released and dismissed by the terms of an earlier class action settlement).

However, this Court granted the foreign Defendants' motion to dismiss in substantial part. *Dennis v. JPMorgan Chase & Co*., 343 F. Supp. 3d 122 (S.D.N.Y. 2018). Plaintiffs solved this problem through an amended complaint in which OCERS joined the Action as a party plaintiff which had contracts containing jurisdiction consent agreements with numerous Defendants. *See* Second Amended Complaint (ECF No. 281). Thereafter, Defendants, represented by the cream of the crop of the defense bar, continued vigorously to contest the existence of any conspiracy and other allegations, and raised numerous defenses, asserted numerous affirmative defenses, and strenuously opposed aspects of discovery.

Plaintiffs used important portions of the 2.5 million documents produced in this Action to find evidence supporting Plaintiffs' claims on the merits, strengthen their negotiation position and, ultimately, bring this Action to a successful resolution that delivers a valuable benefit to the Class.

In Plaintiff Counsel's judgment, the substantial risks of continued prosecution fully justify the fairness and reasonableness of each settlement with each Defendant under the requirements of Rule 23(e) and each such settlement represents a fair and adequate resolution of the claims against each such Settling Defendant.

Thus far, the reaction of the Class to the Settlements further supports finally approving the Settlement. Since the notice period began on May 23, 2022, Class Notice has been mailed directly to more than 52,560 potential Class Members, and there have been more than 4,661 visits to the

Settlement Website, which hosts the Class Notice, Proof of Claim and Release form ("Claim Form"), and other information about this Action.

The Settlements fully satisfy the requirement for final approval. The Settlements are procedurally fair, as Plaintiffs and Class Counsel are adequate representatives of the Settlement Class, and the Settlements themselves resulted from hard-fought arm's length negotiations with each Settling Defendant. The terms of the Settlements are substantively fair, providing significant relief to eligible Class Members in exchange for the complete resolution of the claims against each Settling Defendant. Additionally, the proposed Plan of Distribution fairly and efficiently allocates the Net Settlement Funds among Authorized Claimants. As described in Plaintiffs' several memoranda in support of conditional class certification[3] and further argued below, the Court may finally certify the Settlement Class under Rule 23(a) and (b)(3). Finally, Class Counsel implemented a robust notice program that apprised Class Members of their rights and options. Plaintiffs therefore respectfully request that the Court finally approve the Settlements and the Plan of Distribution, finally certify the Settlement Class, and enter the proposed Final Approval Orders and Final Judgments dismissing with prejudice the claims against the Settling Defendants.

BACKGROUND[4]

Plaintiffs allege that Defendants conspired to manipulate BBSW and the prices of BBSW-Based Derivatives during the Class Period by, *inter alia*: (1) engaging in manipulative money market transactions during the BBSW Fixing Window; (2) making false BBSW rate submissions

[3] *See* ECF Nos. 224, 451, 489, 535 (collectively, the "Conditional Certification Briefs"). Plaintiffs incorporate by reference the arguments in the Conditional Certification Briefs

[4] A detailed description of the background of this Action is included in the Joint Declaration of Vincent Briganti and Christopher Lovell in Support of (A) Plaintiffs' Motion for Final Approval of Class Action Settlements; and (B) Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses ("Joint Declaration" or "Joint Decl."), filed herewith.

that did not reflect actual transaction prices; (3) uneconomically buying or selling money market instruments at a loss to cause artificial derivatives prices; and (4) sharing proprietary information to align interests and avoid conduct that could harm co-conspirators. ECF No. 281 (Second Amended Class Action Complaint ("SAC")). Plaintiffs claim that as a result of Defendants' price-fixing conspiracy, they paid more or received less than they should have on their BBSW-Based Derivatives transactions during the Class Period. Settling Defendants do not admit any of Plaintiffs' allegations of misconduct in the BBSW market by entering into the Settlements and continue to deny any and all wrongdoing, including any allegations that they have violated any United States law.

Settlement Terms and Proposed Plan of Distribution

As part of their respective Settlements, the Settling Defendants agreed to pay the following amounts:

JPMorgan: $7,000,000	Morgan Stanley: $7,000,000
Credit Suisse: $8,875,000	Westpac: $25,000,000
NAB: $27,000,000	ANZ: $35,500,000
CBA: $35,500,000	Group Settling Defendants: $40,000,000

There were no admissions made by the Settling Defendants in their respective Settlements.

The eight proposed settlements provide for non-reversionary cash payments totaling **$185,875,000** (the "Settlement Funds") that will be distributed to Class Members, less deductions made for the payments of taxes, settlement administration expenses, attorneys' fees, litigation costs and expenses, and any other charges authorized by the Court (the "Net Settlement Funds"). Under the Plan of Distribution, the Net Settlement Funds will be allocated *pro rata* to Authorized Claimants according to the volume of their BBSW-Based Derivatives, with an adjustment factor

for BBSW-Based Derivatives traded between 2005 and 2012, during which time Plaintiffs' investigation suggests the frequency of the alleged manipulation was significantly larger. *See* ECF No. 552 (Plan of Distribution Mem.); 552-1 (Plan of Distribution). Settling Defendants also agreed to provide cooperation, including the production of certain data and/or documents, to assist in the prosecution of claims against any non-settling Defendants that remain. In exchange, Plaintiffs and all Settling Class Members will release and discharge and covenant not to sue the Released Parties for the Released Claims.

ARGUMENT

I. THE SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE

"The compromise of complex litigation is encouraged by the courts and favored by public policy." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005). In service of "the strong judicial policy in favor of settlements, particularly in the class action context," *id.*, a court may approve a class action settlement upon a showing that the settlement is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). A settlement is fair, reasonable and adequate and should be approved if the settlement is shown to be both procedurally and substantively fair. *See In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 28 (E.D.N.Y. 2019) ("*Payment Card*") (analyzing the amended Rule 23(e)(2) standards to be applied at both preliminary and final approval).

The amended Rule 23 sets out a number of factors to guide the Court's analysis, with the factors in Rule 23(e)(2)(A) and (B) focusing on the procedural fairness and those in Rule 23(e)(2)(C) and (D) focusing on substantive fairness. FED. R. CIV. P. 23 advisory committee's note to 2018 amendment (stating Rule 23 now focuses on the "core concerns of procedure and substance" to be considered when deciding whether to finally approve a settlement). The courts in this Circuit also consider the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448,

463 (2d Cir. 1974) ("*Grinnell*"), to assess the fairness of a class settlement. Applying the *Grinnell* factors and Rule 23 to the Settlements here demonstrates final approval of the Settlements is warranted. *See also Maywalt v. Parker & Parsley Petroleum*, 67 F.3d 1072, 1079-80 (2d. Cir. 1995).

A. The Settlements Are Procedurally Fair

To approve a class action settlement, Rule 23 requires the Court to find in part that, "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length[.]" FED. R. CIV. P. 23(e)(2)(A)-(B). Courts presume settlements are procedurally fair when they are "the product of arm's length negotiations between experienced and able counsel on all sides." *In re Air Cargo Shipping Servs. Antitrust Litig.,* No. 06-md-1775 (JG), 2009 WL 3077396, at *7 (E.D.N.Y. Sept. 25, 2009).

1. Plaintiffs Have Adequately Represented the Class

Adequate representation under Rule 23(e)(2)(A) (and 23(a)(4))[5] requires that the "interests . . . served by the Settlement [are] compatible with" those of settlement class members. *Wal-Mart Stores*, 396 F.3d at 110; *see also In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 827 F.3d 223, 232 (2d Cir. 2016) (the focus for adequacy is whether the interests of the proposed settlement class are "sufficiently cohesive to warrant adjudication"). This is met when the class representative's interests are not antagonistic to those of the class and their chosen counsel is qualified, experienced, and able to conduct the litigation. *See In re Currency Conversion*

[5] Courts analyze the adequacy of representation requirement of Rule 23(e)(2)(A) using the same considerations for representative adequacy under Rule 23(a)(4). *See Payment Card*, 330 F.R.D. at 30 n.25 ("This adequate representation factor [under Rule 23(e)(2)(A)] is nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context. As a result, the Court looks to Rule 23(a)(4) case law to guide its assessment of this factor."); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019).

Fee Antitrust Litig., 264 F.R.D. 100, 111-12 (S.D.N.Y. 2010); *Wal-Mart Stores*, 396 F.3d at 106-07 (adequate representation is established "by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

Plaintiffs' identical and related interests to the other Class Members provide clear evidence of their adequacy to represent the Class. Plaintiffs here suffered the same alleged injury as other Class Members, monetary losses resulting from BBSW-Based Derivatives transactions impacted by Defendants' alleged manipulation of BBSW. The impact of Defendants' alleged misconduct would have been felt market wide, and all members of the Class, including Plaintiffs would have paid more or received less for their BBSW-Based Derivatives transactions based on the artificiality in the market. Therefore, Class Members and Plaintiffs similarly have "an interest in vigorously pursuing the claims of the class." *Denney v. Deutsche Bank AG*, 443 F.3d 253, 268 (2d Cir. 2006). Moreover, there are no conflicting interests among Plaintiffs and the Settlement Class that provide a barrier to Plaintiffs' representation of the Class. *See Wal-Mart Stores*, 396 F.3d at 110-11 (class representatives are adequate if their injuries encompass those of the class they seek to represent); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1175 (JG) (VVP), 2014 WL 7882100, at *34 (E.D.N.Y. Oct. 15, 2014) ("Even if there was a conflict [relating to the assignment of recovery rights] (and there is not), it would under no conceivable circumstances be so 'fundamental'" to cause class representatives to be inadequate), *report and recommendation adopted*, 2015 WL 5093503 (E.D.N.Y. July 10, 2015). Plaintiffs and Class Members have a strong interest in obtaining the maximum recovery possible for the impacts caused by Defendants' alleged manipulation of BBSW and the prices of the BBSW-Based Derivatives.

2. Class Counsel Have Adequately Represented the Class

Courts evaluating adequacy of representation also consider the adequacy of plaintiffs' counsel. *Payment Card*, 330 F.R.D. at 30 (considering whether "plaintiff's attorneys are qualified, experienced and able to conduct the litigation"); accord FED. R. CIV. P. 23(g). Class Counsel have led the prosecution of this action from its inception and negotiated the proposed Settlements. Moreover, they have extensive experience litigating antitrust and CEA claims on behalf of some of the nation's largest pension funds and institutional investors and are among the most knowledgeable firms litigating benchmark interest rate manipulation cases. Class Counsel serve as lead or co-lead counsel in at least eight class actions (including this one) bringing antitrust and/or CEA claims for the manipulation of global benchmark rates. *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD) (S.D.N.Y.) (Yen-LIBOR/Euroyen TIBOR); *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (Euribor); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, MDL No. 2262, No. 11 Civ. 2613 (U.S. Dollar LIBOR Exchange-Based Plaintiffs); *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (Swiss franc LIBOR); *Fund Liquidation Holdings LLC, et al. v. Citibank*, N.A., et al., No.: 16-cv-05263 (AKH) (S.D.N.Y.) (SIBOR and SOR); *Sonterra Capital Master Fund Ltd., et al. v. Barclays Bank PLC, et al.*, No. 15-cv-03538 (VSB) (S.D.N.Y.) (Sterling LIBOR). *See* ECF Nos. 452-6, 452-7 (Firm Resumes). Their extensive class action, antitrust, and complex litigation experience provides strong evidence that the Settlement is procedurally fair. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009), *aff'd, Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010) (noting the "extensive" experience of counsel in granting final approval of settlement); *see also Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 8331 (CM)

(MHD), 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (giving "great weight" to experienced class counsel's opinion that the settlement was fair).

In addition to being well-versed in the relevant facts and law as applied to this Action, Class Counsel were assisted by Berman Tabacco ("Additional Plaintiffs' Counsel"), which brought its substantial experience in complex class actions to bear in this Action. Class Counsel and Additional Plaintiffs' Counsel understood the potential strengths and risks of Class Plaintiffs' claims and developed a comprehensive strategy to obtain a favorable outcome for the Class. *See City of Providence v. Aeropostale, Inc*., No. 11 Civ. 7132 (CM)(GWG), 2014 WL 1883494, at *7 (S.D.N.Y. May 9, 2014) (crediting the adequacy of counsel who "developed a comprehensive understanding of the key legal and factual issues in the litigation and, at the time the Settlement was reached, had a clear view of the strengths and weaknesses of their case and of the range of possible outcomes at trial").

3. The Proposed Settlements Were Negotiated at Arm's Length

The Rule 23(e) procedural fairness inquiry is consistent with Second Circuit precedent that "a strong initial presumption of fairness attaches to [a] proposed settlement," when the "integrity of the arm's length negotiation process is preserved . . . ." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997); *see In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000) (where a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness"), *aff'd sub nom.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001).

To assess the integrity of the process, one of the key questions is whether "plaintiffs' counsel is sufficiently well informed" to adequately advise and recommend the settlement to the

class representative and settlement class. *See In re GSE Bonds,* 414 F. Supp. 3d at 699. In this case, Class Counsel's expertise and knowledge of the Action supports a finding that the settlement processes were fair. Prior to engaging in any settlement discussions with Settling Defendants, Class Counsel had the benefit of their investigations into BBSW and BBSW-based derivatives market. Joint Decl. ¶¶ 12-17. They also benefited from the extensive arguments Defendants presented in connection with multiple motions to dismiss, motions for reconsideration, and motions for judgment on the pleadings and the Court's analyses in its rulings on these motions. Joint Decl. ¶¶ 18-24, 27-33, 51.

In addition to the knowledge acquired through their investigation and prosecution of the Action, Class Counsel had the benefit of the Parties' meaningful and productive discussions of their views on the case and the key settlement terms, including the amount of consideration to be paid and the type of cooperation that would be provided to assist in the further prosecution of the Action. Joint Decl. ¶¶ 43-44. On top of this, Class Counsel could rely on the experience they developed in the other benchmark interest rate litigation in which they are involved. *See supra* at Part I.A.2; Joint Decl. ¶¶ 48-50. This deep experience in the field gave Class Counsel two distinct advantages. It provided them with a solid knowledge base about how best to conduct their investigation—where to find and how to analyze the best trading data, which experts to engage, and what methodologies to use to estimate damages. Their experience reaching settlements in those factually and legally similar cases also provided benchmarks against which to compare the settlement proposals and ultimate settlements here while considering differences in market size.

The other key inquiry is whether there is evidence that the settlement negotiations were non-collusive. In this case, there is plenty of support for the conclusion that the Settlements were the product of arm's length negotiations. Settling Defendants were represented by leading

international law firms that have significant experience defending federal class action antitrust claims and were well-prepared to advocate for their clients' positions. Class Counsel and each respective Settling Defendant's Counsel spent months in contentious negotiations over a potential settlement. *See* Joint Decl. ¶¶ 54-87. Numerous communications occurred during which each party expressed their views on the merits, risks, and challenges of the Action, the Settling Defendant's (or Settling Defendants') potential liability, and the appropriate measure of damages in light of the developing applicable law. Even after settlement term sheets were executed, several more weeks or months were required to reach agreement on and execute the respective Settlement Agreement. Joint Decl. ¶¶ 58, 69-71.

At all times, Class Counsel were well-informed about the facts, risks and challenges of the Action and had a sufficient basis on which to recommend that Plaintiffs enter into the Settlements. Class Counsel's conclusion that the Settlements are fair and reasonable and the process by which the Settlements were reached weigh in favor of finding the Settlements are procedurally fair and should be approved. *See In re NASDAQ Market-Makers Antitrust Litig. ("NASDAQ III")*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (courts give "'great weight' . . . to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

B. The Proposed Settlements Are Substantively Fair

These Settlements represents one of the few (if not the only) means of obtaining relief for Settlement Class Members impacted by the alleged manipulation of BBSW-Based Derivatives. More than $185 million will be paid by Settling Defendants on a non-reversionary basis, which further enhances the value of the recovery. *See Guerrero v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2014 WL 1365462, at *2 (N.D. Cal. Apr. 7, 2014) (finding the lack of reversion of remaining portions of the net settlement an important benefit to the class).

To assess the Settlement's substantive fairness, the Court considers whether, "the relief provided for the class is adequate," accounting for the following factors: "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3)." FED. R. CIV. P. 23(e)(2)(C). The Court is also required to confirm that the Settlement "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D).

Courts in this Circuit have long considered the nine *Grinnell* factors in deciding whether a settlement is substantively fair, reasonable, and adequate:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463. The amended Rule 23(e)(2) factors are intended to be complementary to the *Grinnell* factors. *See GSE Bonds*, 414 F. Supp. 3d at 692 ("The Advisory Committee Notes to the 2018 amendments indicate that the four new Rule 23 factors were intended to supplement rather than displace these '*Grinnell'* factors."); *accord Payment Card*, 330 F.R.D. at 29 ("Indeed, there is significant overlap between the *Grinnell* factors and the Rule 23(e)(2)(C-D) factors . . . ."). Here, the factors set forth in Rule 23(e) and *Grinnell* weigh heavily in favor of final approval.

1. The costs, risks, and delay of trial and appeal favor the Settlements

To determine whether a settlement provides adequate relief to the class, the Court must evaluate "the costs, risks, and delay of trial and appeal," FED. R. CIV. P. 23(e)(2)(C)(i), "to forecast

the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. This factor "implicates several *Grinnell* factors, including: (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Id.*; *see also GSE Bonds*, 414 F. Supp. 3d at 693. In evaluating this factor, the Court's role is to "balance the benefits afforded the Class, including immediacy and certainty of recovery, against the continuing risks of litigation." *GSE Bonds,* 414 F. Supp. 3d at 694; *see also Shapiro*, 2014 WL 1224666, at *10 (at final approval, the Court's role is not to "decide the merits of the case or resolve unsettled legal questions or to foresee with absolute certainty the outcome of the case" but rather to "assess the risks of litigation against the certainty of recovery under the proposed settlement.").

"[T]he primary purpose of settlement is to avoid the uncertainty of a trial on the merits." *Matheson v. T-Bone Rest. LLC*, No. 09 Civ. 4214 (DAB), 2011 WL 6268216, at *5 (S.D.N.Y. Dec. 13, 2011). Although Plaintiffs and Class Counsel firmly believe that the asserted claims are meritorious and they would ultimately prevail at trial, there are risks that come with continuing this Action, and the existence of those risks supports approving the Settlements.

The factual and legal issues in this Action are complex and expensive to litigate. Antitrust and CEA cases require a significant expenditure of time and resources, and this case is no exception. *See Wal-Mart*, 396 F.3d at 118; *GSE Bonds*, 414 F. Supp. 3d at 693 ("Numerous federal courts have recognized that federal antitrust cases are complicated, lengthy, and bitterly fought as well as costly. . . .") (internal citations omitted); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) ("The case involves claims of commodity price manipulation in violation of the CEA. Such claims have been notoriously difficult to prove . . . ."). Plaintiffs alleged

manipulative and collusive conduct between and among at least 17 institutions over more than 13 years. To prosecute this Action, Class Counsel utilized numerous resources, including resources located in Australia, consulting experts, interviews of industry insiders, review of substantial document production by Defendants, examinations of relevant reports and public disclosures, and additional steps to obtain information and develop a deep understanding of the BBSW and BBSW-Based Derivatives market. *See* Joint Decl. ¶¶ 17, 43-44. And even with the thorough investigation Class Counsel had performed, some of Plaintiffs' claims and some of the Defendants were dismissed on the pleadings. *See, e.g.,* ECF No. 347. The Court's orders denying in part and granting in part Defendants' motions to dismiss confirm the risks and challenges of prosecuting the Action. The intricate nature of the financial products and market involved, the lengthy time period over which the alleged misconduct occurred, and the number of defendants involved in the alleged anticompetitive conduct made this Action a highly complex and risky case for Plaintiffs to pursue. *See Currency Conversion Fee*, 263 F.R.D. at 123 ("the complexity of Plaintiffs' claims *ipso facto* creates uncertainty").

Although Plaintiffs developed and sustained antitrust and other claims, the risks of continued prosecution significantly increased after Plaintiffs prevailed on the numerous motions to dismiss. Those risks include the risk to certify a class, to prove the conspiracy, to prove price impact, and to prove the other elements of various claims. Likewise, Defendants were undertaking significant discovery with the aim of refuting or weakening Plaintiffs' evidence regarding their alleged damages, and strenuously argued that they did not conspire. *See In re GSE Bonds*, 414 F. Supp. 3d at 694 ("Given that [ ] defendants contend that they can present a strong case against plaintiffs after discovery, there is no guarantee that plaintiffs will be able to prove liability.").

Continued discovery would be lengthy and costly. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) ("[P]roceeding to antitrust discovery can be expensive.").

This case would also necessarily involve expert discovery, adding more risk to the litigation. *See In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd*, 822 F. App'x 40 (2d Cir. 2020) (experts "tend[] to increase both the cost and duration of litigation"). Expert discovery will likely lead to *Daubert* motions, increasing the litigations costs and risks, and delaying any resolution. A battle of experts involves inherent uncertainty as "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

Defendants would likely use the complexity of the financial products in the market, the sophistication of their alleged misconduct, the temporal breadth of the alleged conspiracy, and the alleged up and down impact on BBSW on various days to argue that a litigation class cannot be certified on these claims. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 494 (S.D.N.Y. 2018) (stating that "the certainty of maintaining a class action is by no means guaranteed" and noting that maintaining the action as a class requires proving the 16-bank conspiracy that was alleged). While Plaintiffs believe the Court would have certified a litigation class if the Action had continued, such motion would have been vigorously opposed by Defendants. *See In re GSE Bonds*, 414 F. Supp. 3d at 694 (the risk of maintaining a class through trial "weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated"); *see also In re AOL Time Warner, Inc. Sec. and "ERISA" Litig.*, No. 02-cv-5575 (SWK), 2006 WL 903236, at *12 (S.D.N.Y. Apr. 6, 2006) ("[T]he

process of class certification would have subjected Plaintiffs to considerably more risk than the unopposed certification that was ordered for the sole purpose of the Settlement."). Even if a litigation class were to be certified, that certification could be challenged on appeal, or at another stage in the litigation. *In re Visa Check/Mastermoney Antitrust Litig.*, 192 F.R.D. 68, 89 (E.D.N.Y. 2000), *aff'd*, 280 F.3d 124 (2d Cir. 2001) ("If factual or legal underpinnings of the plaintiffs' successful class certification motion are undermined once they are tested . . . , a modification of the order, or perhaps decertification, might then be appropriate."); *Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 186 (W.D.N.Y. 2005) ("While plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might be not certified is not illusory and weighs in favor of the Class Settlement."). Plaintiffs would continue to bear the risk of maintaining the class through trial and appeal.

Similar argument could be used to contest liability at trial. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. at 494 ("[A]s to liability, establishing the existence and extent of a conspiracy will necessarily be a complex task, and many of the hurdles that plaintiffs have overcome at the pleading stage will raise substantially more difficult issues at the proof stage."); *NASDAQ III*, 187 F.R.D. at 474 (discussing the difficulties of proving antitrust liability where plaintiffs had to prove, among other things, a complex conspiracy involving a larger number defendants, a common motive, actions against defendants' financial interest and/or evidence of coercion). And were Plaintiffs to establish liability at trial, they would still face the challenge of proving class damages to a jury. There is a substantial risk that a jury might accept one or more of Defendants' damages arguments and award far less than the funds secured by the Settlements, or even nothing at all. "[T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at

trial, or on appeal." *Wal-Mart*, 396 F.3d at 118; *see also In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 283 (S.D.N.Y. 1999). These factors weigh in favor of approval of the Settlements.

Although Plaintiffs and Class Counsel firmly believe that the asserted claims are potentially meritorious and would zealously seek to prosecute those claims to prevail at trial, Class Counsel's judgment is that there are very substantial risks attendant to continuing to prosecute the claims, and the existence of those risks fully supported making these Settlements as well as the requested approval now before this Court.

2. The remaining *Grinnell* factors also support final approval of the Settlements

The *Grinnell* factors not expressly included in Rule 23(e)(2)(c)(i) are also instructive to the Court in assessing whether the relief provided to the class is adequate. These factors include: "(2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; . . . (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell*, 495 F.2d at 463.

a. The reaction of the Settlement Class to the Settlements

While Class Members continue to have an opportunity to file a claim, object or opt out of the Settlements, the Settlement Class's reaction so far indicates that they favor approval of the Settlements. *Wal-Mart*, 396 F.3d at 118 ("'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'"). To date, no objections have been filed, and only one request for exclusion has been received, while more than 52,560 Notice Packets have been sent to Class Members. Declaration of Jack Ewashko dated Aug. 1, 2022

("Ewashko Decl.") (ECF No. 548-1), ¶¶ 12, 26, 28. The Settlement Administrator will submit an updated report following the September 2, 2022 objection and opt-out deadline.

b. The stage of the proceedings and the amount of discovery completed

"[C]ourts encourage early settlement of class actions . . . because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Beckman v. Keybank, N.A.,* 293 F.R.D. 467, 474-75 (S.D.N.Y. 2013). The Court's primary task in examining the stage of the proceedings at which a settlement is reached is to assess whether the settling parties "have engaged in sufficient investigation of the facts" to understand the strengths and weaknesses of their case, and whether the settlement is adequate given those risks. *AOL Time Warner,* 2006 WL 903236, at *10. As a result, formal discovery is not required for a settlement to be approved. *See Plummer v. Chemical Bank*, 668 F.2d 654, 658 (2d Cir. 1982).

In addition to the knowledge and experience they gained from litigating other similar benchmark interest rate manipulation cases (Joint Decl. ¶¶ 48-50), which generally informed their overall litigation and settlement strategy, Class Counsel conducted extensive factual and legal research and investigation that more than satisfy this *Grinnell* factor. *See* Joint Decl. ¶¶ 12-15, 17, 25, 33-44. Class Counsel obtained ASIC's enforceable undertaking involving RBS, UBS, and BNPP and the unrestricted filings involving ASIC's suits against ANZ, CBA, NAB and Westpac from the Australian courts. Joint Decl. ¶¶ 12-14. Australian counsel was engaged to assist with obtaining copies of certain restricted filings from the ASIC lawsuits. Joint Decl. ¶ 14. Class Counsel found in ASIC's investigation materials numerous communications which Plaintiffs contend indicate that Defendants acted collusively for years to fix BBSW. Joint Decl. ¶ 13, 43-44. Defendants vigorously deny any conspiracy and have not admitted to any such conduct in

settling this Action. Recognizing the ambiguity and industry jargon in these clipped communications in a complex financial area, Plaintiffs' Counsel had a strong appreciation of what they thought could be made of these communications, as well as the counter arguments that would be offered by Defendants based on the self-same communications. Based on this foundation, Class counsel implemented their settlement strategy to reach the "ice-breaker" initial settlement with JPMorgan.

The JPMorgan Settlement provided Plaintiffs with cooperation materials early in the Action that further aided Plaintiffs' prosecution. Joint Decl. ¶¶ 43-44, 58. After the Court resolved Defendants' motions to dismiss, discovery commenced, and Plaintiffs obtained over 2.4 million documents from Defendants. Using their in-house document review platform and associated analytics engine, Class Counsel performed a technology-aid review that quickly allowed them to find the relevant documents that allowed Plaintiffs to continue to add to their assessment of the strengths and challenges of their claims. Joint Decl. ¶ 44. This level of information alone is more than sufficient to support the Settlements. *See Manley v. Midan Rest. Inc.*, No. 14 Civ. 1693 (HBP), 2016 WL 1274577, at *9 (S.D.N.Y. Mar. 30, 2016) (settlement fair, reasonable, and adequate where "Plaintiffs' counsel interviewed plaintiffs, the parties have exchanged informal discovery and plaintiffs' counsel has analyzed defendants' records to calculate the damages").

In addition, the information developed during the confidential settlement negotiations added to and refined Class Counsel's understanding of the likely strengths, risks, and challenges of the claims in the Action. They provided a further foundation for Class Counsel's valuation, recommendation, and entry into the respective Settlements to Plaintiffs. The amount of information available and accessible to Class Counsel plainly demonstrate that Plaintiffs and Class Counsel were well-informed when reaching these Settlements.

c. The ability of Settling Defendants to withstand greater judgment

There is little reason to doubt that the Settling Defendants could withstand a greater judgment than the amount paid in settlement, but "'fairness does not require that the [defendant] empty its coffers before this Court will approve a settlement.'" *LIBOR*, 327 F.R.D. at 494. The Settling Defendants' ability to pay more than what was offered in settlement does not undermine the reasonableness or adequacy of the Settlements. *See id.* at 495 (stating that "this factor is intended to 'strongly favor settlement' when 'there is a risk that an insolvent defendant could not withstand a greater judgment' but that 'the ability of defendants to pay more, on its own, does not render the settlement unfair'").

d. The Settlements are reasonable in light of the risks and potential range of recovery

Courts often examine together the range of reasonableness of the settlement fund in light of the best possible recovery and the attendant risks of litigation. *Payment Card*, 330 F.R.D. at 47-48; *PaineWebber*, 171 F.R.D. at 130 ("[t]he adequacy of the amount offered in settlement must be judged 'not in comparison with the best possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of the plaintiffs' case.'"). In considering these factors, "the settlement amount's ratio to the maximum potential recovery need not be the sole, or even the dominant, consideration when assessing the settlement's fairness." *LIBOR*, 327 F.R.D. at 495 (approving settlements even where the plaintiffs did not provide a damages estimate). The analysis of these factors requires consideration of "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart*, 396 F.3d at 119. As the Second Circuit has explained, "[t]he fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of

itself, mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455 n.3.

Class Counsel believe the Settlements collectively will provide a substantial recovery to those members of the Settlement Class who file valid proofs of claim, and that the number of Class Members who file valid proofs of claim will be significantly greater now than they would be if there was no payout until a prospective (potentially successful) trial and appeals.

Plaintiffs' experts analyzed damages in different ways. In the highest damage estimate, Plaintiffs' experts reviewed publicly available data from Reuters, Bank for International Settlements ("BIS") Triennial Surveys, and the Federal Reserve Bank of New York's U.S. based market surveys, as well as the data made available from Settling Defendants in discovery and via cooperation. In this estimate, Plaintiffs' experts considered various factors. These included transaction volumes, outstanding notional amounts in BBSW-Based Derivatives, the duration of the Class Period, and estimates of the potential distortions in BBSW caused by the alleged manipulations. Plaintiffs' experts estimated non-treble damages of $1.5-1.7 billion.

This estimate is exclusive of various deductions which Defendants strenuously argued should be made. The estimate also takes no account of whether all Class Members would file proofs of claims.

Again, Class Counsel's judgment is that these settlements, if approved, will provide substantial consideration to those Class Members who submit valid proofs of claims, and the number of Class Members who file proofs of claim will likely be greater now than after the passage of many years. *Compare Maywalt v. Parker & Parsley Petroleum*, 67 F.3d 1072, 1079-80 (2d. Cir. 1995) (in determining whether a proposed settlement is fair, reasonable, and adequate, "[t]he

primary concern is with the substantive terms of the settlement: 'Basic to this ... is the need to compare the terms of the compromise with the likely rewards of litigation.'") (emphasis added).

3. The Plan of Distribution provides an effective method for distributing relief satisfying Rule 23(e)(2)(C)(ii)

A plan of allocation is fair and reasonable as long as it has a "reasonable, rational basis." *In re FLAG Telecom Holdings, Ltd. Sec. Litig.*, No. 02-3400 (CM) (PED), 2010 WL 4537550, at *21 (S.D.N.Y. Nov. 8, 2010); *In re Initial Pub. Offering Sec. Litig*., 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009). A plan of allocation, however, need not be tailored to fit each and every class member with "mathematical precision." *PaineWebber*, 171 F.R.D. at 133. In determining whether a plan of allocation is fair and reasonable, courts give great weight to the opinion of experienced counsel. *See In re Giant Interactive Grp., Inc. Sec. Litig*., 279 F.R.D. 151, 163 (S.D.N.Y. 2011) ("in determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel"); *In re Marsh ERISA Litig*., 265 F.R.D. 128, 145 (S.D.N.Y. 2010) (same).

As described in Plaintiffs' motion for approval of the Plan of Distribution (*see* ECF Nos. 552, 552-1), the Net Settlement Funds will be distributed based on the respective volumes of Class Members' transactions in BBSW-Based Derivatives. In addition to allocating the settlement proceeds based on volume, the Plan of Distribution applies an adjustment to transactions occurring between 2005 and 2012. Based on Class Counsel's investigation, the frequency of the alleged manipulations likely became significantly greater during that period, and the adjustment provides greater weighting to those transactions that may have suffered a greater impact. The volume method of distributing the settlement funds has been preliminarily or finally approved for use in numerous similar cases. *See*, *e.g.*, Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Mar. 30, 2018), ECF No. 602-1; Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126

(S.D.N.Y. Sept. 28, 2018), ECF No. 681-1; Final Judgments and Orders of Dismissal at ¶ 16, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. June 1, 2018), ECF Nos. 648-57 (approving plan of distribution as fair, reasonable, and adequate); Final Judgment and Order of Dismissal at ¶ 15, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Nov. 13, 2018), ECF No. 738 (same); Distribution Plan, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 25, 2020), ECF No. 451-5; Final Approval Order, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 15, 2021), ECF No. 536 (approving plan of distribution as fair, reasonable, and adequate). This proposed Plan of Distribution fully merits final approval.

4. The proposed Attorneys' Fees indicate that the Class will receive substantial relief from the Settlements

The attorneys' fees and expenses that will be sought in connection with the Settlements are reasonable and further indicate that the Settlement Class will receive a substantial Net Settlement Fund. Specifically, Class Counsel seek 25.4% of the Settlement Funds ($47,218,750), to be paid, if approved by the Court, upon final approval of the Settlements. *See* Joint Decl., ¶ 97. As more fully described in the accompanying Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses, the percentage of attorneys' fees requested is reasonable given the range of settlement awards made in similar cases in this District and the amount of work contributed by Class Counsel towards the prosecution of the Action. In addition to the request for attorneys' fees, Class Counsel seek a reimbursement of $845,471.57 (or .04% of the Settlement Fund) for litigation costs and expenses incurred through to the present. *See Meredith Corp. v. SESAC LLC,* 87 F. Supp. 3d 650, 671 (S.D.N.Y. 2015) (reasonably incurred expenses may be

reimbursed from the settlement fund). The expenses are of the type reasonably incurred in class action litigation.

5. The Settlements identify all relevant agreements that impact the adequacy of the relief

The Settlements fully describe the relief to which Class Members are entitled and all agreements that may impact the Settlement. This includes disclosing the existence of Supplemental Agreements that grant each Settling Defendant a qualified right to terminate its respective Settlement. *See, e.g.,* ECF No. 536-1 § 23. This type of agreement, often referred to as a "blow" provision, is common in class action settlements. *See, e.g.*, *GSE Bonds,* 414 F. Supp. 3d at 696 (finding, after review that a similar blow provision "has no bearing on the [settlement] approval analysis"); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 948 (9th Cir. 2015); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 02-cv-1152, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018). Therefore, the Supplemental Agreements do not weigh against approval of the Settlements.

6. The Settlements treat the Settlement Class equitably

Rule 23(e)(2)(D) requires that the Settlement "treat[] class members equitably relative to each other. FED. R. CIV. P. 23 (e)(2)(D). The Plan of Distribution provides for a *pro rata* distribution of the Net Settlement Funds, which courts have found to satisfy the requirement for equitable treatment. *See, e.g.*, *Payment Card*, 330 F.R.D. at 47 (finding that "pro rata distribution scheme is sufficiently equitable"). All Class Members would release Settling Defendants for claims based on the same factual predicate of this Action. The proposed Class Notice provides information on how to opt out of the Settlements; absent opting out, each Class Member will be bound by the releases. Because the Settlements' releases and the Plan of Distribution do not include any improper intra-class preferences or prejudice, the Court should find that the Settlements satisfy this factor.

II. THE PROPOSED SETTLEMENT CLASS SHOULD BE FINALLY CERTIFIED

Plaintiffs moved for conditional certification of the Settlement Class in connection with each Settlement, and the Court granted that conditional certification each time. *See* ECF Nos. 229, 459, 460, 517-518, 520-522, 542, 544. For the same reasons previously argued, the Court should now grant final certification of the Class for purposes of the Settlements.[6]

Further supporting Plaintiffs' arguments and as described above (*see* Part I.A), Plaintiffs and Class Counsel have demonstrated their adequacy to serve as representatives for the Class, and Class Counsel's experience and conduct in this Action amply satisfy the requirements to be appointed as class counsel under Fed. R. Civ. P. 23(g). As detailed by the Settlement Administrator, notice was sent to more than 52,000 potential Class Members, which confirms that the numerosity requirement is satisfied for purpose of class certification. *See* Ewashko Decl. ¶ 12; *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 90 (S.D.N.Y. 2009) ("Sufficient numerosity can be presumed at a level of forty members or more.").

The size of the Class also supports the superiority of pursuing the claims through a class action. *See In re Currency Conversion Fee Antitrust Litig.*, 224 F.R.D. 555, 566 (S.D.N.Y. 2004) (class action is "the superior method for the fair and efficient adjudication of the controversy" where the class is numerous). As a practical matter, no other Class Member "has displayed any interest in bringing an individual lawsuit" by seeking to join this Action or by commencing a separate action, likely due to the prohibitive costs. *See Meredith*, 87 F. Supp. 3d at 661. But even if other Class Members had chosen to pursue individual claims, the Class Members are geographically disbursed, and the prosecution of potentially hundreds or thousands of individual suits based on the same factual

[6] Plaintiffs incorporate by reference the arguments made in their Conditional Certification Briefs. *See* ECF Nos. 224, 451, 489, 535.

predicate of this Action would likely tax the court system and/or create the risk of inconsistent and inefficient adjudications. Taking everything in total, this Court has a sufficient basis on which to finally certify the Settlement Class.

III. THE CLASS NOTICE PLAN INFORMED THE CLASS OF THE SETTLEMENTS AND SATISFIED DUE PROCESS

Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." FED. R. CIV. P. 23(e)(1)(B). The standard for the adequacy of notice to the class is reasonableness. FED. R. CIV. P. 23(c)(2)(B) (for actions certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart*, 396 F.3d at 114. The Settlement Class Members here have received adequate notice and have been given sufficient opportunity to weigh in on or exclude themselves from the Settlements.

The Class Notice plan has been fully implemented. *See generally* Ewashko Decl. A.B. Data has produced and mailed more than 52,000 copies of the mailed notice to potential Class Members including (i) Settling Defendants' known counterparties for BBSW-Based Derivatives during the Class Period based on transactional and other data provided by Settling Defendants; (ii) counterparties in BBSW-Based Derivatives that were identified by market participants, including banks, brokers, and futures commission merchants, pursuant to subpoenas issued by Class Counsel; and (iii) the Settlement Administrator's proprietary list of banks, brokers, and other

nominees, which are likely to trade or hold BBSW-Based Derivatives on behalf of themselves and their clients. *See* Ewashko Decl., at ¶¶ 5-12 (describing direct mail component of notice plan).

The Settlement Administrator also caused the publication notice published in *The Wall Street Journal*, *Investor's Business Daily*, *The Financial Times*, *Stocks & Commodities*, *Hedge Fund Alert*, and *Grant's Interest Rate Observer*, and on websites Zacks.com, Traders.com, GlobalInvestorGroup.com, and GlobalCapital.com. In addition, the Settlement Administrator caused the publication notice published in e-newsletters from Global Investor Group, Stocks & Commodities, Zacks.com, and Barchart.com, as well as in email "blasts" to subscribers of Stocks & Commodities and Zacks.com. The Settlement Administrator also disseminated a news release via PR Newswire's US1 Newsline distribution list announcing the Settlements, which was distributed to the news desks of approximately 10,000 newsrooms. Ewashko Decl., at ¶¶ 14-21. The Settlement Administrator maintained a Settlement Website (www.BBSWSettlement.com), where class members were able to review and obtain: (i) the Settlement Agreements with Settling Defendants; (ii) the full-length mail and publication notices; (iii) Court orders and key pleadings; (iv) the proposed Plan of Distribution; and (v) a Proof of Claim form for the Settlements. The Plan of Distribution and Proof of Claim form were promptly posted on the Settlement Website after being filed with the Court.

The Class Notice plan, as well as the mailed notice and publication notice, satisfy due process. *See, e.g.,* Final Judgment Approving Class Action Settlement, *In re JPMorgan Precious Metals Spoofing Litig.*, No. 18-cv-10356 (GHW), (S.D.N.Y. July 7, 2022), ECF No. 115 (holding similar notice plan satisfied "due process"); *In re Mexican Gov't Bonds Antitrust Litig.*, No. 18 Civ. 02830 (JPO), 2021 WL 5709215, at *2 (S.D.N.Y. Oct. 28, 2021) (same). The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See*, *e.g.*,

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 319 (1950). The mailed notice and publication notice are written in clear and concise language, and reasonably conveyed the necessary information to the average class member. *See Wal-Mart*, 396 F.3d at 114. Class Members have been advised on the nature of the Action, including the relevant claims, issues, and defenses. *See* Ewashko Decl. Ex. A (Notice Packet). Class Members have been afforded a full and fair opportunity to consider the proposed Settlement, exclude themselves from the Settlements, and respond and/or appear in Court. Further, the Class Notice fully advised Class Members of the binding effect of the judgment on them. *Id.*, Ex. A.

The Court should find that the Class Notice plan as implemented was reasonable and satisfied due process.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court finally approve the Settlements and the Plan of Distribution, certify the Settlement Class, and enter the proposed Final Approval Orders and Final Judgments dismissing with prejudice the claims against the Settling Defendants.

Dated: August 18, 2022
White Plains, New York

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