

**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.

**JOINT DECLARATION OF VINCENT BRIGANTI AND CHRISTOPHER MCGRATH**

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

1. We, Vincent Briganti and Christopher McGrath, are members of the Bar of this Court and, respectively, are the Chairman and a shareholder of 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 Plaintiffs<sup>1</sup> and submit this Joint Declaration in support of Plaintiffs’ Motion for Conditional Class Certification for Purposes of Class Action Settlements with Defendants Credit Suisse AG and Credit Suisse Group AG, and 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, and for Orders Approving Class Notice Plan and Scheduling Hearing for Final Approval (the “Motion”). The statements herein are true and accurate to the best of our personal knowledge, information and belief based on the documents and information referenced herein and information from attorneys at Lowey Dannenberg and Lovell Stewart.

2. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs’ Stipulation and Agreement of Settlement as to Defendants Credit Suisse AG and Credit Suisse Group AG (“Credit Suisse”) dated January 21, 2022 (the “Credit Suisse Settlement Agreement”).

3. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiffs’ Stipulation and Agreement of Settlement as to Defendants 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

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<sup>1</sup> For purposes of this declaration, “Plaintiffs” means Richard Dennis (“Dennis”) and Orange County Employees Retirement System (“OCERS”).

Bank, RBC, and RBS, the “Group Settling Defendants”) dated April 29, 2022 (the “Group Settling Defendants Settlement”).

4. Attached hereto as Exhibit 3 is a true and correct copy of the proposed mailed notice.

5. Attached hereto as Exhibit 4 is a true and correct copy of the proposed publication notice.

6. On December 10, 2021, Plaintiffs submitted a motion seeking conditional certification for purposes of Plaintiffs’ proposed class action settlements with Defendants Australia and New Zealand Banking Group Limited (“ANZ”), Commonwealth Bank of Australia (“CBA”), National Australia Bank Limited (“NAB”) and Morgan Stanley and Morgan Stanley Australia Limited (“Morgan Stanley”). ECF Nos. 488-494. Plaintiffs’ December 10 submission included a detailed procedural history of the case. ECF No. 490 ¶¶7-23. We incorporate the procedural history from the December 10 submission by reference in this Declaration.

7. On January 13, 2022, Plaintiffs submitted a motion seeking approval of a plan and form of notice and the scheduling of a fairness hearing for purposes of Plaintiffs’ six proposed class action settlements with ANZ, CBA, NAB, Morgan Stanley, JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively, “JPMorgan”) and Westpac Banking Corporation (“Westpac”). ECF Nos. 506-14.

8. On February 1, 2022, the Court granted Plaintiffs’ December 10, 2021 motion (*see* ¶6 above) and entered conditional certification orders for purposes of Plaintiffs’ proposed class action settlements with Defendants ANZ, CBA, NAB and Morgan Stanley. ECF Nos. 518-521. The Court also entered superseding conditional certification orders for purposes of Plaintiffs’ proposed class action settlements with Defendants Westpac and JPMorgan. ECF Nos. 517, 522.

9. On February 1, 2022, the Court granted Plaintiffs' January 13, 2022 motion (*see* ¶7 above) and entered orders that approved the plan and form of notice and set a fairness hearing. ECF Nos. 525-530. If the instant Motion is granted, the proposed mailed and publication notices attached hereto as Exhibits 3 and 4 will supersede the versions approved by the Court in connection with the orders it entered on February 1, 2022 approving the form of notice. *See* ECF No. 508, Exs. 2-3.

10. **Experience.** At the time the Settlements with Credit Suisse and the Group Settling Defendants were being negotiated, Plaintiffs' Counsel were experienced in prosecuting claims under the Commodity Exchange Act ("CEA"), 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* ECF Nos. 452-6, 452-7 (firm resumes). Lowey Dannenberg and Lovell Stewart have previously conducted multiple successful prosecutions that produced pretrial settlements, including what were at the time the first, second, third, and fourth largest class action recoveries under the Commodity Exchange Act.<sup>2</sup>

11. Mr. Briganti has twenty-plus years of experience in developing and leading the prosecution of federal commodity manipulation, antitrust, and securities litigation matters. This experience includes recently obtaining, as court-appointed lead or co-lead counsel, over \$1,000,000,000 in settlements in cases involving similar benchmark manipulation cases and other antitrust actions. *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) & *Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y.) (\$307 million in

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<sup>2</sup> *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).

total settlements related to manipulation of Yen-LIBOR and Euroyen TIBOR); *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (settlements totaling \$491.5 million for alleged Euribor manipulation); *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (JSR) (S.D.N.Y.) (settlements totaling \$386.5 million relating to the alleged manipulation of unsecured bonds issued by U.S. government sponsored entities).

12. 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 benchmark manipulation cases have been approved as fair, reasonable and adequate. *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.

13. Christopher Lovell, founding and senior partner of Lovell Stewart, has more than 40 years of experience with antitrust and commodity futures claims. Lovell Stewart and its predecessors (“the Lovell 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* ECF No. 452-7 (firm resume). The Lovell 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.*

14. **Well-Informed.** Before reaching the Settlements with Credit Suisse and the Group Settling Defendants, Plaintiffs’ Counsel was well informed regarding the strengths and weaknesses of Plaintiffs’ claims. Lowey Dannenberg and Lovell Stewart extensively reviewed and analyzed publicly available documents and information, including: (i) government investigation disclosures

and related settlements, including plea, non-prosecution and deferred prosecution agreements concerning 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; (iv) cooperation materials from settling defendants; and (v) prior decisions of this Court and others deciding similar issues.

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

16. **Arm's-Length.** The negotiations leading to the Settlement Agreements 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, and counsel's investigation into Plaintiffs' claims. Negotiations were hard-fought and deliberative, with each side raising issues and arguments that well-represented the interests of their clients. We were involved in all material aspects of the settlement negotiations on behalf of Plaintiffs.

17. **Settlement Negotiations with Credit Suisse.** The Credit Suisse Settlement Agreement was preceded by several months of arm's-length negotiations. Throughout the settlement negotiations, Plaintiffs' Counsel and counsel for Credit Suisse shared their views on the perceived strengths and weaknesses of the litigation—including any updated views of the case, as applicable—as well as Credit Suisse's litigation exposure, their perceptions of a fair, reasonable and adequate settlement, and other cooperation that might be available in the settlement.

18. Negotiations with Credit Suisse began in early May 2021. After more than nine months of back and forth, hard fought and difficult negotiations, Plaintiffs and Credit Suisse executed the Settlement Agreement on January 21, 2022.

19. The Settlement Agreement was not the product of collusion. Before any financial numbers were discussed during the settlement negotiations and before any demand or counteroffers were ever made, we were well-informed about the legal risks, factual uncertainties, potential damages, costs, delay of trial and appeal, and other aspects of the strengths and weaknesses of the claims against Credit Suisse.

20. Lowey Dannenberg and Lovell Stewart believe that the consideration that Credit Suisse has agreed to provide for the benefit of the Class—\$8,875,000 in cash payments and substantial cooperation—is within the range of that which may be found to be fair, reasonable, and adequate at final approval. Plaintiffs' Counsel also believe that Credit Suisse Settlement treats Class members equitably relative to one another.

21. **Settlement Negotiations with the Group Settling Defendants.** The Group Settling Defendants Settlement was preceded by months of arm's length negotiations. Plaintiffs' Counsel and counsel for the Group Settling Defendants exchanged their views on the perceived strengths and weaknesses of the litigation.

22. The negotiations with the Group Settling Defendants began in May 2021. The parties executed the Settlement Agreement on April 29, 2022, after more than ten months of hard-fought negotiations. The Settlement Agreement was not the product of conclusion. Plaintiffs' Counsel and were well-formed about the legal risks, factual uncertainties, potential damages, costs, delay of trial and appeal, and other aspects of the strengths and weaknesses of the claims against the Group Settling Defendants before the settlement negotiations began.

23. Lowey Dannenberg and Lovell Stewart believe that the consideration that the Group Settling Defendants have agreed to provide for the benefit of the Class—\$40,000,000 in cash payments and certain cooperation—is within the range of that which may be found to be fair, reasonable, and adequate at final approval. Plaintiffs’ Counsel also believe that Group Settling Defendants Settlement treats Class members equitably relative to one another.

24. Both Settlements involve a structure and terms that are common in class action settlements in this District, including prior class action settlements in which Lowey Dannenberg and Lovell Stewart have served as Court-appointed counsel.

25. Lowey Dannenberg and Lovell Stewart have strong reason to believe that there are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on, among other things, 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 2016.

26. 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 SAC and negotiated with Credit Suisse and the Group Settling Defendants to produce the Settlement Agreements. The firms will continue to zealously represent the Class.

We declare under penalty of perjury that the foregoing is true and correct to the best of our personal knowledge, information, and belief.

Dated: April 29, 2022

/s/ Vincent Briganti  
Vincent Briganti

Christopher McGrath  
Christopher McGrath