UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: INTEREST RATE SWAPS ANTITRUST LITIGATION	MDL No. 2704 Master Docket No. 16 MD 2704 (JPO)
This Document Relates to: All Class Action Cases	Hon. J. Paul Oetken

JOINT DECLARATION OF DANIEL L. BROCKETT AND MICHAEL B. EISENKRAFT IN SUPPORT OF (1) MOTION FOR FINAL APPROVAL OF THE CREDIT SUISSE AND NEW SETTLEMENT AGREEMENTS, CERTIFICATION OF THE SETTLEMENT CLASSES, AND FINAL APPROVAL OF THE PLANS OF ALLOCATION, AND (2) MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

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Pursuant to 28 U.S.C. § 1746, we, Daniel L. Brockett and Michael B. Eisenkraft, declare as follows:

1. We are, respectively, partners of the law firms of Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") and Cohen Milstein Sellers & Toll, PLLC ("Cohen Milstein"). Our firms are interim co-lead counsel ("Co-Lead Counsel") for the class in the above-captioned action (the "Action"). By separate orders dated July 11, 2024, the Court granted preliminary approval to the Credit Suisse Settlement Agreement and the New Settlement Agreement (collectively, the "Settlements"), and preliminarily appointed our firms as Co-Lead Counsel for the Settlement Classes. ECF Nos. 1084, 1085 (1:16-md-02704). We have been actively involved in investigating, prosecuting, and resolving this Action since 2015. We are familiar with the case history and have personal knowledge of the matters set forth herein.

2. Collectively, the Settlements provide for $71 million in cash payments (the "Settlement Funds") to members of the Settlement Classes. The Settlements would resolve the Action with respect to all Defendants.

3. At the same time, the Settlements avoid the substantial risk, expense, and delay of taking this Action to trial against the Settling Defendants, including the risk that the Settlement Classes would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation.

4. The Settlements were reached after years of hard-fought litigation and extensive arm's-length negotiations among experienced counsel. Based on our extensive pre-suit investigation, our familiarity with the challenges the Action faces after litigating it for over nine years, and a thorough analysis of the record including our work with world-class experts during the class-certification process, we believe the Settlements are the best results possible for the

Settlement Classes in the circumstances. This is particularly true because of the Court's decision denying class certification and the fact that an investigation by the Commodity Futures Trading Commission ("CFTC") that opened after Co-Lead Counsel filed this lawsuit has resulted in no filed action and no recovery or relief for class members, as far as Co-Lead Counsel are aware.

5. For these reasons and those set forth below, we believe the Settlements should be approved. We therefore respectfully submit this declaration in support of Plaintiffs' motion for final approval of the Settlements, and in support of Plaintiffs' and Co-Lead Counsel's motion for an award of attorneys' fees, expenses, and for named Plaintiffs' service awards.

I. CO-LEAD COUNSEL'S PROSECUTION OF THE ACTION

6. This case is extraordinarily complex and required years of significant investments in time and resources, even relative to other major antitrust class actions. The case examines collusion in the interest rate swaps ("IRS") market, a vital and complex financial market that has existed for decades and enables numerous firms to perform critical risk-management and hedging functions. Plaintiffs allege a conspiracy dating back to 2010 or earlier that impacted multiple boycotted market entrants, including anonymous all-to-all trading platforms.

7. To prosecute the case on behalf of the class, we gathered many millions of documents and records from a myriad of parties and third parties, took or defended approximately 140 depositions in three countries, and employed complex economic theories and reams of data to show antitrust impact and damages. In preparing Plaintiffs' damages model, Plaintiffs and their experts analyzed more than 6 billion IRS transaction records and 28 billion quote records covering $684 trillion in notional volume transacted. These were drawn from some 36 different sets of quote and transactional data, all of which had to be cleaned, merged, and analyzed at enormous cost and difficulty. And at every turn, Co-Lead Counsel faced numerous, well-funded defense counsel, all of whom fought zealously for their clients.

8. In sum, over the past several years, Co-Lead Counsel expended enormous amounts of time and resources working for the benefit of the class. Co-Lead Counsel's work has included, among other things:

- Pre-suit investigation of the facts and legal theories that formed the basis for Plaintiffs' allegations, including reviewing publicly available information, identifying and interviewing key industry insiders, and consulting with industry experts to understand the IRS market structure and economics;
- Successfully defending against Defendants' motions to dismiss, including lengthy briefs and extensive oral argument;
- Negotiating extensive document discovery with Defendants and third parties, resulting in millions of pages of produced documents which Plaintiffs reviewed;
- Negotiating extraordinarily complex transactional data discovery from Defendants and third parties such as the Depository Trust & Clearing Corporation ("DTCC," a central repository of IRS date) and LCH (a major IRS clearinghouse), including evaluation of sample data productions, extensive database-by-database analysis and correspondence to interpret Defendants' and third parties' productions, and ultimately analyzing in excess of 30 terabytes of data produced by Defendants and third parties;
- Litigating numerous discovery motions, including disputes over Defendants' search terms, Defendants' production of phone logs, Defendants' production of sufficient privilege logs, Defendants' attempts to challenge named plaintiffs' standing, and discovery disputes with third parties;
- Taking and defending over 140 depositions, including many outside of the United States;
- Responding to broad interrogatories and requests for admission, including preparing (in response to Defendants' contention interrogatories) more than 120 pages of narrative history of the alleged conspiracy with citation to more than three thousand record documents;
- Working with non-testifying experts to understand platform construction and operation, central clearing, and Dodd-Frank financial regulations and risk assessments, among other issues;
- Briefing a motion for class certification, consisting of a 60-page opening memorandum with 212 exhibits, including two expert reports, an 81-page reply brief with over 100 exhibits, including two more expert reports, and *Daubert* motions, oppositions, and replies;

- Working with two world-renowned economists to develop a class certification model based on cutting-edge economic theory, extensive real-world comparator evidence, and a damages model that required creation of a highly comprehensive set of observations of real-world interest rate swap transactions, drawing on more than 30 terabytes of data;

- Deposing Defendants' three testifying experts and defending depositions of Plaintiffs' two testifying experts;

- Negotiating the two Settlements now before the Court, including preparing for and attending a mediation, as well as months of negotiations with Defendants; and

- Successfully briefing the Court's preliminary approval of the Settlements and managing the notice and allocation process in concert with expert settlement administrators.

A. Co-Lead Counsel's Efforts to Uncover the Wrongdoing and Plead the Initial Claims

1. Co-Lead Counsel conduct extensive pre-filing investigations and file a best-in-class initial pleading

9. Before filing suit, Co-Lead Counsel invested months of attorney time and significant expenses in investigating the possibility of an anticompetitive boycott in the IRS market. This investigation was carried out from scratch, without any precipitating government investigations or public reports.

10. Based on our extensive pre-filing investigation, Co-Lead Counsel filed the first complaint in the Action in November 2015. ECF No. 1 (1:15-cv-09319-SAS). Our 266-paragraph initial complaint alleged, for the first time in a public forum, Defendants' successful efforts to boycott potential new entrants into the interest rate swaps market.

2. Co-Lead Counsel win their leadership battle while continuing the investigation and filing the Amended Class Action Complaint

11. In February 2016, Co-Lead Counsel filed the Amended Class Action Complaint. ECF No. 121 (1:15-cv-09319-SAS). At 105 pages and 320 paragraphs, the Amended Complaint elaborated upon the allegations against the Defendants. Following the filing of a copycat lawsuit

in the Northern District of Illinois, and the filing of complaints by the boycotted Tera and Javelin platforms in the Southern District of New York, pursuant to a June 2016 order of the Judicial Panel on Multidistrict Litigation, all cases, and follow-on cases, were consolidated in the Southern District of New York for pretrial proceedings. *See, e.g.*, ECF No. 161 (1:15-cv-09319).

12. Shortly thereafter, Quinn Emanuel and Cohen Milstein submitted their application to be appointed as Co-Lead Counsel. ECF No. 176 (1:15-cv-09319); ECF No. 74 (1:16-md-02704). This leadership application detailed how now-Co-Lead Counsel recognized similar market dynamics in the IRS market as had been seen in the CDS market, and how Quinn Emanuel identified and interviewed dozens of market participants and confidential witnesses, many of whom had senior roles in the industry. In addition, Co-Lead Counsel reviewed dozens of academic and news articles, performed a thorough search of the public domain, and consulted leading industry experts over the course of many months—ultimately uncovering the alleged conspiracy at issue in this litigation.

13. Judge Engelmayer issued a detailed opinion and Order analyzing the requisite factors, legal standard, and applicant firms' contributions to the litigation. ECF No. 186 (1:15-cv-09319); ECF No. 99 (16-md-02704). In that order, Quinn Emanuel and Cohen Milstein were appointed as Interim Co-Lead Counsel based upon their extensive experience and contributions to developing this case. *Id.*

14. Following the filing of this lawsuit, the CFTC opened an investigation into potential collusion in the IRS market. As far as we are aware, that investigation did not result in any publicly filed case, penalties, or settlements.

3. Co-Lead Counsel continue the investigation and file the Amended Class Action Complaint

15. In September 2016, Co-Lead Counsel filed the Consolidated Amended Class Action Complaint. ECF No. 113 (1:16-md-02704).[1] At 129 pages and 373 paragraphs, the amended complaint was nearly one and a half times the length of the initial pleading. It added new allegations based on months of additional analysis and investigation, and new details based on additional interviews with former industry insiders.

16. In December 2016, Co-Lead Counsel filed the Second Consolidated Amended Class Action Complaint ("SCAC") following review of Defendants' Motions to Dismiss. ECF No. 142. The SCAC totaled 144 pages and 406 paragraphs, adding additional allegations regarding Defendants' conspiracy. As the Court noted in its opinion denying in part Defendants' motions to dismiss, the SCAC included allegations of parallel conduct and plus factors sufficient to assert the existence of a conspiracy, including:

- Parallel refusals to trade on the Javelin, TeraExchange ("Tera"), and TrueEX anonymous all-to-all IRS trading platforms;
- Common excuses and vocabulary when dealing with IRS inter-dealer brokers ("IDBs") and Tera;
- Similar tactics by Defendants at meeting with Javelin and Tera, including a bait and switch—sending personnel from Defendants' strategic investment groups (who Plaintiffs allege sought to stop the development of anonymous all-to-all IRS trading platforms) instead of IRS trading personnel (with whom the platforms had expected to meet);
- Parallel withholding of clearing services by Defendants' affiliated futures clearing merchants ("FCMs"), entities which facilitated the central clearing and risk-management of IRS trades;
- Similar pressure applied to customers who expressed interest in trading on Javelin or Tera;

[1] Unless otherwise noted, docket references *infra* are to 1:16-md-02704.

- Parallel adherence to "name give up" in trading protocols, a practice that Plaintiffs allege Defendants use to identify and retaliate against buy-side firms trading on certain platforms that Defendants sought to reserve exclusively for the use of IRS dealer banks like themselves; and

- Common direction of third-party (and former Defendant) Tradeweb causing it not to launch anonymous all-to-all trading and otherwise using Tradeweb as an alleged smokescreen for their collusion.

ECF No. 237 at 57-59.

4. Co-Lead Counsel oppose Defendants' motions to dismiss

17. In January 2017, Defendants filed motions to dismiss the SCAC. ECF Nos. 159-161 (Dealer Defendants); ECF Nos. 165-67 (ICAP); ECF Nos. 163-64 (HSBC); ECF Nos. 169-71 (Tradeweb). In addition to more than 100 pages of briefs, Defendants submitted numerous supporting exhibits in support of the motions. ECF No. 237 at n.2.

18. In February 2017, Co-Lead Counsel filed more than 100 pages of briefing in opposition to Defendants' motions to dismiss. ECF No. 193. Defendants filed an additional 70 pages of reply briefs. ECF Nos. 206-08, 210, 212.

19. After extensive briefing on Defendants' Motions to Dismiss, the Court held oral argument on whether Plaintiffs had pleaded viable claims against Defendants, which was held on May 23, 2017. *See, e.g.*, ECF Nos. 214, 233 (transcript of proceeding). The Court acknowledged the parties' detailed briefing, stating: "Let me begin by paying all of you a well-deserved compliment. The briefs in this case across the board were absolutely superb. I know how hard everyone here works. From the bench it's paying a compliment, saying this is really as good as it gets, and I'm very grateful. Your clients should be too." ECF No. 233 at 3:3-8.

20. In July 2017, the Court issued a 108-page order denying Defendants' motions to dismiss with respect to claims against Dealer Defendants from 2013-2016. ECF No. 237. (The exception was HSBC, which was dismissed as a Defendant.)

21. In October 2017, Defendants each answered the SCAC. ECF Nos. 271-293.

B. Co-Lead Counsel's Discovery Efforts

22. In August 2017, shortly after the Court's decision on Defendants' motions to dismiss, Co-Lead Counsel diligently set about to coordinate discovery, proposing a schedule. ECF No. 245. Co-Lead Counsel thereafter vigorously pursued discovery in this case over the course of nearly two years. Discovery at every turn was long and hard fought.

23. Fact discovery ultimately closed in April 2019, except for certain depositions that were taken after the close of fact discovery, *see* ECF No. 777, and responses to certain written discovery requests, which were due on May 28, 2019, *see* ECF No. 781.

1. Co-Lead Counsel utilize discovery and ongoing investigations to amend complaints to add relevant allegations

24. Co-Lead Counsel diligently kept abreast of the extensive discovery produced in the litigation, as well as information newly uncovered through Co-Lead Counsel's investigative efforts, that warranted seeking leave to amend the operative complaint. Thus, Co-Lead Counsel continued to develop the record of allegations of Defendants' anticompetitive actions, and Class Plaintiffs' complaints reflected this.

25. For example, in February 2018, Plaintiffs filed their motion for leave to amend and the Proposed Third Consolidated Amended Complaint, proposing the addition of Plaintiff Los Angeles County Employees Retirement Association ("LACERA") and new substantive allegations against Defendants. ECF Nos. 336-339. The Court granted Plaintiffs' request to amend to add LACERA as an additional putative Class Representative, and certain additional substantive allegations regarding the 2013-2016 conspiracy period. ECF No. 390 at 16-17.

26. In November 2018, Plaintiffs sought leave to file a Proposed Fourth Consolidated Amended Complaint. ECF Nos. 623-626. Among other proposed additions, the Proposed

FCAC added allegations of the conspiracy targeting the IRS clearinghouse IDCG, the IRS trading platform Bloomberg, and the IRS IDB Tradition, and further substantiating Plaintiffs' existing 2013-2016 allegations. *Id.* The Court again granted Plaintiffs' request to amend allegations pertaining to the 2013-2016 timespan, but otherwise denied the motion. ECF No. 735.

2. Co-Lead Counsel negotiate the production of, and then review, over 9 million pages of documents

27. This case involves eleven Dealer Defendants (Bank of America, Barclays, BNPP, Citi, Credit Suisse, Deutsche Bank, Goldman Sachs, JPMorgan, Morgan Stanley, RBS, and UBS) and numerous third parties, including the allegedly boycotted platforms, some of whom brought suit separately (Javelin, Tera, TrueEx), dozens of buy-side firms that were allegedly harmed by the conspiracy (including major institutional investors like Blackrock), and central clearinghouses (such as LCH and the DTCC). All of these entities produced documents, which Plaintiffs worked diligently to review.

28. Defendants issued 87 requests for production. These requests called for not only emails and other types of correspondence, but also complex financial data and records. Working with Co-Lead Counsel, the Class Representatives spent extensive time searching for, reviewing, and eventually producing responsive documents. Altogether, the Class Representatives produced hundreds of thousands of pages of documents. That review included a detailed privilege analysis to avoid the production of documents protected by the attorney client privilege or work product protection.

29. Co-Lead Counsel issued 174 requests for production on the Defendants. In total, Defendants produced more than 9,400,000 pages of documents.

30. Co-Lead Counsel also served over 100 subpoenas to third-party entities or corporate families. In response, those third parties produced over 100,000 pages of documents.

31. Given this extraordinary volume of information, Co-Lead Counsel employed a variety of review techniques. We used cutting-edge technology-assisted review and predictive coding tools to efficiently identify the most important documents. We supplemented these tools with linear review by specialized discovery attorneys of potentially important document sets and targeted searches. From more than nine million pages of produced documents, we were able to identify hundreds of key documents that we believed supported Plaintiffs' claims.

3. Co-Lead Counsel respond to, and issue, a significant volume of written discovery

32. The volume of written discovery in this case was also significant. Both sides issued and responded to numerous written discovery requests.

33. Defendants issued broad interrogatories to the Class Representatives. Our responses and objections span hundreds of pages in length, including more than 120 pages of extended narrative description of Defendants' conspiracy, replete with record cites to documents and depositions. Defendants also issued many requests for admission to all Plaintiffs. Collectively, the Class Representatives' responses and objections to these requests for admission span 97 pages.

4. Co-Lead Counsel negotiate for the production of voluminous and complicated transactional data

34. To support the motion for class certification, Co-Lead Counsel negotiated and analyzed an unusually large and comprehensive amount of transactional data, which was essential to our expert reports. Each Defendant produced detailed transaction data reflecting its IRS transactions. Tradeweb and Bloomberg similarly produced extensive data about the transactions it facilitated, along with productions of incredibly large data sets received from

DTCC and LCH. And IDBs such as ICAP, Tullett Prebon, Dealerweb, and Tradition also produced extensive data. Along the way, Co-Lead Counsel navigated numerous challenges, including complications associated with negotiation and production.

35. Co-Lead Counsel initially requested transactional data from the Defendants in March 2017. Between March 2017 and May 2018, the parties engaged in dozens of meet and confers regarding these requests and exchanged dozens of detailed letters. *See* ECF No. 514. Defendants wanted to conclude negotiating the scope of Defendants' data production prior to negotiating a joint request for data from the DTCC. *Id.* The scope of Defendants' data production (notwithstanding later correspondence to confirm the meaning of their data) was not resolved until late April 2018. *Id.*

36. Defendants' initial data productions often lacked critical fields and explanations for the fields provided, and many were delayed or required supplementation. *Id*. Accordingly, Co-Lead Counsel recognized early on that these complications would necessitate an extension of the case schedule and intervening deadlines, and promptly raised the issue with the Court. *Id*.

37. In May 2018, the DTCC first produced exemplar data to confirm that the data specifications were correct. *Id*. Technical issues concerning the fields available in different types of DTCC reports prolonged negotiations for several months. *Id*. The DTCC's data ultimately took months to produce, and comprised approximately 150 fields for each of the millions of IRS transactions. *Id.*

38. The data productions Defendants, Tradeweb, Bloomberg, LCH, ICAP, Tullett Prebon, Dealerweb, Tradition, and the DTCC ultimately made are massive in scope, even for a complex antitrust class action. The DTCC data alone represented more than 30 terabytes of information.

39. It is hard to overstate how much information that figure represents—usually, data measured in terabytes describes libraries of big multimedia files, such as hundreds of hours of 4K video, or hundreds of thousands of high-quality photos. The data collected in Defendants' and third parties' productions are lines of comma-separated text representing tens of millions of IRS transactions—the equivalent of *billions* of printed pages of information.

40. Data of this volume is not easy to work with. It cannot be stored in familiar formats such as Microsoft Excel spreadsheets. Analyzing it required writing new, specialized computer code, and took thousands of hours of processing by high-powered computers not available in consumer markets. Processing and "cleaning" this data took months; the process was sufficiently arduous that, despite millions of dollars in expert fees, Plaintiffs' damages experts were unable to complete the process for all data sources by the date of their opening class certification report. ECF No. 725-1 Appendix 3.

41. Apart from sheer volume, Defendants' and the third parties' data was also extremely complex. Just understanding the Defendants' data required Co-Lead Counsel repeatedly to seek clarification in follow-up questions to Defendants. By way of example, Co-Lead Counsel and counsel for JPMorgan exchanged myriad formal letters, alongside many more emails, between December 2017 to July 2018 concerning JPMorgan's data production. Those letters concern a huge array of topics, including field definitions (*e.g.*, what does a particular field mean or represent), field-value definitions (*e.g.*, what does a particular value in a given field represent), missing data (*e.g.*, why is there no data for a particular date range), anomalous entries (*e.g.*, why is a given field value, expected to be positive, negative sometimes), and units of observation (*e.g.*, what triggers or events are necessary for a particular dataset to record an observation). Co-Lead Counsel had similar exchanges with each Defendant, as well as

third parties, and consumed hundreds of hours of Co-Lead Counsel's time as well as their experts.

5. Co-Lead Counsel take and defend more than 140 depositions

42. Fact depositions in this case spanned late 2018 until mid-2019. Many depositions occurred internationally, whether in London, England, where many of the conspiracy participants worked, or in Switzerland for certain third parties. The huge number of depositions, combined with the relatively tight schedule for completing them, required Co-Lead Counsel to work around the clock for months on end, often conducting multiple depositions in different locations on the same day and back-to-back.

43. Co-Lead Counsel took 81 depositions of Defendants' witnesses. This included seven from Bank of America, eight from Barclays, five from BNP Paribas, ten from Citibank, seven from Credit Suisse, seven from Deutsche Bank, eight from Goldman Sachs, eight from JPMorgan, nine from Morgan Stanley, five from RBS, and seven from UBS. These depositions required Co-Lead Counsel to master complex facts relating to the IRS market in order to effectively examine witnesses about those topics.

44. Given the nature of the conspiracy in this case—a group boycott of trading platforms and data transparency providers—platform discovery was also critical. Co-Lead Counsel also took part in 28 depositions of the allegedly boycotted platforms TeraExchange, Javelin, and TrueEx who had also filed suit against Defendants. Co-Lead Counsel also took depositions of third parties Plaintiffs alleged would have pursued anonymous all-to-all trading absent Defendants' conspiracy—including four depositions from Tradeweb, two from Bloomberg, and five from Tradition.

45. Plaintiffs took dozens of additional critical third-party depositions. This included depositions from PIMCO Investment Management and WAMCO Asset Management (who

conducted IRS trades on behalf of certain named plaintiffs), Gottex (a broker specializing in OTC IRS), large institutional traders who deal in IRS such as Chimera Investment Corporation and Metlife Insurance, and others.

46. Co-Lead Counsel also defended four depositions of witnesses from the Class Representatives. This included two 30(b)(6) depositions for each of Chicago Teachers Pension Fund and LACERA.

47. In total, Co-Lead Counsel took and defended more than 140 fact depositions during the span of under one year.

6. Co-Lead Counsel litigate numerous discovery motions

48. This case was zealously fought, with Co-Lead Counsel litigating against many of the world's top firms, including the firm now known as Allen Overy Shearman & Sterling (Bank of America); Cahill Gordon & Reindel LLP (Credit Suisse); Covington & Burling LLP (JPMorgan); Cravath Swaine & Moore (Morgan Stanley); Davis Polk & Wardwell LLP (NatWest (f/k/a RBS)); Goodwin Procter, LLP (BNP Paribas); Jones Day (Deutsche Bank); Katten Munchin Rosenman LLP (UBS); Latham & Watkins LLP (Barclays); Paul Weiss Rifkind Wharton & Garrison (Citi); and Winston & Strawn LLP, Sullivan & Cromwell LLP, and, later, Paul Weiss Rifkind Wharton & Garrison (Goldman Sachs). The parties litigated numerous discovery disputes. Some examples are set forth below.

49. From the outset of discovery in 2017, Plaintiffs raised a discovery dispute in order to obtain relevant discovery preceding the 2013-2016 conspiracy period upheld by the Court, winning discovery back to the passage of Dodd-Frank in July 2010. ECF No. 266.

50. In light of the Court's order dismissing parts of Plaintiffs' complaint relating to activities before 2013, Plaintiffs policed Defendants' attempts to character relevant discovery as pertaining to that period in order to avoid discovery. The Court agreed with several of Plaintiffs'

challenges, ordering discovery to proceed into such challenged topics as Tradeweb, and documents relating to the importance of central clearing to the IRS market. ECF No. 322.

51. Throughout discovery in this action, the Court held monthly discovery conferences to receive updates regarding discovery, and weigh in on or resolve discovery disputes. Plaintiffs participated actively in every such conference, using them to diligently move forward discovery, raise discovery disputes promptly, and obtain the Court's guidance on discovery matters. *See, e.g.*, ECF No. 341. Several representative examples follow.

52. In August 2018, Plaintiffs pressed Defendants to run relevant search terms across their collected documents, and the Court granted one of Plaintiffs' discovery requests—requiring use of search terms directed to Tradeweb's product committee and trading protocol groups. ECF No. 492.

53. Plaintiffs' pursuit of discovery also resulted in Defendants de-designating many privilege assertions challenged by Plaintiffs, and the Court providing stringent guidance as to the level of detail necessary in privilege logs in order to adequately assert privilege. *See*, *e.g.*, ECF No. 494 (August 2018 order providing guidance on compliant privilege log language).

54. On October 19, 2018, the Court also granted Plaintiffs' discovery motion (ECF No. 576) related to the number of depositions Plaintiffs could take, and authorized Plaintiffs to take up to 110 depositions from among the Defendants, with a cap of 12 depositions per Defendant. ECF No. 583. This allowed Plaintiffs to zealously investigate their allegations and prepare for class certification, summary judgment, and if necessary, trial.

55. In October 2018, Plaintiffs also completed successful negotiations for additional discovery sought by Plaintiffs' motion to compel against Defendants (ECF No. 552) against the

last Defendant to withhold the discovery sought, Deutsche Bank. The Court "commend[ed] the parties' efforts to achieve resolution without the Court's intervention." ECF No. 587.

56. Plaintiffs' discovery efforts extended beyond disputes with Defendants. For example, Plaintiffs successfully compelled production of improperly withheld documents from third party Tradition. ECF Nos. 456 (granting Plaintiffs' motion to compel documents from Tradition), 550 (Court denying Tradition's request for "clarification" and noting the Court "lacks confidence in the soundness of Tradition's judgments as to the relevance and responsiveness of documents" identified as improperly withheld by Plaintiffs). *See also* ECF Nos. 370 (order setting oral argument to discuss discovery from Tradition, and agreeing with Plaintiffs' argument regarding Tradition's relevance), 429 (order requiring production of documents to Court for *in camera* review following Plaintiffs' request).

57. In November 2018, following Plaintiffs' diligent pursuit of discovery from relevant third parties ICAP and Tullett Prebon, and Plaintiffs' continued negotiation following submission of discovery disputes, the Court acknowledged that all disputes had subsequently been resolved, and ordered ICAP and Tullet Prebon to fully complete their document productions by the end of November 2018.

58. In January 2019, the Court granted in part Plaintiffs' motion to compel additional discovery pertaining to IRS Clearinghouses OTCDerivNet and LCH.Clearnet and their use by Defendants in the alleged conspiracy. The Court required the production of formal meeting minutes from Defendants' central repositories and re-review of certain documents from select Defendant custodians. ECF No. 686.

59. In April 2019, the Court resolved several pending discovery issues including narrowing the scope of 30(b)(6) testimony for two third-party depositions opposed by Plaintiffs

(ECF No. 777) and granting Plaintiffs' request to take the deposition of a third-party opposed by Defendants (ECF No. 776).

60. Given Co-Lead Counsel's efforts, Judge Engelmayer stated on the record at the close of discovery:

> I cannot tell you how impressed I have been with the efficiency, organization, and collegiality that all of you have mustered, given the scale of the litigation, the number of disputes that have been presented to me for resolution has been modest. When issues have been presented, they have been cleanly, very professionally briefed, and it is a real pleasure for me to be the judge assigned to a case where professionals are fighting with fair, but hard blows and working together collegially, with the focus on the merits and to a very, very limited degree on small fry stuff. In any event, the bottom line is you have my compliments. It's really been a pleasure to see the way in which people have worked together and endeavored to avoid needless disputes and to come up with smart, productive resolutions. I didn't want this milestone to pass without those words of praise. (Apr. 25, 2019 Hr'g Tr. at 15.)

C. Co-Lead Counsel's Expert Discovery Efforts And Efforts To Certify The Litigation Class

61. Co-Lead Counsel filed Plaintiffs' motion for class certification and appointment of class counsel in February 2019. ECF No. 722. The motion was accompanied by a 60-page memorandum of law and two attorney declarations attaching a combined 212 exhibits. ECF Nos. 723-25. Those included two expert reports: the report of Plaintiffs' lead expert on the element of antitrust impact, Prof. Darrell Duffie, and the report of Plaintiffs' damages expert, Prof. Mark Grinblatt which estimated class-wide damages of $4.5 billion. ECF No. 725-1, 2. Prof. Grinblatt's damages analysis was supported by extensive data processing and analysis in conjunction with a leading litigation support firm.

62. After filing our opening motion for class certification, Co-Lead Counsel spent many hours preparing our testifying experts for their depositions. Co-Lead Counsel prepared the two testifying experts with mock questioning over weeks of telephonic and in-person

preparations, anticipating many of the lines of questioning that Defendants' counsel pursued in depositions.

63. Defendants filed their 98-page opposition to Plaintiffs' motion for class certification in June 2019. ECF Nos. 815, 817. Defendants included 210 exhibits with their opposition, including reports from three experts: Professor Michael Johannes from the Columbia University Graduate School of Business; Professor Peter Reiss from the Stanford Graduate School of Business; and Christopher Culp, PhD., of Compass Lexecon. ECF Nos. 816-1-3. Defendants also filed a *Daubert* motion against portions of Prof. Grinblatt's expert report in support of class certification. ECF No. 817.

64. Utilizing these experts, Defendants made numerous lengthy and complex arguments in support of their opposition to Plaintiff's class certification motion. Co-Lead Counsel immediately got to work preparing responses. To do so, Co-Lead Counsel conducted extensive research into the law, the evidentiary record, and economic literature.

65. In September 2019, in the midst of Plaintiffs' efforts to certify the litigation class, Judge Engelmayer recused himself from the litigation, on consultation with the Committee on Codes of Conduct of the Judicial Conference of the United States. ECF No. 844. In that Order, Judge Engelmayer remarked "As a final word, I wish to thank and commend all counsel for their extraordinary work and professionalism in this important and complex case. It has been an honor for me to preside over the case and a genuine privilege to be privy to such consistently excellent and committed advocacy." *Id.* at 2.

66. Co-Lead Counsel deposed Defendants' testifying experts following extensive preparation. Co-Lead Counsel then requested leave to file a 95-page reply brief in support of our

motion for class certification, which the Court granted up to a limit of 80 pages. ECF Nos. 846, 849.

67. Co-Lead Counsel ultimately filed our reply memorandum in support of our motion for class certification in October 2019. ECF No. 869. The reply brief was accompanied with 100 new exhibits, including expert reply reports by Professors Duffie and Grinblatt. ECF No. 871-72. Plaintiffs' also opposed Defendants' *Daubert* motion, ECF No. 873, and filed *Daubert* motions against two of Defendants' experts, Dr. Christopher Culp and Dr. Peter Reiss, ECF Nos. 874-879.

68. Defendants sought and received permission to file a sur-reply in opposition to Plaintiffs' class certification motion. ECF Nos. 859, 864. Defendants' 25 page sur-reply—and supplemental expert reports—were filed in November 2019. Plaintiffs sought leave to move to strike Defendants' supplemental expert reports, in addition to extend the deadline for replies in support of Plaintiffs' *Daubert* motions to late January 2020. ECF No. 886. The Court denied Plaintiffs' request to file a motion to strike and motion for leave to file a sur-surreply as unnecessary, as the Court stated it would disregard inappropriate materials in Defendants' sur-reply. ECF No. 897.

69. Plaintiffs filed their *Daubert* motion replies to exclude the reports of two of Defendants' experts on January 6, 2020.

70. This Court denied Plaintiffs' motion to certify the class on December 15, 2023. ECF No. 1054. This Court's 21-page Opinion and Order determined that individual issues of antitrust impact would predominate over common questions. *Id.* at 5. While Co-Lead Counsel respectfully believe the Court erred in resolving disputed questions of fact among the experts on the class certification motion for the reasons stated in our Rule 23(f) petition, we realized at the

same time that the issue was not free from doubt and convincing the Second Circuit to allow an interlocutory appeal on class certification could have been an uphill battle.

71. Plaintiffs requested leave to file a motion for certification of a Rule 23(c)(4) issue class in January 2024. ECF No. 1063.

72. Plaintiffs filed a petition for a Rule 23(f) appeal with the Second Circuit on January 4, 2024. No. 24-81 (2d Cir.), ECF No. 1.1. Defendants lodged their joint opposition to Plaintiffs' petition on January 8, 2024. ECF No. 7.1. On January 16, 2024, Plaintiffs filed a motion for leave to submit a reply brief, attaching the proposed brief. ECF No. 46.1. Defendants opposed Plaintiffs' submission of a reply brief on January 26, 2024. Plaintiffs submitted a letter under Federal Rule of Appellate Procedure 28(j) on February 7, 2024, notifying the Second Circuit of the grant of a 23(f) petition in *Bank of America v. City of Philadelphia*, No. 23-7328 (2d Cir.), and the reasons why this action presented stronger grounds for review. ECF No. 79.1. Defendant JPMorgan submitted a letter in opposition to Plaintiffs' 28(j) letter on February 9, 2024. ECF No. 80.1.

73. Plaintiffs' Rule 23(f) petition and request to file a motion for Rule 23(c)(4) certification, which continued to advocate on behalf of the proposed class, maintained pressure on Defendants and facilitated settlement discussions. The parties reached settlement in principle on March 4, 2024. On March 28, 2024, at request of the parties, proceedings in the Second Circuit were stayed, pending further developments in the District Court. ECF Nos. 88.1, 90.1.

74. On April 29, 2024, Plaintiffs informed the Second Circuit that Plaintiffs' Boards of Directors had approved the settlement in principle, and the parties were working diligently to prepare final settlement materials. ECF No. 90.1. Plaintiffs moved for preliminary approval of the settlement agreement in the District Court on June 27, 2024, and the parties informed the

Second Circuit on June 28. ECF No. 93.1. On July 29, 2024, the parties informed the Second Circuit that Judge Oetken had granted preliminary approval for the settlement on July 11, 2024. ECF No. 94.1. The parties have diligently kept the Second Circuit apprised of the provisions of class notice data to Plaintiffs from Defendants' records, and Plaintiffs' preparations to promptly seek a Fairness Hearing. ECF Nos. 95.1-98.1, 102.1.

II. THE SETTLEMENTS AND CO-LEAD COUNSEL'S EFFORTS TO GET THEM APPROVED

75. The Credit Suisse Agreement was reached after extensive arm's-length negotiations with Credit Suisse and its counsel, concluding in late January 2022. In February 2022, Co-Lead Counsel prepared and filed a motion to approve the Credit Suisse Agreement, including a 25-page brief and supporting documentation. ECF No. 977. Following the Court's denial of Plaintiffs' motion for class certification of a litigation class, Plaintiffs again requested that the Court grant Plaintiffs' motion for preliminary approval of the Credit Suisse Agreement. ECF No. 1063 at 8-11.

76. The New Settlement Agreement was reached after extensive arm's-length negotiations. Negotiations, which had occurred periodically during the pendency of the case, began anew in early 2024 and concluded in June 2024. The parties informed the Court on June 10, 2024 that the parties had agreed to the terms of settlement, papered those settlement terms, and were in the process of executing the agreement. ECF No. 1077.

77. Very shortly thereafter, also in June 2024, Co-Lead Counsel prepared and filed a motion to approve the New Settlement Agreement, including a 25-page brief and supporting documentation. ECF No. 1079.

78. The Court granted preliminary approval to the Credit Suisse Agreement on July 11, 2024. ECF No. 1084.

79. The Court also granted preliminary approval to the New Settlement Agreement on July 11, 2024. ECF No. 1085.

80. Co-Lead Counsel's work continued even after the Settlements were preliminarily approved.

81. For instance, Co-Lead Counsel spent the next few months preparing to give notice to members of the Settlement Classes. This included working with the Settling Defendants to provide the reasonably available contact information for potential members of the Settlement Classes. *See, e.g.*, ECF No. 1092. This also included retaining and then working with the settlement administrator to devise the notice program and all of the notice materials.

82. Co-Lead Counsel also continued to work for the benefit of the Settlement Classes by way of devising the Plans of Allocation. While built off of our extensive work during the class-certification stage, translating the lessons learned and the conclusions reached during litigation into an easy-to-understand, easy-to-administer, universal plan covering the entire class of interest rate swap participants required additional effort and consultation with the settlement administrator. The Plans of Allocation assign different damages and risk multipliers based on (i) the type of transaction; and (ii) the date of the transaction. Co-Lead Counsel believe the methodology achieves an equitable distribution of settlement funds among members of the Settlement Classes, while ensuring that both the preparation of claims by class members and the administration of claims by the settlement administrator is as seamless and efficient as possible.

83. In September 2024, Co-Lead Counsel filed a motion to preliminarily approve the notice and allocation plans, including a 15-page brief and extensive supporting documentation, including the proposed notice materials, claim form, and allocation plans. ECF No. 1094.

III. CO-LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE AWARDS

84. Class members were advised that Co-Lead Counsel would submit an application for an award of attorneys' fees; litigation expenses; Class Representative service awards; and interest accrued on these amounts in the Settlement Fund accounts. Our fee, expense, and award application is fully consistent with the notice materials.

A. Co-Lead Counsel's Fee Request as Compared to Our Significant Time Invested In This Action

85. Co-Lead Counsel seek a fee award such that, combined with the allowed expenses, the combined total is 50% of the Settlement Funds. If the requested expenses are granted in full, this would mean a fee award of $12,113,654, plus interest accrued in the Settlement Funds thereon.

86. As detailed in our concurrently filed individual declarations, Co-Lead Counsel have invested nearly 200,000 hours in this Action over the course of nine years, through October 2024 (Quinn Emanuel) and April 2025 (Cohen Milstein).

87. Our individual declarations also identify the attorneys and support staff who worked on the Action, their hourly rates and number of hours billed, and the lodestar value of their time. Using the "historic rate" method described therein, this amounts to an investment of more than $100,000,000 in the time of Co-Lead Counsel's attorneys and professional support staff. Using the "current rate" method described therein, this amounts to an investment of more than $135,000,000 in the time of Co-Lead Counsel's attorneys and professional support staff. For simplicity, valuable work on behalf of the class by other firms is not included in these figures.

88. Co-Lead Counsel took this case on a fully contingent basis.

B. Co-Lead Counsel's Request for Litigation Expenses

89. Co-Lead Counsel seek expenses in the amount of $23,386,346, plus interest accrued in the Settlement Funds accounts thereon.

90. The categorization of all expenses incurred by counsel acting on behalf of the class and explanations as to how they were arrived at, as well as other details, are provided in concurrently filed individual declarations.

91. Almost all of these expenses represent payments to testifying and non-testifying experts and Plaintiffs' discovery management platform. As more fully discussed above, these expenses reflect the extraordinary work required from Plaintiffs' experts to develop usable transactional data from which Plaintiffs' testifying experts could create the damages models that supported Plaintiffs' motion for class certification, which drove the settlement. Document storage fees were also extraordinary, because of the enormous volume of documents provided by Defendants, which greatly exceeded case productions even in other complex antitrust cases.

92. As noted in our motion for attorneys' fees, litigation expenses, and named Plaintiff service awards, in our reply brief to that motion we may update this request with additional expenses incurred during the pendency of the motion, such as ongoing document hosting fees or vendor corrections.

C. Co-Lead Counsel's Request for Service Awards

93. Each Class Representative devoted extensive time and effort to supervising Co-Lead Counsel's prosecution of the case and participating in discovery as named Plaintiffs. Without the Class Representatives' participation, this case would not have been brought, leaving the tens of millions of dollars achieved in these Settlements in the hands of the banks.

94. As Co-Lead Counsel, we endorse their request for incentive awards of $25,000 each, for a total of $50,000, plus interest accrued in the Settlement Funds thereon. Co-Lead

Counsel believe these awards, which reflect the disproportionate responsibility and risk the Class Representatives undertook to prosecute this case, are a key element of an equitable distribution of the Settlement Funds to members of the Settlement Classes under Rule 23(e)(2)(D).

* * *

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

Executed April 16, 2025
New York, New York

Daniel L. Brockett

Executed April 16, 2025
New York, New York

Michael B. Eisenkraft