UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE LIBOR-BASED FINANCIAL INSTRUMENTS ANTITRUST LITIGATION	MDL No. 11-md-2262 (NRB)
THIS DOCUMENT RELATES TO:	
The OTC Action	No. 11-cv-5450

MEMORANDUM IN SUPPORT OF OTC PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND INCENTIVE AWARDS

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Court-appointed co-lead class counsel Susman Godfrey L.L.P. and Hausfeld LLP ("Class Counsel") respectfully submit this memorandum in support of the OTC Plaintiffs' application for an award of attorneys' fees, expenses, and class representative service awards on their $90 million settlement with Defendants MUFG Bank, Ltd., The Norinchukin Bank, and Société Générale (the "Settlement").

Introduction

This litigation has been hard-fought by Class Counsel for nearly twelve years. Despite Defendants' repeated attempts to have this case dismiss and to defeat class certification, OTC Plaintiffs have persevered and repeatedly achieved outstanding results for the class. Because of Class Counsel's zealous pursuit of this case, OTC Plaintiffs recently achieved a fifth settlement, shortly followed by a sixth, and recovered nearly $200 million more for the class.

This settlement comes on top of OTC Plaintiffs' $590 million in prior settlements—$120 million from Barclays, $130 million from Citibank, $100 million from HSBC; and $240 million from Deutsche Bank. Two months after reaching this Settlement, OTC Plaintiffs reached yet another combined settlement, totaling $101 million, with four more defendants, namely Lloyds, Rabobank, RBC, and Portigon.

These settlements represent a tremendous recovery for the class: $680 million through the date of this Settlement and $781 million through the date of the subsequent settlement.

OTC Plaintiffs now request an interim award of attorneys' fees from the Settlement with MUFG, Norinchukin, and SocGen of 25% of the net settlement fund after the deduction of litigation expenses.[1] The 25% interim fee award OTC Plaintiffs request here is well within the

[1] As with OTC Plaintiffs' prior attorneys' fee applications, OTC Plaintiffs respectfully ask that the Court reserve judgment on a request for the difference between the fee sought now and a final award of 30% of the net Settlement (after deducting expenses) until a later stage of this litigation. *See* ECF 2350 at 6, 13; ECF 2387 at 1; ECF 2705 at 1.

range of interim awards regularly granted in comparable multi-defendant antitrust class actions and will, we respectfully submit, fairly compensate Class Counsel for the excellent result they have obtained for the OTC class. This is the same percentage the Court awarded as attorneys' fees from the Exchange Based Plaintiffs' (EBPs) settlements and a lower percentage than the Court awarded on the Lender and Non-Defendant OTC Plaintiffs' settlements. *See In re LIBOR-Based Fin. Instr. Antitrust Litig.* ("*EBP Fee Op.*"), 2020 WL 6891417, at *4–5 (S.D.N.Y. 2020). OTC Plaintiffs' request would result in a lodestar multiplier of 1.56, at the low end of the range awarded in comparable actions.

OTC Plaintiffs additionally seek reimbursement of $2,512,026.10 in unreimbursed costs and expenses incurred by Class Counsel on behalf of the OTC Class between February 15, 2018, the date of the HSBC Settlement (the cut off date for Class Counsel's last reimbursement request) and May 12, 2023 (the date of this Settlement). "[C]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." ECF 2683, at 2 (alteration in original) (quoting *In re IMAX Sec. Litig.*, 2012 WL 3133476, at *6 (S.D.N.Y. 2012)).

Argument

I. Class Counsel's Fee Request Is Fair and Reasonable

A. Class Counsel Are Entitled to Fees from the Common Fund

"[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). This principle applies to class action settlements, including interim settlements. *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *9 (E.D.N.Y. Oct. 23, 2012) ("Where a class action settlement creates a common fund the plaintiffs' attorneys are entitled to a reasonable fee—set by the court—to be taken from the fund. Fees can be awarded based on an interim settlement fund.").

B. The Requested Fee Is Fair and Reasonable Under the Percentage Method

The Second Circuit's preferred method for calculating a fair and reasonable attorneys' fee is to award "some percentage of the recovery." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). "The trend in this Circuit is toward the percentage method" because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.'" *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). This principle and preference hold equally true for interim fee awards drawn from partial settlements with one or more defendants in a multi-defendant action. *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *9 (noting that "[f]ees can be awarded based on an interim settlement" and recounting the Second Circuit's "trend" of "utiliz[ing] the percentage method" with the lodestar/multiplier method as a cross-check).

The percentage method, by tying the fee award to the result achieved for the class, "allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure,'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011); thus, Class Counsel's request also corresponds neatly to the settlement from which it arises. This Settlement—which provides $90 million in cash on top of OTC Plaintiffs' $590 million in prior settlements—is by any measure a substantially favorable result for the OTC Class. As the primary measure of Class Counsel's success is the recovery they have achieved for the OTC Class, granting Class Counsel's application for 25% of that favorable result provides a proportionate and appropriate reward for Class Counsel's efforts. *See Laydon I*, *infra*, slip op. ¶ 5(b)-(c), (f) (awarding "fair, reasonable, appropriate" fee of 25% of partial settlement fund, noting that "in the absence of a settlement, [the claims against the settling defendants] would have involved lengthy proceedings with uncertain resolution," and recognizing that "[h]ad Plaintiffs' Counsel not achieved the Settlements, a risk would remain that Plaintiffs and the

Settlement Class may have recovered less or nothing from [the settling defendants]").

1. OTC Plaintiffs' Requested Fee Aligns with Attorneys' Fee Awards in Other Large Antitrust Cases

Courts regularly make successive interim fee awards over the life of a multi-defendant antitrust class action at percentages equivalent to and higher than the 25% requested by Class Counsel here. Table 1 below describes fee awards made in a number of recent antitrust class actions—all cases where these awards were made from partial settlements—in descending order by size of the settlement fund. OTC Plaintiffs' current application for 25% of a $90 million common fund is well within the range of these other interim awards in recent antitrust cases.

Table 1

Case	Settlement Fund	Fee Awarded	Fee Percentage
In re Urethane Antitrust Litig. (*Urethane III*), No. 04-md-1616 (D. Kan. July 29, 2016), ECF 3276	$835 million	$278 million	33-1/3%
Alaska Elec. Pension Fund v. Bank of Am. Corp., 2018 WL 6250657, at *1 (S.D.N.Y. 2018)	$504.5 million	$126.4 million	26%
In re Auto. Parts Antitrust Litig., 2018 WL 11260510, at *4 (E.D. Mich. 2018)	$432.8 million	$108 million	25%
In re Air Cargo Shipping Servs. Antitrust Litig. (*Air Cargo V*), No. 06-md-1775 (E.D.N.Y. Oct. 25, 2016), ECF 2484	$388 million	$97 million	25%
In re Automotive Parts Antitrust Litig. (*Auto Parts II*), 2017 WL 3525415 (E.D. Mich. 2017)	$379 million	$75.7 million	20%
In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litig., 2021 WL 5369798, at *6 (D. Kan. 2021)	$345 million	$115 million	33-1/3%
In re Air Cargo Shipping Servs. Antitrust Litig. (*Air Cargo IV*), 2015 WL 5918273 (E.D.N.Y. 2015)	$333 million	$73.2 million	22%
Sullivan v. Barclays Bank plc, No. 13-cv-2811 (S.D.N.Y. May 18, 2018), ECF 425	$309 million	$68.71 million	22.24%
In re Capacitors Antitrust Litig., 2020 WL 6544472, at *2 (N.D. Cal. 2020)	$232 million	$69.6 million	30%
In re Automotive Parts Antitrust Litig. (*Auto Parts I*), No. 12-cv-0103 (E.D. Mich. Dec. 5, 2016), ECF 545	$225 million	$44.9 million	20%
In re Air Cargo Shipping Servs. Antitrust Litig. (*Air Cargo III*), 2012 WL 3138596 (E.D.N.Y. Aug. 2, 2012)	$222 million	$54.4 million	24%

In re Domestic Drywall Antitrust Litig., No. 13-md-2437 (E.D. Pa. July 17, 2018), ECF 767, 768	$190 million	$63.53 million	33-1/3%
In re Auto. Parts Antitrust Litig., 2020 WL 5653257, at *4 (E.D. Mich. 2020)	$183 million	$40.47 million	22%
In re Broiler Chicken Antitrust Litig., 2021 WL 5709250, at *5 (N.D. Ill. 2021)	$169.6 million	$55 million	33-1/3%
Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd. (*Freight Forwarders II*), 2015 WL 6964973 (E.D.N.Y. Nov. 10, 2015)	$169 million	$42.2 million	25%
In re Steel Antitrust Litig. (*Steel I*), No. 08-cv-5214 (N.D. Ill. Oct. 22, 2014), ECF 539	$164 million	$54.1 million	33%
In re Air Cargo Shipping Servs. Antitrust Litig. (*Air Cargo II*), 2011 WL 2909162 (E.D.N.Y. July 15, 2011)	$154 million	$38.5 million	25%
Laydon v. Mizuho Bank, Ltd. (*Laydon II*), No. 12-cv-3419 (S.D.N.Y. Dec. 7, 2017), ECF 837	$148 million	$34.9 million	23.6%
In re Lithium Ion Batteries Antitrust Litig., No. 13-md-2420 (N.D. Cal.), ECF 2322	$139.3 million	$41.79 million	30%
In re CRT Antitrust Litig. (*CRT I*), 2016 WL 183285 (N.D. Cal. Jan. 14, 2016)	$127.5 million	$38.2 million	30%
Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd. (*Freight Forwarders III*), No. 08-cv-0042 (E.D.N.Y. Nov. 07, 2016), ECF 1396	$118 million	$29.7 million	25%
In re Auto. Parts Antitrust Litig., 2018 WL 7108072, at *4 (E.D. Mich. 2018)	$115 million	$33.3 million	30%
Precision Assocs., Inc. v. Panalpina World Transport (Holding) Ltd. (*Freight Forwarders I*), No. 08-cv-0042 (E.D.N.Y. Dec. 27, 2013), ECF 984	$112 million	$16.9 million	15%[2]
In re Municipal Derivatives Antitrust Litig. (*Muni Derivatives IV*), No. 08-cv-2516 (S.D.N.Y. July 8, 2016), ECF 2029	$101 million	$33 million	33-1/3%

Fee awards reaching up to one-third of the proceeds of partial settlements are consistent with fee awards granted in class actions generally, where "fees that are 30 percent or greater" are "routine[]." *Velez v. Novartis*, 2010 WL 4877852, at *21 (S.D.N.Y. 2010).[3]

[2] In *Freight Forwarders I*, Judge Gleeson granted an interim fee award of 15% of the initial settlement fund, rejecting class counsel's request for 33-1/3% of that fund. Class counsel later requested and received 25% of the subsequent settlement funds in *Freight Forwarders II* and *III*.

[3] *See also Hyun v. Ippudo USA Holdings*, 2016 WL 1222347, at *3 (S.D.N.Y. Mar. 24, 2016) ("Fee awards representing one third of the total recovery are common in this District."). This benchmark furthermore holds true for settlements with large common funds like this one. *See In re Initial Public Offering Secs. Litig.*, 671 F. Supp. 2d

Plus, the 25% fee requested here is significantly less than Class Counsel could obtain on the open market. For example, Susman Godfrey regularly takes high-stakes non-class commercial cases on a contingent fee basis, and typically negotiates contingent fee arrangements with individual non-class plaintiff clients equal to 40% of the gross sum recovered in cases where the firm advances expenses, with percentage increases based on the milestones reached at the time of settlement. *See* ECF 2280 ¶ 7. "This fact is highly relevant to determining the appropriateness of the award because the Court's ultimate task is to 'approximate the reasonable fee that a competitive market would bear.'" *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *17 (S.D.N.Y. 2015) (quoting *Johnson v. City of New York*, 2010 WL 5818290, at *4 (E.D.N.Y. 2010)); *accord In re Continental Ill. Secs. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client.").

2. OTC Plaintiffs' Requested Fee Is Consistent with Other *Libor* Attorneys' Fee Awards

OTC Plaintiffs' requested fee of 25% of the net settlement fund is consistent with this Court's awards in other *Libor* cases. The Court awarded 25% of the net $187 million settlement fund from EBPs' settlements with seven defendants in November 2020. *See EBP Fee Op.*, 2020 WL 6891417, at *5; *see also Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *1 (awarding 26% of a net settlement fund on $504.5 million in settlements in the ISDA fix antitrust litigation). The Court awarded 28.06% of the Non-Defendant OTC Plaintiffs'

467, 516 (S.D.N.Y. 2009) (awarding plaintiffs' counsel one-third of the net settlement fund of $170 million); *In re Priceline.com, Inc. Secs. Litig.*, 2007 WL 2115592, at *4 (D. Conn. July 20, 2007) (awarding 30% of an $80 million settlement); *In re Deutsche Telekom AG Secs. Litig.*, 2005 WL 7984326, at *4 (S.D.N.Y. June 14, 2005) (Buchwald, J.) (awarding attorneys' fees of 28% of a $120 million settlement); *Kurzweil v. Philip Morris Companies, Inc.*, 1999 WL 1076105, at *3 (S.D.N.Y. Nov. 30, 1999) (awarding class counsel 30% of a $123 million settlement); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 394 (S.D.N.Y. 1999) (awarding plaintiffs' counsel attorneys' fees of 27.5% of a $116.6 million settlement).

$21.775 million settlement fund. *Id.* at *4 (citing ECF 3185). The Court awarded 29.38% and 28.08% in fees from the Lender Plaintiffs' $31 million and $4 million settlement funds, respectively. *See id.* at *4 (citing ECF 2777 and 3097).

The Court awarded 18.49% and 18.5% of the net settlement fund for OTC Plaintiffs' prior settlements. *See* ECF 2683 at 9–10; ECF 2745. OTC Plaintiffs respectfully submit that a higher percentage award from this Settlement is appropriate for three reasons. *First*, an award of 25% of the net settlement fund from the MUFG, Norinchukin, and SocGen settlement would result in a reasonable aggregate percentage award of attorneys' fees from all OTC settlements to date. Combined with the Court's earlier attorneys' fees awards, OTC Plaintiffs' requested fee here would result in a combined fee award of 19.4% of the combined $680 million in settlement funds through the MUFG, Norinchukin, and SocGen settlement. That aggregate fee award is comparable to the Court's prior awards of 18.49% and 18.5% from the Barclays–Citi and Deutsche Bank–HSBC settlements. *See Barclays–Citi OTC Fee Op.*, 2018 WL 3863445, at *4.

Second, OTC Plaintiffs' requested fee represents a lower lodestar multiplier (1.56) than OTC Plaintiffs' prior fee awards (1.65 for Barclays–Citi and 3.23 for Deutsche Bank–HSBC). *See* ECF 2705 at 10; ECF 2745; *OTC Barclays-Citi Fee Op.*, 2018 WL 3863445, at *4. This relatively low lodestar multiplier reflects Class Counsel's significant investment of attorney time in prosecuting this action by, among other things, successful appealing the dismissal of all three settling Defendants on personal jurisdiction grounds, reviewing 3.5 million documents produced by Defendants, including the painstaking review of more than 126,000 audio recordings of defendants' phone calls, along with continued litigation in this Court during that appeal and after

the Second Circuit's decision. *See* Joint Decl. ¶ 18.[4] That investment of attorney time ensured Class Counsel were well prepared to pursue the class's claims if and when the Second Circuit ruled in their favor and litigation in this Court re-commenced against the foreign bank defendants. *See Goldberger*, 209 F.3d at 50 (holding that "the time and labor expended by counsel" and "the magnitude and complexities of the litigation" are factors the Court should consider in evaluating the reasonableness of a requested fee).

On top of that, Class Counsel's increased lodestar—and decreased lodestar multiplier—demonstrates that the premise justifying the so-called "sliding scale" approach simply does not apply to this case. The "sliding scale" approach (*i.e.*, "awarding a smaller percentage for fees as the size of the settlement fund increases") is premised on the concern that "economies of scale could cause windfalls in common fund cases." *OTC Barclays–Citi Fee Op.*, 2018 WL 3863445, at *3 (quoting *Wal-Mart Stores*, 396 F.3d at 120). Class Counsel's increased lodestar, and correspondingly decreased lodestar multiplier, show that granting Class Counsel's requested fee would result in no such "windfall" here. *See* 5 William Rubenstein, Newberg on Class Actions § 15:81 (6th ed.) (Westlaw 2023) ("Given that a high multiplier is the best measuring stick of a windfall, courts ought to use the high multiplier to police windfalls, regardless of the size of the fund, rather than use the size of the fund as a policing mechanism."). The complexity of this case, reinforced by the Court's statement in *Libor VII*, 299 F. Supp. 3d 430, 607 n.189 (S.D.N.Y. 2018) that its "decision to certify a class as to OTC plaintiffs' antitrust claims rests on the action in its current form, including on OTC plaintiffs' allegations of a sixteen-bank conspiracy to suppress LIBOR," have meant that achieving additional settlements by pursuing this case through each subsequent phase of the case against the non-settling Defendants has required Class

[4] The Joint Declaration of William C. Carmody and Michael D. Hausfeld in Support of OTC Plaintiffs' Motion for

Counsel to continue to invest substantial time and resources to prosecute the claims of the OTC Class. Hence, far from resulting in a "windfall," awarding 25% of the fund would appropriately reward Class Counsel for that investment of time in proportion to the favorable result Class Counsel have obtained for the class as a result of their efforts.

Third, an award of 25% of the net settlement fund would result in 80.87% of all OTC settlement funds being distributed to class members—representing an increased percentage recovery compared to the recovery for the class from the Barclays–Citi and Deutsche Bank–HSBC settlements. As the Court explained in awarding fees from the Barclays–Citi settlement fund: "Given these amounts of expense reimbursements, incentive awards, and attorneys' fees, the class writ large will receive 76.62% of the aggregate settlement amounts (prior to other expenses, such as those incurred in providing notice to the classes) – a percentage that we find comports with public policy notions of allowing the class, rather than class counsel, to receive a sufficiently significant share of the recovery." *OTC Barclays-Citi Fee Op.*, 2018 WL 3863445, at *4; ECF 2705 at 2 (noting the fee award from the DB–HSBC settlements would "result in the class receiving 79.34% of the aggregate settlement amounts for all settlements to date").

3. Empirical Research on Attorneys' Fee Awards Supports OTC Plaintiffs' Requested Fee

OTC Plaintiffs' requested fee is also consistent with empirical research on attorneys' fee awards. A recent empirical study of contingent fee arrangements negotiated by sophisticated clients in non-class cases and class cases where the class representatives and members were sophisticated corporate parties concluded that "[d]ata from sophisticated clients shows both that they choose to pay fixed one-third percentages or even higher escalating percentages based on litigation maturity just like unsophisticated clients do, and they do so even in the most enormous

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Attorneys' Fees and Expenses ("Joint Decl.") is filed concurrently herewith.

cases." Brian T. Fitzpatrick, *A Fiduciary's Guide to Awarding Fees in Class Actions*, 90 Fordham L. Rev. 1151, 1170 (2021). The most recent empirical study of fee awards, and one previously cited by this Court, found an average percentile of 22.3% in the highest decile of settlements studied (those greater than $67.5 million). *See* Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. Rev. 937, 948 (2017). While the Court has previously cited older empirical studies with a lower *mean* percentage fee award, those studies also found a large standard deviation and the Court thus concluded based on them in the EBP fee opinion that "a reasonable fee for EBP Class Counsel would fall somewhere between approximately 17% and 25% of the settlement fund." *See EBP Fee Op.*, 2020 WL 6891417, at *3, *4 (citing Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 837–39 (2010) and 4 William B. Rubenstein, *Newberg on Class Actions* § 15:81 fig.2 (5th ed.)).

C. The Requested Fee Is Reasonable Under Lodestar "Crosscheck"

The reasonableness of Class Counsel's requested fee is confirmed by the lodestar "crosscheck," which tests the reasonableness of a percentage method–based fee. *See Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours expended on the litigation by each particular attorney or firm professional by their current hourly rate, and totaling the amounts for all timekeepers.[5] When using this lodestar to crosscheck Class Counsel's requested award, courts employ a multiplier that "represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y.

[5] The lodestar is calculated at current hourly rates. *See, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing "an appropriate adjustment for delay in payment" by applying "current" rates); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (stating that rates "should be 'current rather than historic'").

2004) (citing *Goldberger*, 209 F.3d at 47).

Class Counsel have spent over 121,000 hours, with a lodestar of $82,265,759, from the inception of this matter through May 12, 2023.[6] *See* Joint Decl. ¶ 52. That time represents Class Counsel's tireless efforts in investigating and prosecuting the OTC Plaintiffs' claims over a nearly twelve-year period. By way of comparison, in the Yen LIBOR cases, class counsel reported a total lodestar of $54,532,316.55, corresponding to 105,775.61 hours worked, *before* any briefing on class certification. *See Laydon II* Br. at 29. Compared to those figures, Class Counsel's lodestar at the far more advanced stage of this case is presumptively reasonable.

When combined with Class Counsel's previous fee awards, Class Counsel's fee request of 25% of the net settlement fund here would correspond to a multiplier of 1.56 over Class Counsel's total lodestar, if the Court grants the requested expense reimbursements.[7]

This multiplier falls at the lower end of the range considered reasonable by courts in the Second Circuit.[8]

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[6] In addition to Class Counsel, six other firms have assisted in this litigation. *See* Joint Decl. ¶¶ 50-51. Four firms performed work for the benefit of the OTC Class by helping in evaluation of the plan of distribution. *See id.* ¶¶ 28, 50. Two other firms representing class representatives have also performed work related to those representations as well as other work at the direction of Class Counsel. *See id.* ¶ 51. These firms' time is not included in the lodestar reported in this application. OTC Plaintiffs request that the Court grant Class Counsel authority to allocate and distribute any attorneys' fees and expenses awarded from the settlement funds among counsel who performed work on behalf of OTC Plaintiffs as is customary in class action litigation.

[7] When evaluating successive applications for interim awards of attorneys' fees, the relevant multiplier for courts to consider when performing the lodestar crosscheck is the *cumulative* multiplier that compares class counsel's *total* fee award to class counsel's *total* lodestar. *See, e.g.*, *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (approving a second fee award that when combined with a prior award "in its aggregate gives Lead Counsel $336.1 million in fees based on a *total* lodestar of approximately $83.2 million" (emphasis added)). This is the approach utilized by class counsel in the Yen LIBOR cases, without objection from Judge Daniels, who approved class counsel's first and second fee applications in full. *See Laydon II* Br. at 29 (presenting cumulative multiplier of 0.91, which compared class counsel's total lodestar of $54,532,316.55 from the initiation of the action to class counsel's second fee request for $34.88 million aggregated with their prior $14.5 million award).

[8] *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (finding a multiplier of 3.5 to be reasonable in an antitrust class action); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *16 (S.D.N.Y. April 26, 2016) (approving fee award in complex antitrust action where lodestar was "just over 6"); *Colgate*, 36 F. Supp. 3d at 353 (holding a multiplier of 5 was "on the high end" but "not unreasonable"); *Beckman v. KeyBank N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (approving an award of 33% of the common fund, representing a multiplier of 6.3, and explaining that "[c]ourts regularly award lodestar multipliers of up to eight times the

Class counsel's requested fee award would result in a lower lodestar multiplier than the average reported in empirical studies. This Court previously noted that "one study identifies an average multiplier of 3.18 for settlements above $175.5 million and a second study identifies an average multiplier of 2.39 for settlements above $44.6 million." ECF 2683 at 11 (citing 4 William B. Rubenstein, *Newberg on Class Actions* § 15:89 tbl. 2). Professor Eisenberg's 2017 study found an average multiplier of 2.72 for cases with a settlement fund of greater than $75 million. *See* Theodore Eisenberg & Geoffrey Miller, *Attorneys' Fees in Class Actions: 2009–2013*, 92 N.Y.U. L. Rev. 937, 967 tbl.13 (2017).

Further, all the work performed by Class Counsel through May 12, 2023, contributed to Class Counsel's analysis of the strengths and weaknesses of the claims against MUFG, Norinchukin, and SocGen, and furthered Class Counsel's ability to negotiate a favorable settlement. As the Court recognized at the fairness hearing for the settlement with Barclays, OTC Plaintiffs have "alleged a conspiracy" and "the same action against everybody." ECF 2352-1, Tr. 66:23-24. Class Counsel's efforts to strengthen the OTC Plaintiffs' litigation position as to all Defendants, including MUFG, Norinchukin, and SocGen. These efforts—which included motion practice, appeals, discovery efforts, and document review—generally involved all of the Defendants or had case-wide implications. Moreover, all of the work performed by Class Counsel was undertaken to benefit the same OTC Class. *See* ECF 2863 at 3 ("Further, attribution of these expenses to Barclays and Citi is appropriate – even though some portion undoubtedly pertains to other defendants also – given the joint and several liability in this action."). Thus,

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lodestar, and in some cases, even higher multipliers"); *Sewell v. Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) ("Courts commonly award lodestar multipliers between two and six."); *Johnson v. Brennan*, 2011 WL 4357376, at *13 (S.D.N.Y. Sept. 16, 2011) ("Courts routinely award counsel two to three times lodestar in class action settlements."); *In re Lloyd's Am. Trust Fund Litig.*, 2002 WL 31663577, at *27 (S.D.N.Y. Nov. 26, 2002) ("Here, the resulting multiplier of 2.09 is at the lower end of the range of multipliers awarded by courts within the Second Circuit.").

courts consider cumulatively, when performing the lodestar crosscheck, all of class counsel's time from the beginning of an action. *See supra* note 7.[9]

Finally, Class Counsel's hourly rates are also reasonable. The rates for Class Counsel who billed meaningful time to this case are Class Counsel's standard hourly rates and are regularly charged to (and paid by) clients who engage Class Counsel on an hourly basis. Joint Decl. ¶¶ 46-47; *Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("The 'lodestar' figure should be in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation."). Class Counsel's hourly rates are market rates for plaintiff- and defense-side law firms of similar quality litigating matters of similar complexity and magnitude in New York City.[10] Thus, OTC Plaintiffs' request for an award of 25% of the net settlement fund is fair and reasonable using a lodestar multiplier. *Colgate*, 36 F. Supp. 3d at 353.

D. The *Goldberger* Factors Support the Requested Fee Award

Under either the percentage method or the lodestar multiplier approach, the "'*Goldberger* factors' ultimately determine the reasonableness of a common fund fee," *Wal-Mart Stores*, 396 F.3d at 121. The *Goldberger* factors, which the Court weighs in its discretion, are:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy

[9] *See also Auto Parts II*, 2017 WL 3525415, at *4 n.2 ("The Court rejects the argument . . . that time included with the Round 1 Settlement fee request should not be included in the lodestar cross-check for the Round 2 Settlements. In calculating the lodestar for purposes of the cross-check, it would be impractical to compartmentalize and isolate the work that EPPs' counsel did in any particular case at any particular time because all of their work assisted in achieving all of the settlements and has provided and will continue to provide a significant benefit to all of the EPPs classes.").

[10] *See* Sara Randazzo & Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour*, The Wall Street Journal, Feb. 16, 2016 (finding that "[f]or lawyers at the very top of th[e] fields [of antitrust and high-stakes litigation and appeals], hourly rates can hit $1,800 or even $1,950" and citing a 2011 article and observing that the increases in hourly rates "mak[e] the $1,000-an-hour legal fees that once seemed so steep look quaint by comparison"), *available at* https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708.

considerations.

Goldberger, 209 F.3d at 50 (citation omitted). Courts regularly apply the *Goldberger* factors when considering applications for interim awards. *See, e.g.*, *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *9-10. Each of these factors confirms the requested fee is reasonable.

1. Time & Labor Expended by Counsel (Goldberger Factor 1)

The first *Goldberger* factor—the "time and labor expended by counsel"—strongly supports approval of the requested fee. Class Counsel have spent over 121,000 hours prosecuting this case and, as discussed above, the lodestar multiplier is within the range approved by courts in this Circuit. The substantial time devoted to this litigation over nearly twelve years reflects the immense effort Class Counsel have exerted in prosecuting this case and is reasonable, particularly given the complex nature of this action. Class Counsel have, among other things:

- Conducted an initial investigation of this case to develop the facts and legal theories that formed the basis of the allegations in the complaint and drafted and filed the complaint, amended complaint, second amended complaint, proposed third amended complaint, third amended complaint, and fourth amended complaint.
- Defended the complaint against eight Rule 12(b) motions to dismiss and Defendants' opposition to the OTC Plaintiffs' motions for leave to amend the complaint.
- Written scores of letters to the Court, on numerous matters, including providing supplemental authority, addressing discovery disputes, and presenting scheduling issues.
- Appealed the dismissal of the OTC Plaintiffs' antitrust claims to the Second Circuit, and successfully filed an amicus brief to the Supreme Court on an issue of appellate jurisdiction.
- Attended multiple full-day, in-person mediation sessions conducted by highly experienced mediators, preceded by mediation briefing, to achieve the Barclays, Citi, Deutsche Bank, and HSBC Settlements.
- Successfully briefed motions for preliminary and final approval of the Barclays, Citi, Deutsche Bank, and HSBC Settlements and worked with experts to develop a comprehensive notice program and plan of distribution.
- Reviewed more than 3.5 million documents produced by the Defendants and third parties, as well as trial transcripts and evidence from civil and criminal trials in the United States

and the United Kingdom relating to LIBOR manipulation.

- Listened to more than 125,000 audio files produced by the defendants.

- Drafted discovery requests to the Defendants for trading, cash-flow, and borrowing data on the Defendants' financial instruments and participated in scores of meet and confers to obtain the production of that data.

- Diligently pursued discovery from four third-party brokers that formed an important component of the OTC Plaintiffs' expert witness analysis.

- Defended six 30(b)(6) depositions of the named plaintiffs; defended three depositions of OTC Plaintiffs' experts; conducted two depositions of the Defendants' experts.

- Worked with the OTC Plaintiffs' expert witnesses to draft extensive 30(b)(6) notices setting out questions essential to understanding the trade, cash-flow, and borrowing data produced by the defendants.

- Assisted the OTC Plaintiffs' economic experts in analyzing 686 gigabytes of data and developing two expert witness reports totaling more than 300 pages.

- Prepared more than sixty pages of briefing, more than sixty pages of attorney declarations, and 149 exhibits in support of the OTC Plaintiffs' motion for class certification and vigorously defended against challenges thereto by the defendants.

- Attended a full-day, in-person mediation session conducted by the Honorable Layn Phillips, preceded by mediation briefing, and followed by extensive telephonic discussions and negotiations, to achieve the Citibank Settlement.

- Leveraged experience from the Barclays Settlement to successfully brief a motion for preliminary approval of the Citibank Settlement and adapt previously successful notice program for this second settlement.

- Attended a full-day, in-person mediation session conducted by the Honorable Layn Phillips, preceded by mediation briefing, and followed by extensive telephonic discussions and negotiations, to achieve the Deutsche Bank Settlement.

- Attended a full-day, in-person mediation session conducted by the Honorable Layn Phillips, preceded by mediation briefing, and followed by extensive telephonic discussions and negotiations, to achieve the HSBC Settlement.

- Successfully briefed motions for preliminary and final approval of both the Deutsche Bank and HSBC Settlements and designed a joint notice program for those two settlements as well as for the litigation class that saved substantial expense to the class.

- Collected, reviewed, and produced to the Defendants thousands of pages of documents from the named plaintiffs, and prepared supplemental class certification briefing regarding one named plaintiff's adequacy as a class representative.

- Appealed the dismissal of the OTC Plaintiffs' antitrust claims on personal jurisdiction grounds to the Second Circuit, including supplemental briefing on the Second Circuit's decision in *Schwab* and the Supreme Court's decision in *Ford Motor Co. v. Montana 8th Judicial Dist.*, No. 19-368.

- Briefed disputed issues concerning the case schedule after the Second Circuit's personal jurisdiction ruling and negotiated with Liaison Counsel for Defendants a proposed schedule for merits discovery, expert reports, class certification as to the foreign-bank Defendants, and summary judgment briefing.

- Drafted with the Direct-Action Plaintiffs a consolidated set of document requests to all defendants for merits discovery on "Upstream" issues.

- Worked with experts and the claims administrator to administer the Barclays, Citi, Deutsche Bank, and HSBC settlement funds and briefed the motion for distribution resulting in the successful distribution of those settlement funds to the members of the OTC Class.

- Proposed and negotiated search terms and custodians for merits discovery on "Upstream" issues with the twelve non-settling OTC Defendants and briefed a motion to compel on disputed search terms and custodians.

- Engaged in extensive negotiations and discussions mediated by the Honorable Layn Phillips to achieve the MUFG, Norinchukin, and SocGen Settlement and then the Lloyds, Rabobank, RBC, and Portigon Settlement.

- Briefed a motion for preliminary approval of this Settlement and worked with experts to develop a comprehensive notice program and plan of distribution that leverages prior claims submissions and extensive prior claims administration work.

In sum, Class Counsel have devoted considerable time and financial resources in prosecuting this case on behalf of the OTC Class.

2. Magnitude & Complexity of the Litigation (Goldberger Factor 2)

The second *Goldberger* factor—"the magnitude and complexities of the litigation"—also strongly supports approval of the requested fee. No other case better embodies the challenges faced by plaintiffs in antitrust litigation than this one. *See Virgin Atl. Airways Ltd. v. British Airways PLC*, 257 F.3d 256, 263 (2d Cir. 2011) (noting the "factual complexities of antitrust cases"); *Wal-Mart Stores*, 396 F.3d at 118 ("Federal antitrust cases are complicated, lengthy, and bitterly fought."); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *4 ("Federal antitrust

cases are complicated lengthy, and bitterly fought, as well as costly."). This action was initially filed nearly twelve years ago and has undergone multiple rounds of briefing on eight motions to dismiss, a motion for judgment on the pleadings, and an opposition to leave to amend that functioned as the equivalent to a motion to dismiss.

Meanwhile, the briefing of the OTC Plaintiffs' successful motion for class certification was extensive, and OTC Plaintiffs successfully opposed Defendants' Rule 23(f) petition. After class certification, the OTC Plaintiffs faced (and continue to face) the monumental task of completing merits discovery, including additional expert discovery, summary judgment briefing, class certification briefing as to the foreign bank Defendants, and ultimately a trial likely lasting weeks (if not months) from which the losing party will almost certainly appeal. *See, e.g.*, *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *4 ("This litigation has been pending since 2005 and has involved the production of thousands of documents, at least 17 fact witness depositions, expert discovery, and extensive motion practice. The Certified Classes are scheduled for a trial against the non-settling defendants that is expected to take at least three weeks.").

3. Risk of the Litigation (Goldberger Factor 3)

The third *Goldberger* factor—the "risk of the litigation"—also strongly supports approval of the requested fee. The Second Circuit has identified "the risk of success as perhaps the foremost factor to be considered in determining [a reasonable fee award]." *Goldberger*, 209 F.3d at 54. Class Counsel have taken on and overcome significant risks in this litigation.

a. Contingency Risk

"No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *Fleisher*, 2015 WL 10847814, at *21 (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974)). Here, OTC Counsel have invested more than

121,000 hours of time with a lodestar value of more than $82 million without *any* guarantee they would be compensated for their continued efforts or reimbursed for any of the millions of dollars in litigation expenses they have incurred. *See In re High-Crush Ptrs. L.P. Secs. Litig.*, 2014 WL 7323417, at *16 (S.D.N.Y. Dec. 19, 2014) ("Lead Counsel undertook the representation of Lead Plaintiffs and the Class in this Action on a wholly contingent basis, investing substantial time and funds to prosecute this Action, without any guarantee of compensation or of recovering out-of-pocket expenses."); *Fleisher*, 2015 WL 10847814, at *21 ("[T]he firm would not have been compensated for its time or expenses at all had it been unsuccessful in this litigation.").

Moreover, Class Counsel would not have been compensated their additional time or expenses at all had they been unsuccessful in this litigation. *See Grinnell*, 495 F.2d at 471 ("[D]espite the most vigorous and competent of efforts, success is never guaranteed."); *In re Beacon Assocs. Litig.*, 2013 WL 2450960, at *13 (S.D.N.Y. 2013) ("And all of these matters were taken on contingency, so in view of the novelty of the issues there was some possibility that counsel would recover nothing at all."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 366 (S.D.N.Y. 2002) ("The enormous risks of litigation are why settlement is frequently preferred. Settling avoids delay as well as uncertain outcome . . . ."). The risk of no recovery in complex class actions is real and supports Class Counsel's request.

Contingency risk takes on an additional layer in multi-defendant actions such as this one, where class counsel's efforts in securing partial settlements with certain defendants protect against the risk that there might *never* be any recovery from other defendants. Courts recognize this dynamic when awarding fees—and cite it as a reason to *reward* class counsel for the risk they take. For instance, in the *Online DVD Rental* case, plaintiffs settled with one defendant for $27.25 million and then lost the entire case against the remaining defendant a few months later, when the court granted that defendant's motion for summary judgment. *See In re Online DVD*

Rental Antitrust Litig., No. 09-md-2029 (N.D. Cal. Sept. 2, 2011), ECF 492 (granting preliminary approval to settlement); *In re Online DVD Rental Antitrust Litig.*, 2011 WL 5883772, at *1 (N.D. Cal. Nov. 23, 2011) (granting motion for summary judgment). The court not only granted class counsel's fee request for 25% of the settlement fund, *see In re Online DVD Rental Antitrust Litig.*, No. 09-md-2029, slip op. ¶ 1 (N.D. Cal. Mar. 29, 2012), ECF 607, *aff'd*, 779 F.3d 934, 955 (9th Cir. 2015), but in fact, specifically cited the summary judgment order as one reason to approve the fee request as reasonable:

> At this time, I'm prepared to find that the settlement is fair, reasonable, and adequate given the totality of the circumstances, ***particularly given the fact that half the case has been kind of wiped off the books for the plaintiffs***, I find that the settlement is fair, reasonable, and adequate, that something's better than nothing in this kind of case, and that ***the bench mark is a reasonable fee*** for this case. So I approve.

Transcript of Hearing, *In re Online DVD Rental Antitrust Litig.*, No. 09-md-2029 (N.D. Cal. Mar. 14, 2012), ECF 602 (emphasis added). In that case, class counsel's diligence in pursuing what turned out to be an unsuccessful claim was a compelling reason to *reward* class counsel for the contingency risk it took on and *award* the requested fees from the recovery that class counsel *did* achieve. Although Class Counsel are confident in the merits of the OTC Class's claims against the non-settling Defendants, there still remains significant contingency risk associated with those claims, which favors granting an interim fee award from the substantial and concrete recovery Class Counsel have obtained to date.

b. Liability Risk

"Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *14 (S.D.N.Y. 2014). The OTC Plaintiffs face significant risks in continuing to litigate, amplified by the complexity of the market for LIBOR-linked financial instruments and the fact

that Deutsche Bank and HSBC are global financial institutions with virtually unlimited litigation resources. Indeed, this case presents the Court, the parties, and eventually a jury with the task of understanding complex derivative instruments in an opaque, unregulated market, during a period of extraordinary economic upheaval. "The complexity of Plaintiff's claims *ipso facto* creates uncertainty . . . . A trial on these issues would likely be confusing to a jury." *Park v. The Thomson Corp.*, 2008 WL 4684232, at *4 (S.D.N.Y. Oct. 22, 2008); *see* 31 No. 7 Futures & Derivatives L. Rep. 1 ("Derivative instruments, in most cases, are highly complex and difficult to understand for even highly sophisticated and intelligent investors.").

Although the OTC Plaintiffs believe fervently in the merit of their case, at the time the MUFG, Norinchukin, and SocGen Settlement was reached, merits discovery, merits expert work, class certification as to those foreign-bank Defendants, summary judgment, and ultimately a trial lay ahead along with corresponding risks at each phase. *See Athale v. Sinotech Energy Ltd.*, 2013 WL 11310686, at *6 (S.D.N.Y. Sept. 4, 2013) ("Absent settlement, there is no assurance that Lead Plaintiff's motion for class certification would be granted or that Class status, if granted, would be maintained throughout trial.").[11]

c. Damages Risk

Equally as significant as the risks in establishing liability in this case were the OTC Plaintiffs' risks in establishing damages. The damages estimates in this case are heavily expert-driven, and, although the OTC Plaintiffs are confident in their ability to prove damages, the expert battle at class certification and the anticipated merits expert battle adds substantial risk to the OTC Plaintiffs' claims. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550,

[11] *Sykes v. Harris*, 2016 WL 3030156, at *18 (S.D.N.Y. May 24, 2016) ("Defendants asserted numerous novel defenses to Lead Plaintiffs' claims which put recovery for Class Members and Class Counsel at risk."); *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970) ("[N]o matter how confident one may be of the outcome of litigation, such confidence is often misplaced.").

at *18 (S.D.N.Y. 2010) (noting that the burden in proving the extent of the class's damages weighed in favor of approving fee request, and that "[t]he jury's verdict . . . would . . . depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable"); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) (observing that "[d]amages at trial would inevitably involve a battle of the experts" and noting that it is "difficult to predict with any certainty which testimony would be credited").

* * *

The only certainties from the outset of this litigation were that there would be no attorneys' fees or reimbursement of expenses without a successful result, and that a successful result, if any, could be achieved only after lengthy, difficult, and expensive effort.

4. Quality of the Representation (Goldberger Factor 4)

The fourth *Goldberger* factor, "the quality of representation," also supports approval of the requested fee. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award and in assessing the quality of the representation. *See, e.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Class Counsel respectfully submits that the $90 million settlement amount, the $680 million achieved through this settlement, and the $781 million in total settlement funds achieved through the subsequent settlement is strong evidence of the quality of Class Counsel's representation. That is particularly true because none of MUFG, Norinchukin, or SocGen were the subject of regulatory orders relating to persistent suppression of LIBOR during the financial crisis—the subject of OTC Plaintiffs' claims.

"To determine the 'quality of the representation,' courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Taft v. Ackermans*, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007). "Susman Godfrey has significant experience with . . . class actions, including settlements thereof . . . [and] [t]he lawyers working

for the Class have substantial experience prosecuting large-scale class actions." *Fleisher*, 2015 WL 10847814, at *22; *see also* Joint Decl. Ex. A. Hausfeld LLP's attorneys "are highly experienced practitioners in complex litigation generally and antitrust litigation specifically." *Air Cargo IV*, 2015 WL 5918273, at *7; *see also* Joint Decl. Ex. B.

"The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work." *Fleisher*, 2015 WL 10847814, at *22. Courts recognize that the caliber of the opposition faced by plaintiffs' counsel aids assessment of the quality of the plaintiffs' counsel's performance. *See Anwar v. Fairfield Greenwich Ltd.*, 2012 WL 1981505, at *2 (S.D.N.Y. June 1, 2012) (considering "the quality and vigor of opposing counsel"). All three settling defendants represented by skilled and highly regarded counsel from Sullivan & Cromwell LLP, Sidley Austin LLP, and Mayer Brown LLP—prestigious firms with well-deserved reputations for vigorous advocacy in the defense of complex civil cases, and the same is true of the other defendants in this action. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d at 357–58 ("Lead Counsel obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country.").

5. Requested Fee in Relation to the Settlement (Goldberger Factor 5)

The fifth *Goldberger* factor—"the requested fee in relation to the settlement"—also supports approval of the requested fee, as discussed *supra* at Section I.B.

6. Public Policy Considerations (Goldberger Factor 6)

Finally, the sixth *Goldberger* factor—public policy considerations—weighs heavily in favor of the requested fee. *Goldberger*, 209 F.3d at 50. Public policy considerations strongly favor incentivizing skilled private attorneys to undertake class action litigation both to vindicate the rights of class members and the law enforcement function of private action litigation. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d at 359 ("[T]o attract well-qualified plaintiffs'

counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."); *Hicks v. Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."); *In re Sumitomo*, 74 F. Supp. 2d at 399 ("[T]he Second Circuit and courts in this district also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.").

Those interests are particularly salient in this case, which has required continual investments of large amounts of attorney time and expenses by Class Counsel. To incentivize the very best private attorneys to take on complex, lengthy, difficult, and expensive class actions, the fee awarded must be sufficient to justify the opportunity cost of foregoing hourly and fixed-fee cases where counsel are assured of compensation regardless of outcome.

II. Class Counsel's Request for Reimbursement of Litigation Expenses Is Reasonable

Class Counsel also request reimbursement in the amount of $2,512,026.10 for out-of-pocket expenses reasonably and necessarily incurred in connection with the prosecution of this case between February 15, 2018 (the date of the HSBC Settlement) and May 12, 2023 (the date of the MUFG-Norinchukin-SocGen Settlement). Joint Decl. ¶ 53.

"[C]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." ECF 2683 at 2 (alteration in original). The expenses incurred by Class Counsel include fees charged by experts, electronic document hosting services, translators, the mediator, court fees, electronic research services like Westlaw and Lexis, photocopy services, and travel providers in connection with this litigation. Courts regularly approve similar cost

applications in large, complex antitrust class actions.[12] Indeed, "[t]he fact that Class Counsel [were] willing to [incur these expenses], where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary." *Fleisher*, 2015 WL 10847814, at *23.

III. The Court Should Grant Service Awards to the Class Representatives

The OTC Plaintiffs also seek incentive awards of $100,000 for named plaintiffs the Mayor & City Council of Baltimore, the City of New Britain, Vistra Energy Corp., Yale University, and Jennie Stuart Medical Center Inc., as stated in the notice. "Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation." *Anwar v. Fairfield Greenwich, Ltd.,* 2012 WL 1981505, at *3 (S.D.N.Y. 2012).

The named plaintiffs' service to the class over the twelve years of litigation so far was critical in achieving the $680 million recovered for absent class members through this Settlement and the prior settlements. They provided evidence to assist in the development of the OTC Plaintiffs' claims, collected thousands of documents in response to defendants' expansive discovery requests, responded to scores of questions from counsel about the documents and data produced, prepared and sat for lengthy 30(b)(6) depositions by Defendants, and have continued throughout to monitor the litigation alongside with class counsel. Providing this service to the class required the named plaintiffs to dedicate considerable time and take key personnel away from their normal duties—at an immediate cost that was not borne by the members of the class

[12] *See, e.g.*, *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *18 (approving $10 million in expenses "[m]ost of" which "were incurred in connection with retention of experts" where the case settled just prior to the due date for class certification motions); *In re Bank of Am. Corp. Secs., Derivatives & ERISA Litig.*, 2013 WL 12091355, at *1 (S.D.N.Y. Apr. 8, 2013) (approving $8 million in litigation expenses); *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 380 (S.D.N.Y. 2013) (approving $7.3 million in litigation expenses); *In re IPO*, 671 F. Supp. 2d at 505 (approving $46 million in expenses).

but that benefitted those class members to the tune of hundreds of millions of dollars. Courts routinely approve incentive awards to class representatives who provide these types of services to the Class. *See, e.g.*, *Sewell v. Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *15 (S.D.N.Y. 2012) (approving incentive awards where the named plaintiffs "served class members by providing counsel with relevant documents in their possession, assisting counsel to prepare for the mediation, participating in litigation strategy, and reviewing and commenting on the terms of the settlement" (internal quotation marks omitted)).

Courts have approved similar and higher incentive awards in numerous cases. *See, e.g.*, *Pearlstein v. Blackberry Ltd.*, 2022 WL 4554858, at *11 (S.D.N.Y. 2022) (awarding $100,000 to each class representative and finding "The award amount is consistent with similar awards granted in this district"); *In re Lidoderm Antitrust Litig.*, 2018 WL 11375216, at *3 (N.D. Cal. 2018) (awarding as "fair and reasonable" service awards to class representatives of "$100,000, to be paid out of the Settlement Fund, for representing the Direct Purchaser Class"); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 2019 WL 13213700, at *2 (E.D.N.Y. 2019) (approving service awards of between $50,000 and $200,000). Combined with the Court's earlier service award of $25,000 to each class representative, the service awards requested represent less than 0.12% of the settlement funds achieve for class members as a result of their efforts, net of attorneys' fees and litigation expenses (including those requested here).

Conclusion

OTC Plaintiffs respectfully request that the Court award from the MUFG, Norinchukin, and SocGen settlement the requested attorneys' fees equal to 25% of the net settlement fund, plus a pro rata share of interest thereon, and reimbursement of litigation expenses in the amount of $2,512,026.10, and service awards of $100,000 for each of the class representatives.

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