

**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 Plaintiffs¹ and submit this Joint Declaration in support of Plaintiffs’ Consolidated Motion for Conditional Class Certification for Purposes of Class Action Settlements with Morgan Stanley and Morgan Stanley Australia Limited (“Morgan Stanley”), Australia and New Zealand Banking Group Limited (“ANZ”), Commonwealth Bank of Australia (“CBA”), and National Australia Bank Limited (“NAB”). 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. A true and correct copy of the Stipulation and Agreement of Settlement between Representative Plaintiffs and ANZ dated December 10, 2021 (the “ANZ Settlement”) is attached as Exhibit 1.

3. A true and correct copy of the Stipulation and Agreement of Settlement between Representative Plaintiffs and CBA dated December 10, 2021 (the “CBA Settlement”) is attached as Exhibit 2.

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

4. A true and correct copy of the Stipulation and Agreement of Settlement between Representative Plaintiffs and NAB dated December 10, 2021 (the “NAB Settlement”) is attached as Exhibit 3.

5. A true and correct copy of the Stipulation and Agreement of Settlement between Representative Plaintiffs and Morgan Stanley dated October 1, 2021 (the “Morgan Stanley Settlement”) is attached as Exhibit 4.

6. The Morgan Stanley Settlement, ANZ Settlement, CBA Settlement, and NAB Settlement are collectively referred to herein as the “Settlement Agreements.” Unless otherwise defined, capitalized terms herein have the same meaning as in the Settlement Agreements.

7. **Procedural History.** On August 16, 2016, Plaintiffs Dennis, Sonterra Capital Master Fund (“Sonterra”), FrontPoint Financial Services Fund L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P. (collectively, “FrontPoint”), individually and on behalf of a Class of similarly situated investors, commenced this Action against ANZ, CBA, NAB, Morgan Stanley, and other Defendants. ECF No. 1 (Class Action Complaint).² On December 19, 2016, pursuant to a stipulation dated November 11, 2016 (ECF No. 9), these plaintiffs filed their corrected Amended Complaint (“AC”) (ECF No. 63), which asserted 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.

8. On February 24, 2017, Defendants moved to dismiss for lack of personal jurisdiction under Fed. R. Civ. P. 12(b)(2) (ECF No. 109-31, 133, 137), and for lack of subject

² On May 31, 2017, Dennis, Sonterra and FrontPoint agreed to voluntarily dismiss, without prejudice, Defendants BNP Paribas, Australia Branch, Deutsche Bank AG, Australia Branch, JPMorgan Chase Bank, N.A. Australia Branch, Lloyds TSB Bank PLC, Australia, Royal Bank of Canada, Australia Branch, and UBS AG, Australia Branch. ECF No. 168

matter jurisdiction and failure to state a claim under Fed. R. Civ. P. 12(b)(1) and (6). ECF No. 132, 134-36. On April 28, 2017, Dennis, Sonterra and FrontPoint filed their opposition to Defendants' motions to dismiss (ECF Nos. 153-56) and, on May 25, 2017, Defendants filed their replies. ECF Nos. 163-66. On October 31, 2017, after obtaining leave of the Court, Defendants filed a supplemental memorandum of law in support of their motions to dismiss the AC alleging that FrontPoint and Sonterra lacked capacity to sue. ECF Nos. 184-87. On November 14, 2017, Dennis, Sonterra and FrontPoint filed their opposition to Defendants' supplemental memorandum of law under seal. On November 21, 2017, Defendants filed their supplemental reply under seal. The Court held oral argument on January 23, 2018 and directed Defendants to seek leave via letter to raise any capacity issues as a separate motion. ECF No. 203. Defendants submitted their letter seeking leave to file the separate motion, which Dennis, Sonterra and FrontPoint opposed. ECF Nos. 207-08. The Court granted Defendants' request for leave to file a separate motion to dismiss the AC for lack of capacity to sue. ECF No. 208. The parties fully briefed this additional motion to dismiss, which was filed under seal.

9. On November 26, 2018, the Court denied in part and granted in part Defendants' motion to dismiss for lack of subject-matter jurisdiction and failure to state a claim except as to JPMorgan.³ The Court also granted Defendants' motion to dismiss for lack of personal jurisdiction and improper venue except for claims brought by Plaintiff FrontPoint Asian Event Driven Fund, L.P. against Defendant Macquarie Bank Ltd. ECF No. 227.

10. On January 15, 2019, Dennis, Sonterra and FrontPoint filed motions for leave to file an amended complaint and for jurisdictional discovery. ECF Nos. 260-63. Attached to the motion for leave to file an amended complaint was the Proposed Second Amended Complaint

³ See ECF Nos. 227-28. The motions to dismiss were stayed as to JPMorgan pending consideration of the JPMorgan Settlement. ECF No. 227 at 1 n.1, ECF No. 228 at 1 n.1.

(“PSAC”), in which, among other things, Orange County Employees Retirement System (“OCERS”) was added as a plaintiff. ECF No. 263-1.

11. On February 21, 2019, the parties filed a stipulation agreeing to the filing of the PSAC on the Court’s docket and setting a proposed briefing schedule for Defendants’ motion to dismiss. ECF No. 274. On March 4, 2019, the Court “so-ordered” the stipulation. ECF No. 277. On April 3, 2019, Dennis, OCERS, Sonterra and FrontPoint filed the SAC. ECF No. 281.

12. On May 20, 2019, Defendants moved to dismiss the SAC. ECF No. 298-304, 306-08. The same day, Defendants Morgan Stanley and Morgan Stanley Australia Limited, NAB, HSBC Holdings plc and HSBC Bank Australia Limited (collectively, “HSBC”) filed their opposition to the motion for jurisdictional discovery. ECF No. 305.

13. On July 8, 2019, Dennis, OCERS, Sonterra and FrontPoint filed their oppositions to Defendants’ motions to dismiss (ECF Nos. 314-15, 317-18), and their reply in support of their motion for jurisdictional discovery. ECF No. 316. On August 7, 2019, Defendants filed their replies in support of their motions to dismiss. ECF Nos. 324-27.

14. On February 13, 2020, the Court issued an Order that denied in part and granted in part Defendants’ joint motion to dismiss the SAC, granted in part and denied in part Morgan Stanley and Morgan Stanley Australia Limited’s separate motion to dismiss the SAC, granted RBC Capital Markets, LLC’s motion to dismiss, and denied the motion for jurisdictional discovery. ECF No. 347.

15. On February 27, 2020, ANZ and CBA filed a motion for reconsideration of the Court’s Order that found personal jurisdiction over ANZ and CBA concerning OCERS’s claims. ECF Nos. 350-51. On March 12, 2020, Plaintiffs filed their opposition to Defendants ANZ and CBA’s motion for reconsideration. ECF No. 355. On March 19, 2020, Defendants ANZ and CBA

filed their reply in support of their motion for reconsideration. ECF No. 360. On August 4, 2020, the Court denied Defendants' motion for reconsideration. ECF No. 394.

16. Due to the COVID-19 pandemic, on March 27, 2020, Defendants submitted a revised proposed case management plan and scheduling order. ECF No. 361. On April 10, 2020, the Court issued a scheduling order that incorporated the revisions to case deadlines. ECF No. 364. On June 16, 2020, Defendants filed answers to the SAC. ECF Nos. 373, 375-85.⁴

17. On July 27, 2020, BNP filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). ECF Nos. 390-92. On August 5, 2020, Deutsche Bank, UBS, and RBS, and RBC (the "Rule 12(c) Group Movants") also filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) that mirrored the arguments in BNP's motion. ECF Nos. 396-98. On August 5, 2020, Defendant ANZ also filed a motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). ECF Nos. 400-02.

18. On August 28, 2020, Plaintiffs filed their omnibus memorandum in opposition to BNP's and the Rule 12(c) Group Movants' motions for judgment on the pleadings. ECF No. 412. On September 11, 2020, Plaintiffs filed their opposition to ANZ's motion for judgment on the pleadings. ECF No. 415.

19. On September 14, 2020, BNP and the Rule 12(c) Group Movants filed their replies in support of the motions for judgment on the pleadings. ECF Nos. 416-17. On September 25, 2020, ANZ filed its reply in support of its motion for judgment on the pleadings. ECF No. 420. The Court denied ANZ's motion on March 30, 2021 without prejudice. ECF No. 458. BNP and the Rule 12(c) Group Movant's motions were denied on May 11, 2021. ECF No. 469.

⁴ Answers were filed by Defendants UBS AG ("UBS"), BNP Paribas, S.A. ("BNP"), Royal Bank of Canada ("RBC"), CBA, Morgan Stanley, Credit Suisse AG, The Royal Bank of Scotland plc ("RBS"), Westpac, ANZ, and Deutsche Bank AG ("Deutsche Bank").

20. On October 30, 2020, Plaintiffs filed motions concerning discovery disputes about Defendants' objections to the scope of discovery ("Scope of Discovery Motion") and the time period ("Time Period Motion"). ECF Nos. 427-28. On November 9, 2020, Defendants⁵ filed an opposition to Plaintiffs' motions (ECF Nos. 431-32), and ANZ filed a supplemental opposition to both motions. ECF No. 433. On July 12, 2021, the parties advised the Court that they had independently resolved the dispute that was the subject of the Scope of Discovery Motion, and on July 13, 2021, the Court denied Plaintiffs' motion without prejudice to renew it if the parties were unable to resolve any remaining discovery disputes by agreement. ECF No. 471. On September 15, 2021, the Court denied without prejudice the Time Period Motion. ECF No. 476.

21. Plaintiffs and then-remaining defendants ANZ, BNP, CBA, Credit Suisse, Deutsche Bank, Morgan Stanley, RBC, RBS, UBS and Westpac executed an expert stipulation on November 18, 2020, which the Court approved the following day. ECF Nos. 434-35.

22. On March 2, 2021, Plaintiffs filed their motion to conditionally certify the Settlement Class in connection with the proposed class action settlement with Westpac. ECF Nos. 450-54. The Court granted the motion on March 30, 2021. ECF Nos. 457, 459-60.

23. On September 24, 2021, Plaintiffs, with the consent of the non-settling Defendants, asked the Court to extend the deadline to serve requests for admissions under the Case Management and Scheduling Order ("CMO") from September 29, 2021 to November 15, 2021. ECF No. 477. On November 10, 2021, Plaintiffs separately moved for a ten-month extension of

⁵ For Plaintiffs' Time Period Motion, "Defendants" refers to all remaining Defendants other than the Morgan Stanley Defendants and Westpac, to which Plaintiffs' motion is not addressed. For Plaintiffs' Scope of Discovery Motion, "Defendants" refers to ANZ, BNP, CBA, Credit Suisse, Deutsche Bank, Morgan Stanley, RBS, RBC, and UBS.

the November 15, 2021 fact discovery cut-off and related deadlines in the CMO. ECF No. 483-84. These requests remain pending before the Court.

24. **Experience.** At the time the Settlements with ANZ, CBA, NAB, and Morgan Stanley were 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 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 CEA.⁶

25. 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 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 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.)

⁶ 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).

(settlements totaling \$386.5 million relating to the alleged manipulation of unsecured bonds issued by U.S. government sponsored entities).

26. 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.

27. 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 Lovell Firm’s history. *Id.*

28. **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 available documents and information, including: (i) government investigation disclosures and related 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; (iv) cooperation materials from settling defendants; and (v) prior decisions of this Court and others deciding similar issues.

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

30. **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.

31. **Settlement Negotiations.** The Settlement Agreements were preceded by several months of arm's-length negotiations. Throughout the settlement negotiations, Plaintiffs' Counsel and Counsel for ANZ, CBA, NAB, and Morgan Stanley shared their views on the perceived strengths and weaknesses of the litigation—including any updated views of the case, as applicable—as well as views on the respective settling defendant's litigation exposure, their perceptions of a fair, reasonable and adequate settlement, and other cooperation that might be available in the settlement.

32. Negotiations with ANZ and CBA began in November 2020. After numerous discussions concerning each side's strengths and weaknesses in the litigation, Representative

Plaintiffs and ANZ and CBA reached agreement on a binding term sheet on March 20, 2021. Several more months of negotiations were necessary to reach agreement on the scope of obligations detailed in the ANZ and CBA Settlements. After more than eight months of back and forth, hard fought and difficult negotiations, Representative Plaintiffs and ANZ executed the ANZ Settlement on December 10, 2021, and CBA and Representative Plaintiffs executed the CBA Settlement on December 10, 2021.

33. Morgan Stanley and Representative Plaintiffs began discussing a potential settlement of the Action in December 2020. These negotiations were also hard fought, involving significant discussion of each side's positions and applicable risks to the case. Representative Plaintiffs and Morgan Stanley reached agreement on a term sheet on February 19, 2021. After several more months of negotiations over the specific terms of the agreement, Morgan Stanley and Representative Plaintiffs executed the Morgan Stanley Agreement on October 1, 2021.

34. Following preliminary discussions at earlier points in the litigation, Representative Plaintiffs and NAB began settlement discussions in May 2021 that were both hard fought and fast paced. After discussions concerning each side's strengths and weaknesses in the litigation and the risks and uncertainties the parties would face in litigation, Representative Plaintiffs and NAB reached agreement on a settlement term sheet that they executed on June 17, 2021. Additional negotiations continued to resolve the terms of the agreement, and the parties executed the NAB Settlement on December 10, 2021.

35. The Settlement Agreements were 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 these settling defendants.

36. The Settlement Agreements 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.

37. Lowey Dannenberg and Lovell Stewart believe that the consideration that settling defendants have agreed to provide—Morgan Stanley— \$7,000,000; ANZ— \$35,500,000; CBA— \$35,000,000; and NAB— \$27,000,000 for the benefit of the Class and substantial cooperation— is within the range of which may be found to be fair, reasonable, and adequate at final approval. Plaintiffs' Counsel also believe that the Settlement Agreements treat Class members equitably relative to one another.

38. 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.

39. 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 settling defendants to produce 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: December 10, 2021

/s/Vincent Briganti
Vincent Briganti

Christopher M. McGrath
Christopher McGrath