

**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., AND FRONTPOINT FINANCIAL HORIZONS FUND, L.P., 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., JPMORGAN CHASE BANK, N.A. AUSTRALIA BRANCH, BNP PARIBAS, S.A., BNP PARIBAS, AUSTRALIA BRANCH, THE ROYAL BANK OF SCOTLAND GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, RBS N.V., RBS GROUP (AUSTRALIA) PTY LIMITED, UBS AG, UBS AG, AUSTRALIA BRANCH, AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD., COMMONWEALTH BANK OF AUSTRALIA, NATIONAL AUSTRALIA BANK LIMITED, WESTPAC BANKING CORPORATION, DEUTSCHE BANK AG, DEUTSCHE BANK AG, AUSTRALIA BRANCH, HSBC HOLDINGS PLC, HSBC BANK AUSTRALIA LIMITED, LLOYDS BANKING GROUP PLC, LLOYDS BANK PLC, LLOYDS TSB BANK PLC, AUSTRALIA, MACQUARIE GROUP LTD., MACQUARIE BANK LTD., ROYAL BANK OF CANADA, RBC CAPITAL MARKETS LLC, ROYAL BANK OF CANADA, AUSTRALIA BRANCH, 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 VINCENT BRIGANTI AND CHRISTOPHER LOVELL

Vincent Briganti and Christopher Lovell, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. We, Vincent Briganti and Christopher Lovell, are members of the Bar of this Court and, respectively, are a shareholder with the law firm Lowey Dannenberg, P.C. (“Lowey Dannenberg”) and a partner with the law firm Lovell Stewart Halebian Jacobson LLP (“Lovell Stewart” and, with Lowey Dannenberg, “Plaintiffs’ Counsel”). We are the attorneys for the Representative Plaintiffs and submit this Joint Declaration in support of Plaintiffs’ Unopposed Motion for Conditional Class Certification for Purposes of Class Action Settlement with JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, “JPMorgan”).

2. A true and correct copy of the Stipulation and Agreement of Settlement between Representative Plaintiffs and JPMorgan dated November 20, 2018 (the “Settlement Agreement” or “Agreement”), in which JPMorgan agrees to settle this action for \$7,000,000 and provide certain cooperation to Representative Plaintiffs, is attached as Exhibit 1.

3. Lowey Dannenberg’s Firm Resume is attached hereto as Exhibit 2.

4. Lovell Stewart’s Firm Resume is attached hereto as Exhibit 3.

5. **Experience.** At the time the Settlement¹ was being negotiated, Plaintiffs’ Counsel were experienced in prosecuting claims under the Commodity Exchange Act (“CEA”), 7 U.S.C. §§ 1 *et seq.*, Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, and Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961 *et seq.* See Exhibit 2; Exhibit 3. Lowey Dannenberg and Lovell Stewart have previously conducted multiple successful prosecutions that produced pre-

¹ Unless otherwise indicated, capitalized terms herein have the same meaning as in the Agreement.

trial settlements, including what were at the time the first, second, third, and fourth largest class action recoveries under the Commodity Exchange Act.²

6. Mr. Briganti has nearly twenty years of experience in developing and leading the prosecution of federal commodity manipulation, antitrust, and securities litigation matters. This experience includes obtaining, as court-appointed lead or co-lead counsel substantial settlements in similar benchmark manipulation cases, including recent cases alleging manipulation of the London Interbank Offered Rate (“LIBOR”) for Japanese Yen (“Yen-LIBOR”), the Tokyo Interbank Offered Rate (“Euroyen TIBOR”), the Euro Interbank Offered Rate (“Euribor”), and Swiss franc LIBOR, respectively. Lowey Dannenberg negotiated settlements totaling \$236 million on behalf of class members relating to manipulation of the Yen-LIBOR and Euroyen TIBOR, including a \$30 million settlement that received final approval in July 2018. *See Laydon v. Mizubo Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.) ECF Nos. 891 (Jul. 12, 2018), 838 (Dec. 7, 2017), 720 (Nov. 10, 2016) & *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y.), ECF Nos. 423 (Jul. 12, 2018), 389 (Dec. 7, 2017), 298 (Nov. 10, 2016). Lowey Dannenberg has also obtained preliminary approval for a \$22 million settlement in a class action alleging manipulation of Swiss franc LIBOR. *See Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-00871(SHS), (August 16, 2017 S.D.N.Y.), ECF No. 159.

7. Lowey Dannenberg has unparalleled experience in marshalling resources to manage the complex tasks of noticing Class Members of settlements and building plans of allocation for complex financial products. The plans of allocation Lowey Dannenberg developed in the Euribor, Yen-LIBOR, and Euroyen TIBOR litigation have been approved as fair, reasonable and adequate.

² *See In re Sumitomo Copper Litigation*, Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.) (\$149 million settlement); *Hershey v. Pacific Investment Management Corp.*, Case No. 05-C-4681 (RAG) (N.D. Ill.) (\$118.75 million settlement); *In re Natural Gas Commodity Litigation*, Master File No. 03 CV 6186 (S.D.N.Y.) (Marrero, J.) (\$101 million settlement); and *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y.) (Scheidlin, J.) (\$77.1 million settlement).

See, e.g., Sullivan v. Barclays plc, No. 13-cv-2811 (PKC), ECF No. 424, ¶ 21; *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.), ECF No. 891, ¶ 20.

8. Mr. Lovell has more than 40 years of experience with antitrust and commodity futures claims. Mr. Lovell founded and has been the Senior Partner at Lovell Stewart. Lovell Stewart and its predecessors (“the Firm”) have obtained as Court appointed Lead Counsel or Co-Lead Counsel, what were at the times the largest class action recoveries under three federal statutes, two of which (the antitrust laws and commodity laws) are the primary statutes at issue here. *See* Ex. 3. The Firm has successfully tried antitrust and derivatives claims and recovered billions of dollars for the benefit of its clients or class members during the Firm’s history. *Id.*

9. Recently, Judge P. Kevin Castel finally approved settlements negotiated by Lowey Dannenberg and Lovell Stewart totaling \$309 million, relating to alleged manipulation of Euribor and prices of Euribor-based derivatives. *See* Final Approval Order of Settlements with Barclays plc, Barclays Bank plc, Barclays Capital Inc., Deutsche Bank AG and DB Group Services (UK) Ltd., HSBC Holdings plc and HSBC Bank plc, *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y. May 18, 2018), ECF No. 424.

10. **Well-Informed.** Before reaching the Settlement, Plaintiffs’ Counsel was well-informed regarding the strengths and weaknesses of Plaintiffs’ claims. Lowey Dannenberg and Lovell Stewart extensively reviewed and analyzed the following publicly available documents and information: (i) government settlements, including plea, non-prosecution and deferred prosecution agreements as they may relate to BBSW or other benchmarks; (ii) publicly available information relating to the conduct alleged in Plaintiffs’ complaints; (iii) expert and industry research regarding BBSW and BBSW-Based Derivatives traded in the futures and over-the-counter markets; and (iv) prior decisions of this Court and others deciding similar issues.

11. In addition, Plaintiffs' Counsel: (a) conducted an extensive investigation into the facts and legal issues in this action; (b) engaged in extensive negotiations with JPMorgan; and (c) took many other steps to research and analyze the strengths and weaknesses of the claims.

12. **Procedural History.** On August 16, 2016, Representative Plaintiffs commenced this Action against JPMorgan and 33 other Defendants [ECF No. 1 (Class Action Complaint)] in the Southern District of New York (S.D.N.Y.). Plaintiffs brought the case individually and on behalf of a proposed class of U.S. investors who purchased or sold BBSW-Based Derivatives from at least January 1, 2003 to at least December 31, 2012.

13. On December 19, 2016, pursuant to a stipulation dated November 11, 2016 (ECF No. 9), Representative Plaintiffs' filed their Amended Complaint ("AC"). ECF No. 63. The AC asserts claims under Section 1 of the Sherman Act, Sections 6(c), 9, and 22 of the Commodity Exchange Act (CEA), the Racketeer Influenced and Corrupt Organizations Act (RICO), and New York common law. AC ¶¶ 316-72.

14. On February 24, 2017, Defendants separately moved to dismiss for lack of personal jurisdiction under Rule 12(b)(2) (ECF No. 109-31, 133, 137), and for lack of subject matter jurisdiction and failure to state a claim under Rules 12(b)(1) and (6). ECF No. 132, 134-36.

15. On April 28, 2017, Representative Plaintiffs filed their opposition to both of Defendants' motions to dismiss [ECF No. 153-56], and on May 25, 2018 Defendants' filed their replies. ECF No. 163-66.

16. On October 31, 2017, with leave of the Court, Defendants filed a supplemental memorandum of law in support of their motion to dismiss. ECF No. 184-87. On November 14, 2017, Representative Plaintiffs filed their opposition to Defendants' supplemental memorandum. On November 21, 2017, Defendants' filed their supplemental reply under seal. The Court held oral argument on Defendants' motions to dismiss on January 23, 2018. ECF No. 203. While at oral

argument, the Court advised Defendants that they could seek leave to file a separate motion concerning certain Plaintiffs' capacity to sue. On February 2, 2018, Defendants made an application for leave to submit letter briefing on the capacity to sue issue (ECF No. 208), and on February 5, 2018, the Court granted Defendants' request.

17. On February 22, 2018, Defendants filed their letter motion to dismiss the AC for lack of capacity to sue under seal. On March 13, 2018, Plaintiffs filed their opposition letter under seal, and on March 23, 2018, Defendants filed their reply under seal. The letter motion and both of Defendants' earlier motions to dismiss are pending before the Court.

18. **Arm's-Length.** The negotiations leading to the Agreement were entirely non-collusive and strictly arm's-length. During the course of negotiations, Plaintiffs had the benefit of developing information from various sources, including certain publicly available government settlements and orders, other public accounts of alleged manipulation involving BBSW, counsel's investigation into Plaintiffs' claims, and information shared by JPMorgan during the negotiations. We were involved in all aspects of the settlement negotiations on behalf of Plaintiffs.

19. **Settlement Negotiations.** The negotiations with JPMorgan took more than one year, beginning in April 2017 and continuing until the Agreement was executed on November 20, 2018.

20. During the initial settlement negotiations on or around April 12, 2017, Plaintiffs' Counsel and JPMorgan shared their views on the perceived strengths and weaknesses of the litigation as well as JPMorgan's litigation exposure. Over the next several months, Plaintiffs' Counsel and counsel for JPMorgan continued their negotiations reflecting their evolving views of the case, their perceptions of a fair, reasonable and adequate settlement and other cooperation that might be available in the settlement.

21. During these negotiations, Plaintiffs' Counsel and counsel for JPMorgan discussed

the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by JPMorgan, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the settlement.

22. On June 5, 2018, Plaintiffs' Counsel and counsel for JPMorgan signed a Term Sheet that reflected the terms on which the parties agreed, subject to the preparation of a full Settlement Agreement, to settle Plaintiffs' claims against JPMorgan. At the time the Term Sheet was executed, Plaintiffs' Counsel were well-informed about the legal risks, factual uncertainties, potential damages and other aspects of the strengths and weaknesses asserted. The next day, the parties reported to the Court and other Defendants that a settlement had been reached.

23. Following months of arm's-length negotiations, consisting of additional discussions and exchanges of draft settlement terms, Plaintiffs' Counsel, on behalf of Plaintiffs and JPMorgan entered into the Settlement Agreement on November 20, 2018.

24. The Agreement was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations and before any demand or counter-offer was ever made, we were well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims against JPMorgan.

25. The Agreement involves a structure and terms that are common in class action settlements in this District.

26. The consideration that JPMorgan has agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval.

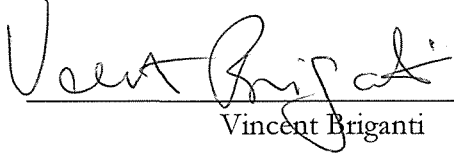
27. Lowey Dannenberg and Lovell Stewart have strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Bank of International Settlements which

shows that trillions of dollars of BBSW-based interest rate swaps and forward rate agreements were traded within the United States from 2003 through 2012.

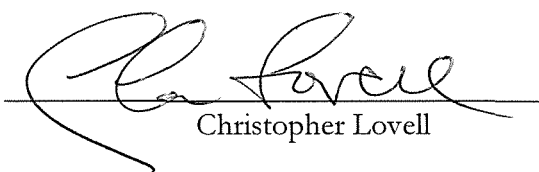
28. Lowey Dannenberg and Lovell Stewart have diligently represented the interests of the Class in this litigation. They investigated and brought the case, and in the process they tolled the statute of limitations. Lowey Dannenberg and Lovell Stewart performed all of the work leading up to and prepared the AC and negotiated with JPMorgan to produce the Agreement. The firms will continue to zealously represent the Class.

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

Dated: November 21, 2018



Vincent Briganti



Christopher Lovell