

**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,

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 GINA M. RATTO IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF THE CLASS ACTION SETTLEMENTS, AND CLASS
COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES**

I, Gina M. Ratto, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am General Counsel of the Orange County Employees Retirement System (“OCERS”), one of the plaintiffs in this matter (the “Action”).

2. I have personal knowledge of the facts set forth in this Declaration, which I make in support of Plaintiffs’ motion for final approval of the class action settlements with the Settling Defendants¹ and Counsel’s motion for approval of an award of attorneys’ fees and reimbursement of expenses.

3. As General Counsel, I am the chief legal advisor to OCERS’ Board of Retirement (“Retirement Board”) and its committees, including the Investment Committee. Comprised of all of the members of the Retirement Board, the Investment Committee was established by the Retirement Board to administer all matters relating to the investment and management of OCERS’ assets. Among its many duties and responsibilities, the Investment Committee is responsible for overseeing and monitoring OCERS’ participation in securities and antitrust litigation. One of my duties as General Counsel is to evaluate, recommend, and supervise all OCERS’ litigation, including securities and antitrust litigation involving OCERS’ investment portfolio.

4. **Background:** Established in 1945, OCERS provides retirement and disability benefits to more than 49,000 active, deferred, and retired government employees of Orange

¹ The “Settling Defendants” means: (1) JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.; (2) Westpac Banking Corporation; (3) Australia and New Zealand Banking Group Ltd.; (4) Commonwealth Bank of Australia; (5) National Australia Bank Limited; (6) Morgan Stanley and Morgan Stanley Australia Limited; (7) Credit Suisse AG and Credit Suisse Group AG; and (8) the “Group Settling Defendants”: 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.

County, California and their beneficiaries. As of March 31, 2022, OCERS had more than \$22.4 billion in assets under management.

5. **Retention of Counsel and Negotiated Fee Agreement**: As a fiduciary to its members in the management of their retirement assets, OCERS has a strong interest in ensuring that financial markets, including the market for BBSW-Based Derivatives² are free from anticompetitive practices and are not being manipulated. When OCERS learned of the Action and alleged wrongdoing in the BBSW-Based Derivatives market, the Investment Committee recognized that OCERS would have a strong interest in pursuing damages and in helping to ensure that the BBSW-Based Derivatives market is free from anticompetitive and manipulative behavior, despite the risk of pursuing complex litigation, particularly against well-established financial institutions.

6. Considering this interest, in March 2018, OCERS retained Berman Tabacco to prosecute claims related to tens of thousands of BBSW-Based Derivatives, including those that OCERS transacted directly with most of the Settling Defendants. OCERS understood that Berman Tabacco would work with the law firms of Lowey Dannenberg, P.C. (“Lowey”) and Lovell Stewart Halebian Jacobson LLP (“Lovell”) (these three firms, collectively, “Counsel”) in prosecuting the Action. By that time, the firms Lowey and Lovell (together, “Class Counsel”) had been prosecuting the Action for over a year.

² As defined in the settlement papers, “BBSW-Based Derivatives” means financial derivative instruments that are based or priced in whole or in part in any way on the Australian Bank Bill Swap rate (“BBSW”) or in any way includes BBSW as a component of price (whether priced, benchmarked and/or settled by BBSW) by a U.S. Person, or by a person from or through a location within the United States.

7. Consistent with OCERS' regular practice in complex cases, I negotiated a contingent fee structure at arm's-length with Counsel prior to their retention.³ The fee structure employs a graduated fee scale that provides for a 28% fee on the first \$25 million recovered, 25% on the next \$175 million recovered, and lower percentages for any additional sums recovered.

8. OCERS is accustomed to negotiating fee agreements with outside litigation counsel. The fee agreement here was carefully calibrated to capture the unique challenges and substantial risks associated with this specific case, especially as those risks could be measured in 2018. I considered and discussed with Berman Tabacco the posture of the litigation, its risk profile, OCERS' approach to negotiating legal fees, the historical levels of fees to which OCERS has agreed to, and fees for comparable legal services prior to arriving at the negotiated fee structure. This Action is not the kind of litigation, and does not involve the kind of market, typically prosecuted by public institutional investors. I was cognizant of that in negotiating what I think is a fair and reasonable contingent-fee agreement.

9. **OCERS' Oversight of the Litigation:** Since March 2018 when OCERS joined the Action, OCERS, through my involvement and the participation of other OCERS' personnel, supervised, monitored, and was actively involved in all material aspects of the prosecution and resolution of this Action. OCERS has actively overseen the work of Counsel and has participated in all aspects of litigation, beginning with Plaintiffs' Second Amended Complaint—the first time OCERS sought to join the Action. *See* ECF No. 281 (including allegations regarding OCERS' BBSW Derivative transactions).

³ Should the Court request, OCERS is prepared to submit its fee agreement for *in camera* review.

10. Since that time, I have reviewed and approved advance drafts of all significant pleadings in the Action and have had numerous telephonic, video, and face-to-face discussions and email communications with Counsel regarding, among other things, the allegations made and arguments raised in opposition to Defendants' motions to dismiss and motions for reconsiderations, arguments related to motions for judgment on the pleadings; Counsel's approach to class certification, expert testimony, and settlement strategy. I also supervised OCERS' participation in responding to discovery requests, as well as collecting, reviewing and producing all responsive discovery materials in this Action.

11. In preparation of the Second Amended Complaint, and Plaintiffs' opposition to the motion to dismiss the Second Amended Complaint, OCERS' legal, investment and information technology staff were involved and, at my direction, worked closely with Counsel to identify OCERS' BBSW Derivative transactions and collect relevant agreements and documents from OCERS' files and money managers.

12. **Discovery:** Under my supervision, OCERS participated in party discovery. Settling Defendants propounded fifty-two (52) document requests to OCERS. To comply with requests for production of documents, my office worked with Counsel and other OCERS staff to collect, review and produce OCERS' historical transaction data, relevant communications, and other requested information. Efforts of various OCERS' in-house portfolio managers were necessary to collect and produce the transaction data, and subsequently they worked with Berman Tabacco to answer comprehensive questions posed by Settling Defendants about the transaction data. Further, OCERS' Director of Investment Operations was actively involved in searching for documents and data relevant to the

discovery requests and follow up requested by Settling Defendants that continued right up until the time of the final settlement agreements.

13. **Settlement Negotiations:** With the exception of the proposed settlement with JPMorgan, which was reached prior to OCERS formally joining the litigation, OCERS was an active participant in all settlement negotiations, through extensive discussions with Counsel regarding the strengths and weaknesses of Plaintiffs' claims, potential defenses and risks, and litigation strategy relevant to a potential settlement and the value of cooperation from the settling party or parties. Given that the various settlement discussions were held attorney-to-attorney during the COVID-19 pandemic, I engaged in numerous remote discussions with Counsel before or after each settlement discussion concerning the state of each negotiation. For each proposed Settlement, at the outset OCERS was involved in discussing strategy, approving opening demands, and setting a floor for any resolution. Then, as the negotiations continued, which often stretched several months, I was in frequent contact with Counsel as the parties' respective attorneys held lawyer-to-lawyer negotiations. I remained informed through regular discussions and updates to understand and help formulate strategy regarding settlement demands, counter-offers, and the evolving litigation landscape that informed the parties' negotiations. Further, I was directly involved in obtaining OCERS' formal approval for each settlement through discussions with the Chair of OCERS' Investment Committee and/or the full Investment Committee. In addition, I was also involved in and present for four presentations by attorneys from Berman Tabacco to the OCERS' Investment Committee concerning settlement negotiations and litigation updates, where the Investment Committee authorized settlement tactics or decisions. Ultimately, I

reviewed and authorized the execution of the term sheets and later stipulation of settlements memorializing the agreements with each settling Defendant.

14. **Monitoring of Counsel's Work:** As General Counsel, I was responsible for closely monitoring Counsel and the litigation. In this Action, in addition to the direct involvement described above, I requested and received detailed briefings from Counsel on substantive legal issues and litigation/settlement strategy.

15. I conferred with Berman Tabacco prior to settlement discussions and important court hearings. I have requested from Counsel and received litigation memoranda as well as presentation to better help me monitor this complex litigation and Counsel's efforts.

16. **OCERS Supports the Proposed Settlement and Fee Request:** Throughout this litigation, I have had numerous discussions with Counsel regarding the discovery and investigation efforts, legal risk, and the scope of potential damages. Based on my experience overseeing complex securities and antitrust class action litigation for OCERS, I recognize the risks posed by such complex litigation, where Plaintiffs must ultimately prove damages on a class-wide basis, through class certification and trial.

17. Given this experience, I consider the settlements obtained here to be important and valuable for OCERS and the Settlement Class. I expect the monetary compensation received in connection with the settlements will provide an immediate measure of compensation for Class Member's claims. I also recognize that the additional non-monetary consideration reached during the serial negotiations would, and did, aid in the continued prosecution of the Action and aid in future settlement negotiations.

18. Considering these factors, OCERS supports Plaintiffs' motion for final approval of the settlement and believes that the Settlement is fair, reasonable, and adequate to the Settlement Class. OCERS believes that the Settlement represents a favorable recovery for the Settlement Class, particularly considering the substantial risks of continuing to prosecute the claims in this case and in recovering a judgment larger than the proposed Settlement. Therefore, OCERS strongly endorses approval of the Settlement by the Court.

19. I have also reviewed Counsel's motion for an award of attorneys' fees and reimbursement of expenses. The attorneys' fees requested exactly match the fee schedule that is part of the retainer agreement that OCERS negotiated with Berman Tabacco before becoming involved in the litigation. Thus, OCERS believes that such an award of attorneys' fees is fair and reasonable to the Class. OCERS further believes that Counsel's litigation expenses are reasonable and represent costs and expenses necessary for the prosecution and resolution of the claims in this Action. Based on the foregoing, and consistent with its obligation to the class to obtain the best result at the most efficient cost, OCERS fully supports Counsel's motion for attorney's fees and litigation expenses.

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

Executed on August 17, 2022



Gina M. Ratto