

**UNITED STATES DISTRICT COURT  
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 the Representative Plaintiffs<sup>1</sup> and submit this Joint Declaration in support of Representative Plaintiffs’ Motion for Conditional Class Certification for Purposes of Class Action Settlement with Westpac Banking Corporation (“Westpac”), for a Superseding Order for Conditional Certification for Purposes of Class Action Settlement with JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (“JPMorgan”), and for an Order Issuing Class Notice of Proposed Settlements with Westpac and JPMorgan. The statements herein are true and accurate to the best of our personal knowledge, information and belief.

2. A true and correct copy of the Stipulation and Agreement of Settlement between Representative Plaintiffs and Westpac dated March 1, 2021 (the “Westpac Settlement”) is attached as Exhibit 1.

3. A true and correct copy of the Amendment to Stipulation and Agreement of Settlement between Representative Plaintiffs and JPMorgan dated March 1, 2021 (the “JPMorgan Amendment”) is attached as Exhibit 2.<sup>2</sup>

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<sup>1</sup> “Representative Plaintiffs” means (i) as to the settlement with JPMorgan, 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., Fund Liquidation Holdings, LLC, and any subsequently named plaintiff(s), including but not limited to Orange County Employees Retirement System (“OCERS”), and any of their assignees that may exist now or in the future; and (ii) as to Westpac, Richard Dennis and OCERS and any subsequently named plaintiff(s) that may be added to this Action through amended or supplemental pleadings.

<sup>2</sup> In connection with Plaintiffs’ motion seeking conditional certification of their settlement with JPMorgan, Plaintiffs submitted the Stipulation and Agreement of Settlement (“JPMorgan Settlement”) as an exhibit to the Declaration of Vincent Briganti and Christopher Lovell dated November 21, 2018. ECF No. 225. The Court entered an Order that

4. A true and correct copy of the Declaration of Linda V. Young, Vice President of Media for A.B. Data, Ltd. is attached hereto as Exhibit 3.

5. A true and correct copy of the proposed mailed notice is attached hereto as Exhibit 4.

6. A true and correct copy of the proposed publication notice is attached hereto as Exhibit 5.

7. A true and correct copy of Lowey Dannenberg's Firm Resume is attached hereto as Exhibit 6.

8. A true and correct copy of Lovell Stewart's Firm Resume is attached hereto as Exhibit 7.

9. **Procedural History.** On August 16, 2016, Plaintiffs Richard Dennis, Sonterra Capital Master Fund, FrontPoint Financial Services Fund L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P., individually and on behalf of a Class of similarly situated investors, commenced this Action against Westpac and other Defendants. ECF No. 1 (Class Action Complaint).<sup>3</sup> 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.

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conditionally certified a settlement class in connection with the JPMorgan Settlement on November 28, 2018. ECF No. 229.

<sup>3</sup> On May 31, 2017, Plaintiffs 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.

10. 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 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, Plaintiffs 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 Plaintiffs FrontPoint and Sonterra<sup>4</sup> lacked capacity to sue. ECF Nos. 184-87. On November 14, 2017, Plaintiffs 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 Plaintiffs 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.

11. 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.<sup>5</sup> 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.

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<sup>4</sup> "FrontPoint" refers to FrontPoint Financial Services Fund, L.P., FrontPoint Asian Event Driven Fund, L.P., and FrontPoint Financial Horizons Fund, L.P. "Sonterra" refers to Sonterra Capital Master Fund, Ltd.

<sup>5</sup> 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.

12. On January 15, 2019, Plaintiffs 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 (“PSAC”), in which Plaintiffs among other things added Orange County Employees Retirement System (“OCERS”) as a Plaintiff. ECF No. 263-1.

13. 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, Plaintiffs filed the SAC. ECF No. 281.

14. 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, National Australia Bank, Limited (“NAB”), HSBC Holdings plc and HSBC Bank Australia Limited (collectively “HSBC”) filed their opposition to Plaintiffs’ motion for jurisdictional discovery. ECF No. 305.

15. On July 8, 2019, Plaintiffs 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.

16. 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 Plaintiffs’ motion for jurisdictional discovery. ECF No. 347.

17. On February 27, 2020, Defendants Australia and New Zealand Banking Group Ltd. (“ANZ”) and Commonwealth Bank of Australia (“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.

18. 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.<sup>6</sup>

19. 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.

20. 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.

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<sup>6</sup> 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”).

21. 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. Defendants' motions for judgment on the pleadings are pending before the Court.

22. On October 30, 2020, Plaintiffs filed motions for discovery concerning discovery disputes about Defendants' objections to the scope of discovery ("Scope of Discovery Motion") and time period ("Time Period Motion"). ECF Nos. 427-28. On November 9, 2020, Defendants<sup>7</sup> filed an opposition to Plaintiffs' motions (ECF Nos. 431-32), and ANZ filed a supplemental opposition to both motions. ECF No. 433. Plaintiffs' motions for discovery are pending before the Court.

23. **Experience.** At the time the Westpac Settlement<sup>8</sup> 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 Exhibits 6-7. Lowey Dannenberg and Lovell Stewart have previously conducted multiple successful prosecutions that produced pre-trial settlements, including what were at the time the first, second, third, and fourth largest class action recoveries under the Commodity Exchange Act.<sup>9</sup>

24. Mr. Briganti has twenty plus years of experience in developing and leading the prosecution of federal commodity manipulation, antitrust, and securities litigation matters. This

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<sup>7</sup> For Representative Plaintiffs' Time Period Motion, "Defendants" refers to all remaining Defendants other than the Morgan Stanley Defendants and Westpac, to which Representative Plaintiffs' motion is not addressed. For Representative Plaintiffs' Scope of Discovery Motion, "Defendants" refers to ANZ, BNP, CBA, Credit Suisse, Deutsche Bank, Morgan Stanley, RBS, RBC, and UBS.

<sup>8</sup> Unless otherwise indicated, capitalized terms herein have the same meaning as in the Westpac Settlement.

<sup>9</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).

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 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).

25. 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.

26. 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 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.*

27. **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 publicly 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.

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

29. **Arm's-Length.** The negotiations leading to the Westpac Settlement 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.

30. **Settlement Negotiations.** The settlement negotiations with Westpac spanned several months and were concluded on March 1, 2021 when the Settlement was executed.

31. Throughout the settlement negotiations, Plaintiffs' Counsel and Westpac's counsel exchanged their respective views on the perceived strengths and weaknesses of the litigation, as well as counsel's perception of a fair, reasonable and adequate settlement. As the settlement discussions progressed, Plaintiffs' Counsel and counsel for Westpac negotiated the material terms of the Settlement, including the amount of the monetary consideration, the scope of the cooperation to be

provided by Westpac, the scope of the releases, and the circumstances under which the Parties would have the right to terminate the Settlement.

32. Following several months of arm's-length negotiations, on October 27, 2020, Plaintiffs' Counsel and Westpac's counsel signed a Memorandum of Understanding ("MOU") that reflected the material terms on which the parties agreed, subject to the preparation of a full stipulation of settlement, to settle Representative Plaintiffs' claims against Westpac. At the time the MOU 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.

33. Following several months of additional arm's-length negotiations and exchanges of settlement agreement drafts and related settlement papers, Plaintiffs' Counsel, on behalf of Representative Plaintiffs, and Westpac entered into the Westpac Settlement on March 1, 2021.

34. The Settlement was not the product of collusion. Before any financial numbers were discussed during 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, costs, delay of trial and appeal, and other aspects of the strengths and weaknesses of the claims against Westpac.

35. The Settlement involves 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.

36. Lowey Dannenberg and Lovell Stewart believe that the consideration that Westpac has agreed to provide—a \$25,000,000 payment for the benefit of the Class 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 Settlement treats Class members equitably relative to one another.

37. 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.

38. 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 Westpac to produce the Westpac Settlement. The firms will continue to zealously represent the Class.

39. **The JPMorgan Amendment.** Section 24 of the JPMorgan Settlement provides that “[i]f any Other Settlement . . . is reached prior to the Fairness Hearing, the ‘Settlement Class’ definition in Section 1(H), as well as the terms contained within the ‘Cooperation,’ ‘Release and Covenant Not to Sue,’ and ‘Termination’ provisions herein (as described in Sections 4, 12, and 21 respectively) shall be no less favorable to JPMorgan than the corresponding term or provision applicable to any Other Settlement.”

40. JPMorgan has asserted that the Settlement Class and the Release and Covenant Not To Sue provisions in the Westpac Settlement are more favorable than those in the JPMorgan Settlement and the Representative Plaintiffs have not objected. Accordingly, the Representative Plaintiffs and JPMorgan have executed the JPMorgan Amendment in order to make the “Settlement Class” and “Release and Covenant Not To Sue” provisions in the JPMorgan Settlement

coterminous with those provisions in the Westpac Settlement. No monetary terms in the JPMorgan Settlement were amended.

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

Dated: March 1, 2021

                  /s/Vincent Briganti                    
Vincent Briganti

                  Christopher M. McGrath                    
Christopher McGrath