

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SONTERRA CAPITAL MASTER FUND, LTD.,
RICHARD DENNIS, and FRONTPOINT EUROPEAN
FUND, L.P., on behalf of themselves and all others
similarly situated,

Plaintiffs,

-against-

BARCLAYS BANK PLC, COOPERATIEVE
CENTRALE RAIFFEISEN-BOERENLEENBANK
B.A., DEUTSCHE BANK AG, LLOYDS BANKING
GROUP PLC, THE ROYAL BANK OF SCOTLAND
PLC, UBS AG, JOHN DOE NOS. 1-50, and
BARCLAYS CAPITAL, INC.,

Defendants.

Docket No. 15-cv-3538 (VSB)

**JOINT DECLARATION OF
VINCENT BRIGANTI AND CHRISTOPHER LOVELL IN SUPPORT OF
REPRESENTATIVE PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT WITH DEFENDANT DEUTSCHE BANK AG**

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

1. We are members of the Bar of this Court and, respectively, are the Chairman and a shareholder with the law firm Lowey Dannenberg, P.C. (“Lowey”) and a partner with the law firm Lovell Stewart Halebian Jacobson LLP (“Lovell,” and with Lowey, “Plaintiffs’ Counsel”).¹

2. We submit this Declaration in support of Representative Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement with Defendant Deutsche Bank AG (“Deutsche Bank”).

3. Annexed hereto are true and correct copies of the following documents:

TABLE OF EXHIBITS	
Exhibit 1	Stipulation and Agreement of Settlement with Deutsche Bank dated March 31, 2022 (the “Settlement Agreement”).
Exhibit 2	Declaration of Linda V. Young, dated July 29, 2022 (“Young Decl.”).
Exhibit 3	Proposed Post Card notice
Exhibit 4	Proposed Long Form notice.
Exhibit 5	Proposed Short Form notice.
Exhibit 6	Proof of Claim and Release form.
Exhibit 7	Proposed Distribution Plan.
Exhibit 8	Lowey firm resume.
Exhibit 9	Lovell firm resume.

I. Procedural History

4. On May 6, 2015, this litigation was initiated as a putative class action on behalf of all persons and entities that engaged in Sterling LIBOR-Based Derivatives transactions. ECF No. 1. On July 24, 2015, the First Amended Complaint (“FAC”) was filed and asserted claims under the CEA, Sherman Act, RICO, and common law. ECF No. 18. Defendants moved to dismiss based on lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim on November 13, 2015, which plaintiff opposed. ECF Nos. 65-75, 81-83.

¹ All capitalized terms not defined herein have the same meaning as defined in the Settlement Agreement.

5. On January 21, 2016, a second complaint was filed alleging the same misconduct with named plaintiffs FrontPoint European Fund, L.P. (“FrontPoint”) and Richard Dennis (“Dennis”). *Dennis, et al. v. Barclays Bank PLC*, No. 16-cv-464 (VSB) (S.D.N.Y.), ECF No. 1 (Jan. 21, 2016). The Court subsequently consolidated the two lawsuits, ordered the filing of a consolidated class action complaint, and dismissed Defendants’ motion to dismiss without prejudice. ECF No. 91.

6. On February 25, 2016, plaintiffs filed the Consolidated Class Action Complaint (“CAC”). ECF No. 95. On April 11, 2016, Defendants filed a motion to dismiss asserting lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim, which plaintiffs opposed. ECF Nos. 99-110, 114-16, 120-21. On December 21, 2018, the Court granted in part and denied in part Defendants’ motion to dismiss the CAC. ECF No. 191.

7. Plaintiffs and UBS filed a motion for reconsideration on January 22, 2019. ECF Nos. 196-99. FrontPoint also filed a motion to substitute Fund Liquidation Holdings, LLC (“FLH”) as its assignee and attorney-in-fact pursuant to an assignment of claims and irrevocable powers of attorney executed prior to FrontPoint’s dissolution and the filing of the initial complaint. ECF Nos. 201-05. On August 16, 2019, the Court denied the motion for substitution, dismissed the FrontPoint claims, and terminated the pending motions finding, *inter alia*, that FrontPoint lacked capacity to maintain the lawsuit. ECF No. 235.

8. On September 16, 2019, plaintiffs filed their notice of appeal and on September 30, 2019, UBS AG filed its notice of cross-appeal. ECF. Nos. 237-38. On December 19, 2019, the Second Circuit granted plaintiffs’ motion to hold the appeals in abeyance pending the issuance of an opinion in *FrontPoint Asian Event Driven v. Citibank, N.A.*, No. 19-2719 (2d Cir.), which stay

was lifted on July 13, 2021. *Sonterra Capital Master Fund, Ltd. v. Barclays PLC*, No. 19-2979 (2d Cir.) (“*Sonterra Appeal*”), ECF Nos. 90 (Dec. 19, 2019), 111 (July 13, 2021).

9. Plaintiffs filed their opening appellate brief on October 21, 2021. *Sonterra Appeal*, ECF No. 127-29 (Oct. 21, 2021). UBS and Defendants-Appellees Barclays Bank PLC, Barclays Capital Inc., Cooperative Centrale Raiffeisen-Boerenleenbank B.A., Lloyds Banking Group PLC and The Royal Bank of Scotland Group PLC (“Appellees”) filed their briefs on January 20, 2022. *Sonterra Appeal*, ECF No. 146, 148 (Jan. 20, 2022). Plaintiffs filed their brief in response to UBS’s opening brief and reply to Appellees’ brief on April 8, 2022. *Sonterra Appeal*, ECF No. 201 (Apr. 8, 2022). UBS filed its reply to plaintiffs’ response on May 20, 2022. *Sonterra Appeal*, ECF No. 215 (May 20, 2022). The appeal remains pending before the Second Circuit.

II. Settlement Negotiations

10. Settlement negotiations with Deutsche Bank took place over several months, starting in approximately September 2021 and continuing until the Settlement Agreement was executed on March 31, 2022.

11. Following initial communications with Deutsche Bank’s counsel in September 2021, Plaintiffs’ Counsel and Deutsche Bank engaged in lengthy negotiations, with each side presenting their views on the strengths and weaknesses of the case, as well as Deutsche Bank’s litigation exposure. During the negotiations, Deutsche Bank denied any liability and maintained that it had meritorious defenses to the claims brought against it. The Parties had extensive discussion over the material terms of any settlement, including the settlement amount, scope of the cooperation to be provided by Deutsche Bank, the release, and the circumstances under which the Parties may terminate the settlement.

12. After significant discussions, Deutsche Bank and Plaintiffs' Counsel signed a binding settlement term sheet on January 3, 2022.

13. Following the execution of the term sheet, Plaintiffs moved the Second Circuit to stay and sever the appeal as to Deutsche Bank only, and to remand that portion of the Action to the Court to consider the approval of the proposed Settlement. *Sonterra Appeal*, ECF No. 147 (January 20, 2022). The Second Circuit granted the motion on January 25, 2022. *Sonterra Appeal*, ECF No. 169 (Jan. 25, 2022).

14. After several more weeks of negotiations, and Representative Plaintiffs and Deutsche Bank executed the Deutsche Bank Settlement on March 31, 2022.

III. Key Settlement Terms

15. Deutsche Bank has agreed to pay **\$5,000,000** to Representative Plaintiffs and the Settlement Class.

16. The Settlement Class is defined as:

All persons or entities that transacted in a Sterling LIBOR-Based Derivative at any time from January 1, 2005 through at least December 31, 2010 ("Class Period"), provided that, if Representative Plaintiffs expand the Class in any subsequent amended complaint, class motion, or settlement, the defined Class in this Agreement shall be expanded so as to be coterminous with such expansion. Excluded from the Settlement Class are the Defendants and any parent, subsidiary, affiliate or agent of any Defendant or any co-conspirator whether or not named as a Defendant, and the United States Government.

See Ex. 1 (Settlement Agreement) at § 1(F).

17. The consideration that Deutsche Bank has agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval. This Settlement with Deutsche Bank has significant value as the "ice-breaker" settlement in this Action, which may help to facilitate additional settlements in the future. Further, the Settlement provides Representative Plaintiffs with cooperation that will be valuable in any ongoing prosecution of this Action.

18. The Settlement involves a structure and terms that are common in class action settlements in this District, including a confidential Supplemental Agreement that provides each Deutsche Bank with a qualified right to terminate their Settlement in the event that the volume of Sterling LIBOR-Based Derivatives transacted by Class Members who timely exercise their right to request exclusion from the Settlement Class exceeds a certain percentage. *See* Ex. 1, § 23.

19. Plaintiffs' Counsel believes that there are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on data from the Federal Reserve Bank of New York, which shows that hundreds of billions of dollars in notional value of Sterling LIBOR-Based Derivatives were traded within the United States from 2005 through 2010. *See* CAC, ECF No. 95, ¶¶ 93-96 (citing, *inter alia*, 2007 and 2010 surveys by the Federal Reserve Bank of New York).

20. Class Members that do not request exclusion from the Settlement Class and submit a valid claim will receive a *pro rata* share of the Net Settlement Fund, based on the notional amount of their Sterling LIBOR-Based Derivatives transactions and adjusted by certain factors as described in the accompanying Distribution Plan. *See* Ex. 7.

21. In the event that any Settlement is terminated pursuant to the terms of the Settlement Agreement, any amount paid by that Settling Defendant into an Escrow Account, less any reasonable costs incurred for notice and claims administration up to \$500,000 will be returned to that Settling Defendant within 10 business days of termination. *See* Ex. 1, § 9(B).

22. If approved, the Settlement provides that the "Releasing Parties finally and forever release and discharge from and covenant not to sue the Released Parties for any and all manner of claims . . . arising from or relating in any way to conduct alleged in the Action . . ." and the Action will be completely resolved. *See* Ex. 1 § 12.

23. Plaintiffs' Counsel intends to seek attorneys' fees of no more than one-third of the common fund (net of litigation expenses and costs) created by the Settlement and reimbursement of its expenses and costs incurred in litigating this Action, not to exceed \$600,000, and for interest on such attorneys' fees and litigation expenses and costs at the same rate as the earnings in the Settlement Fund, accruing from the inception of the Settlement Fund until the attorneys' fees and litigation expenses and costs are paid. *See* Ex. 1, § 5(E).

IV. Non-Collusive Settlement Negotiations

24. The Settlement with Deutsche Bank was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations and before any demand or counteroffer was ever made, we were well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of Representative Plaintiffs' claims against Deutsche Bank. Further, Deutsche Bank is represented by skilled counsel from a top law firm with extensive experience in antitrust and class action cases.

V. Well Informed and Arm's-Length Negotiations

25. Before reaching the Settlements, Plaintiffs' Counsel extensively reviewed and analyzed the following documents and information: (i) government settlements or proposed regulatory frameworks involving Defendants and the U.S. Commodity Futures Trading Commission ("CFTC"), Department of Justice ("DOJ"), and the U.K. Financial Services Authority ("FSA") as they may relate to Sterling LIBOR, or other benchmarks; (ii) publicly-available information relating to the conduct alleged in Plaintiffs' complaints; (iii) expert and industry research regarding Sterling LIBOR and the Sterling LIBOR-Based Derivatives; and (iv) prior decisions of courts deciding similar issues.

26. Plaintiffs' Counsel serve as lead, co-lead counsel, or additional plaintiffs' counsel in at least seven class actions (including this one) bringing antitrust and/or Commodity Exchange Act claims against financial institutions for the manipulation of global benchmark interest rates, including *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD) (London Interbank Offered Rate ("LIBOR") for Japanese Yen ("Yen-LIBOR) and the Tokyo Interbank Offered Rate ("Euroyen TIBOR")); *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (Euro Interbank Offered Rate ("Euribor")); *Dennis et al. v. JPMorgan Chase & Co. et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (the Australian Bank Bill Swap Rate ("BBSW")); *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-871 (SHS) (S.D.N.Y.) (Swiss franc LIBOR); *Fund Liquidation Holdings LLC, et al. v. Citibank N.A., et al.*, No. 16-cv-05263 (AKH) (Singapore Interbank Offered Rate and the Singapore Swap Offer Rate).

27. Plaintiffs' Counsel's experience in litigating IBOR cases provided insight as to how to best conduct their investigation to prosecute the action, include the likely sources of information and trading data, reputable and effective experts to engage, and options available to estimate damages in the market.

28. During the course of these other cases, Plaintiffs' Counsel were able to see multiple judges' reactions to the legal arguments Defendants raised regarding subject matter jurisdiction, personal jurisdiction, and the merits of the respective pleadings; got a preview into Defendants' aggressive style in litigating discovery; had the experience of going up to the Second Circuit and back on a subject matter jurisdiction issue in the Yen LIBOR/Euroyen TIBOR and SIBOR litigations and analyzing how that impacted this case; and saw the main areas of attack that Defendants used on the class certification models that plaintiffs' experts put forth.

29. Having negotiated settlements in other IBOR, Plaintiffs' Counsel's IBOR litigation experience also provided a valuable context through which to assess the value of this Action and what would constitute a reasonable settlement in light of the circumstances.

30. In addition, Plaintiffs' Counsel: (a) conducted an extensive pre-complaint investigation into the facts and legal issues in this Action; and (b) after filing the complaint, continued to research and analyze the strengths and weaknesses of the claims, including through ongoing consultations with leading economic experts. Further, prior to negotiating with Deutsche Bank, Plaintiffs' Counsel had the benefit of the Court's decisions on Defendant's motions to dismiss in this Action.

31. We were personally involved in all aspects of the settlement negotiations on behalf of Representative Plaintiffs. Representative Plaintiffs engaged in hard-fought and principled negotiations with the Deutsche Bank using the information gathered from Plaintiffs' Counsel's extensive investigation, industry and expert analysis, and information shared by Deutsche Bank during the settlement discussion. After carefully weighing the risks and potential outcomes of continued prosecution of Deutsche Bank against the immediate benefit that the Settlement would provide to the Settlement Class, and the cooperation that would be supplied to advance the litigation against non-settling Defendants, Representative Plaintiffs and Plaintiffs' Counsel concluded the Settlement was in the best interest of the Settlement Class.

VI. Experience of Plaintiffs' Counsel

32. At the time the Settlement was negotiated, our firms were experienced in prosecuting complex class action lawsuits brought under the Sherman Antitrust Act, 15 U.S.C. §§ 1 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968, the Commodity Exchange Act ("CEA"), 7 U.S.C. §§ 1 *et seq.*, and the common law. We have obtained

landmark settlements on behalf of some of the nation's largest pension funds and institutional investors. *See* Firm Resumes, attached hereto as Exhibits 8-9.

33. Many of these settlements arose from similar benchmark manipulation cases, including recent cases alleging manipulation of Yen-LIBOR, Euroyen TIBOR, and Euribor. Specifically, Judge P. Kevin Castel approved settlements negotiated by Plaintiffs' Counsel totaling \$491.5 million, relating to alleged manipulation of the Euro Interbank Offered Rate ("Euribor") and prices of Euribor-based derivatives. *See Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.), ECF No. 424 (Final Approval Order of Settlements with three benchmark rate defendants, Barclays, Deutsche Bank and HSBC); ECF No. 498 (Final Approval Order of Settlement with two benchmark rate defendants Citi and JPMorgan). On May 9, 2022, Judge Castel also granted preliminary approval to a \$55 million settlement with Crédit Agricole. *Id.* ECF No. 520 (Preliminary Approval Order of Settlement with defendant Crédit Agricole). If final approval is granted, the total settlements achieved to date in Euribor would be \$546.5 million.

34. Lowey also negotiated settlements totaling \$307 million on behalf of class members relating to manipulation of the London Interbank Offered Rate for Japanese Yen ("Yen-LIBOR") and the Tokyo Interbank Offered Rate ("Euroyen TIBOR"). *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.) ECF Nos. 1013-14 (Dec. 19, 2019), 891 (Jul. 12, 2018), 838 (Dec. 7, 2017), 720 (Nov. 10, 2016) & *Sonterra Capital Master Fund Ltd. et al v. UBS AG et al*, No. 15-cv-5844 (S.D.N.Y.), ECF Nos. 423 (Jul. 12, 2018), 389 (Dec. 7, 2017), 298 (Nov. 10, 2016).

35. We have decades of experience in successfully developing and leading the prosecution of benchmark rate antitrust, commodity manipulation, and federal securities litigation matters. This experience includes cases in which our firms have successfully prosecuted, as court-

appointed lead or co-lead counsel or individual plaintiff's counsel, what were at the time the first, second, third, and fourth largest class action recoveries under the CEA.²

36. In this case, Plaintiffs' Counsel have diligently represented the interests of the Class in the Action. The firms' attorneys investigated and prosecuted the Action, including conducting a pre-filing investigation, drafting the initial and amended complaints, opposing Defendants' motion to dismiss, and appealing the Court's dismissal of the Action. As described above, Plaintiffs' Counsel negotiated the Settlement with Deutsche Bank. The firms have performed all of the necessary work to prosecute this litigation for over 6½ years. Plaintiffs' Counsel will continue to zealously represent the Class to prosecute the Class's claims against the remaining Defendants.

VII. Distribution Plan

37. Plaintiffs' Counsel, together with consulting experts, developed the proposed Distribution Plan. *See* Exhibit 7. The Distribution Plan calculates a score (the "Transaction Claim Amount") that represents an estimate of the impact of Defendants' alleged market manipulation on the payment streams for Sterling LIBOR-Based Derivatives eligible Class Members transacted in during the Class Period. *See* Ex. 7 at ¶¶ 6-31. The Net Settlement Fund will be allocated on a *pro rata* basis based on each claimant's Transaction Claim Amount.

38. Plaintiffs' Counsel has unparalleled experience in building plans of allocation for complex financial products that have been approved as fair, reasonable and adequate. *See, e.g., Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC), ECF No. 424, ¶ 21; *Laydon v. Mizuho Bank, Ltd.*,

² *See In re Sumitomo Copper Litigation*, Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.) (\$149 million settlement); *Hershey v. Pacific Investment Management Corp.*, Case No. 05-C-4681 (RAG) (N.D. Ill.) (\$118.75 million settlement); *In re Natural Gas Commodity Litigation*, Master File No. 03 CV 6186 (S.D.N.Y.) (Marrero, J.) (\$101 million settlement); and *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y.) (Scheidlin, J.) (\$77.1 million settlement).

No. 12-cv-3419 (S.D.N.Y.), ECF No. 891, ¶ 20; *In re London Silver Fixing Antitrust Litig.*, Case No. 14-MD-2573 (VEC) (S.D.N.Y. Aug. 5, 2020) ECF No. 451-5; *In re Mexican Government Bonds Antitrust Litigation*, No. 1:18-cv-02830 (S.D.N.Y. Dec. 16, 2020), ECF. No. 211-7; *Boutchard, et al., v. Gandhi et al.*, No. 18-cv-7041 (JJT) (N.D. Ill. Mar. 5, 2021). ECF No. 125-6.

39. Plaintiffs' Counsel recommends the proposed Distribution Plan as fair, reasonable, and adequate to the proposed Settlement Class, having determined it to be the most fair and efficient manner for distributing funds to Class Members.

VIII. Notice Plan

40. Plaintiffs' Counsel propose that A.B. Data, Ltd. ("A.B. Data") be appointed as the Settlement Administrator in this Action based on its experience, institutional knowledge, and price competitiveness. A.B. Data developed the proposed Notice Plan in coordination with Plaintiffs' Counsel. *See* Ex. 2. The proposed Notice Plan is consistent with notice plans that courts have repeatedly approved in prior benchmark manipulation cases and other complex class action settlements. *See*, Ex. 2, at ¶ 16.

41. A.B. Data's proposal reflects a detailed understanding of the instruments and trading volume involved, and the need for an effective and cost-efficient noticing process that included both direct mail notice to people and entities (*e.g.*, brokers) that likely traded in such products as well as publication notice to inform Class Members whose contact information is not available. A.B. Data has extensive experience administering class action settlements and designing notice plans that have been approved in numerous complex class actions, including class actions involving exchange-traded and over-the-counter products, including in the following cases: *In re Silver Fixing Antitrust Litigation.*, Nos. 14-md-02573 & 14-mc-02573 (VEC) (S.D.N.Y.), ECF No. 464; *Boutchard v. Gandhi et al.*, No. 18-cv-7041 (N.D. Ill.), ECF No. 125-2

at 14-40; and *In re LIBOR-Based Financial Instruments Antitrust Litigation.*, Nos. 11-md-2262 & 11-cv-2613 (NRB) (S.D.N.Y.), ECF No. 3038; *In re Crude Oil Commodity Futures Litig.*, No. 11-cv-3600 (S.D.N.Y.); *In re JPMorgan Precious Metals Spoofing Litig.*, No. 18-cv-10356 (GHW) (S.D.N.Y.), ECF No. 91; *In re JPMorgan Treasury Futures Spoofing Litig.*, No. 20-cv-3515 (PAE) (S.D.N.Y.), ECF No. 74; and *Sonterra Capital Master Fund, Ltd., et al. v. UBS AG, et al.*, 15-cv-5844 (GBD) (S.D.N.Y.), ECF No. 402.

IX. Proof of Claim and Release

42. A proposed Proof of Claim and Release form, prepared and recommended by Plaintiffs' Counsel and A.B. Data, is submitted as Exhibit 6. Plaintiffs' Counsel developed the Proof of Claim and Release form with the assistance of A.B. Data to ensure it is written in a fashion that will be readily understood by Class Members. Plaintiffs' Counsel recommend the proposed Proof of Claim and Release form as fair and reasonable.

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

Executed on July 29, 2022

/s/ Vincent Briganti
Vincent Briganti

/s/ Christopher Lovell
Christopher Lovell