UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALASKA ELECTRICAL PENSION FUND, et al., Plaintiffs, v. BANK OF AMERICA, N.A., et al., Defendants.	Lead Case No.: 14-cv-7126 (JMF)

LEAD COUNSEL'S NOTICE OF MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND INCENTIVE AWARDS

PLEASE TAKE NOTICE that Plaintiffs and Lead Counsel hereby move for attorneys' fees, litigation expenses, and incentive awards. Plaintiffs and Lead Counsel bring this motion pursuant to Federal Rule of Civil Procedure 23(h). This motion is based on this Notice of Motion and Motion; the accompanying Memorandum of Law, the declarations in support of the Motion, any papers filed in reply, and oral and documentary evidence as may be presented at any hearing of this Motion. Plaintiffs and Lead Counsel will submit a corresponding [Proposed] Order along with their reply brief.

Dated: September 28, 2018

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MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND INCENTIVE AWARDS

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiffs, through Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), and Scott+Scott Attorneys at Law LLP ("Scott+Scott," and collectively, "Lead Counsel"), respectfully move for attorneys' fees, litigation expenses, interest on such attorneys' fees and expenses, and incentive awards from the common funds established by Plaintiffs' settlements with all fifteen Defendants.

INTRODUCTION

Lead Counsel initiated, prosecuted, and resolved this case, recovering more than a half-billion dollars for investors. After litigating this matter for more than four years on a contingency-fee basis and having carried millions in expenses, we now seek an award of 30% of the settlement funds as attorneys' fees, plus expenses, as well as incentive awards for the named plaintiffs. As explained below, our requests are well within the standards employed by courts in this Circuit and elsewhere for fee, expense, and incentive awards, particularly in complex antitrust class actions.

The Settlements achieved in this matter are a superb result for investors affected by Defendants' alleged manipulation of ISDAfix.[1] They provide significant and timely compensation for injured investors. Lead Counsel secured a total of $504.5 million to resolve all claims in the litigation, having previously secured confirmatory discovery and cooperation from Defendants that settled while the litigation was ongoing.

[1] Capitalized terms not defined herein have the same meanings as supplied in Plaintiffs' motions for preliminary approval. *See* Dkt. Nos. 220 & 221 (Bank of America, Barclays, Citigroup, Credit Suisse, Deutsche Bank, JP Morgan, and RBS), 329 & 330 (Goldman Sachs), 488 & 489 (HSBC and UBS), 665 & 666 (BNP, ICAP, Morgan Stanley, Nomura, and Wells Fargo). All internal citations and quotations are omitted unless indicated.

Lead Counsel secured these Settlements with fifteen sophisticated adversaries in the face of significant risks. This is not the typical case reflexively filed in response to the announcement of a Department of Justice or other government investigation. In fact, Lead Counsel were *ahead of* government investigations and settlements. We researched and developed innovative yet well-supported approaches to various thorny issues of collusion, injury, damages, impact, and causation. For over four years of investigation and litigation, we met the case's significant—and sometimes unexpected—funding demands, and did so while aligned against fifteen of the world's largest financial institutions represented by some of the world's biggest and most experienced law firms.

Litigating this complex financial collusion case necessarily required Lead Counsel to engage a number of experts and to task them with, among other things, analyzing huge volumes of data. Out-of-pocket expert bills alone have exceeded $16 million to date. Pursuing this case on behalf of the Settlement Class was, by any measure, a formidable task with inherent risk.

When counsel take on uncertain cases, incur significant financial risks, and secure excellent results while serving the important role of private attorneys general to enforce the nation's antitrust laws, public policy dictates that their work be compensated with a fair and reasonable fee. As the Second Circuit has explained:

> [O]ne whose labors produce a favorable result deserves adequate recompense. Such a notion is particularly applicable in the area of antitrust class action, which depends heavily on the notion of the private attorney general as the vindicator of the public policy. In the absence of adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation.

Alpine Pharmacy, Inc. v. Chas. Pfizer & Co., Inc., 481 F.2d 1045, 1050 (2d Cir. 1973).

In this case, Lead Counsel respectfully submits that a fee of 30% of the gross monetary value of the settlement funds, or $151,350,000, is fair and reasonable. This request is well-

supported by this Circuit's standards for evaluating fee applications and by fee schedules adopted by a range of courts in other complex antitrust litigation with comparable recoveries. Legal scholar Brian T. Fitzpatrick of Vanderbilt University School of Law, whose extensive research on attorneys' fees in class action settlements has been widely cited by federal courts, has submitted a declaration in support of Lead Counsel's fee request ("Fitzpatrick Decl."). *See* Fitzpatrick Decl. ¶3 n.1 (collecting cases and other work that rely on his empirical research).

Lead Counsel also seek payment for the expenses incurred while prosecuting this action, amounting to nearly $18.5 million. These expenses were incurred for the benefit of the Class, and were essential to the result achieved. Lead Counsel exercised restraint and careful judgment when incurring these expenses, especially given that they were advanced with no guarantee of reimbursement. These expenses are discussed below and in the declarations of counsel submitted herewith.

Finally, the significant contributions of the named plaintiffs in this matter warrant reasonable incentive awards. Each expended considerable time and resources assisting Lead Counsel and ably fulfilling their duties as proposed class representatives, without any guarantee of recovery. Without their involvement, this litigation would not have occurred, and important public policies would have gone unenforced.

ARGUMENT

I. THE WORK UNDERTAKEN BY LEAD COUNSEL SUPPORTS THE REQUESTED FEE

The results achieved by Plaintiffs on behalf of the Class are the product of years of hard work by Lead Counsel and the firms working at their direction. This was never a simple or straightforward case; effective litigation required Lead Counsel to master complex financial instruments, trading strategies, and market operations. We funded the empirical research and

developed the legal theories that formed the basis for Plaintiffs' allegations of ISDAfix manipulation. After largely defeating Defendants' motions to dismiss, Lead Counsel conducted aggressive discovery—obtaining and managing sprawling document production with efficiency, diligence, and skill, deposing dozens of witnesses, and winning numerous discovery disputes. All of this was done in time to meet the Court's class certification fact discovery deadline and to create a record that would support Plaintiffs' robust motion for class certification.

Between April 2016 and June 2017, ten of fifteen Defendants settled. The remaining five Defendants settled in May 2018, on the eve of an evidentiary hearing on class certification and *Daubert* issues. At all times, it was Lead Counsel's work that drove Defendants to the negotiating table. Our unrelenting, sustained advocacy was crucial to each settlement, and each settlement served as a building block toward the settlements that followed. The extensive work that Lead Counsel performed on the Class's behalf is described below, and in further detail in the accompanying Joint Declaration of Daniel L. Brockett, Christopher M. Burke, and David W. Mitchell in Support of Lead Counsel's Motion for Award of Attorneys' Fees and Payment of Litigation Expenses ("Joint Decl."), Plaintiffs' Memorandum of Law in Support of Final Approval of Settlement with Ten Defendants (Dkt. No. 602, granted June 1, 2018), and Plaintiffs' concurrently-filed Memorandum of Law in Support of Final Approval of Settlement with Five Defendants.

A. Pre-Appointment Case Investigation and Initial Complaints

The $504.5 million in recoveries could not have been achieved without Lead Counsel's initial pre-filing investigations. In the wake of scandals involving the manipulation of other financial benchmarks such as LIBOR, and as part of Lead Counsel's continuous efforts to monitor the landscape of financial markets for potential misconduct, counsel were already looking at the ISDAfix benchmark as one vulnerable to possible manipulation, even before it

was first reported in the press in April 2013 that the CFTC had opened an investigation. When the issue hit the press, we accelerated our investigation of ISDAfix and retained a private investigation firm and several economists to assist in our inquiry.

Lead Counsel first retained Professor Rosa Abrantes-Metz of the New York University Stern School of Business to analyze trading price data for the possibility of benchmark manipulation. Professor Abrantes-Metz is perhaps the most prominent academic in the world on benchmark manipulation, having authored numerous articles on screening for price manipulation and detecting collusion. She is largely credited with uncovering the manipulation of LIBOR that led to worldwide investigations and huge fines. We later retained Fideres Partners LLP ("Fideres"), a prominent economic consulting firm located in London and New York, that has extensive experience with benchmark and financial services analysis. The initial expert work uncovered serious red flags in Defendants' ISDAfix submissions.

To assist in the expert work, Lead Counsel purchased a sizeable amount of trading data, which our consultants studied using several well-established methods of analysis to determine anomalous trading patterns and the likelihood of collusion. Through examination of this data, our consultants determined that numerous days throughout the Class Period exhibited highly anomalous, statistically-significant spikes just before the 11:00 a.m. benchmark-setting window. Further analysis revealed that the observed price spikes were consistent with collusion among Defendants.

Expert analysis was also able to demonstrate that going back many years the Defendant Banks regularly submitted the same or virtually the same USD ISDAfix rate quotes on almost every single day, down to five decimal points. This resulted in the official ISDAfix rates and the Defendant Banks' contributions being identical on the vast majority of the days covering the

Class Period. And, tellingly, this stunning pattern of uniformity ceased when regulators began to focus on the manipulation of financial benchmarks.

During this investigative phase, Lead Counsel also consulted with numerous other consultants, including industry insiders knowledgeable about ISDAfix, the ISDAfix rate-setting process, and the financial instruments that are pegged to ISDAfix.

All told, Lead Counsel invested over $1 million and numerous months analyzing data, learning about the ISDAfix benchmark (its calculation process, its uses, its history, and its strengths and weaknesses), and assessing whether investors were injured by the trends and irregularities uncovered. After extensive consultation with industry-leading economists and experts in financial market manipulation, counsel determined that it was likely that laws were violated and investors were injured. We then drafted a complaint that documented the findings of the investigation, seeking relief for those who were injured by the misconduct.

Lead Counsel filed the first action arising out of ISDAfix manipulation, *Alaska Electrical Pension Fund*, on September 4, 2014, *before* it was revealed that the U.S. Commodity Futures Trading Commission ("CFTC") had uncovered evidence of possible criminal wrongdoing in connection with ISDAfix and referred the case to the Department of Justice.[2]

When four other class actions concerning ISDAfix manipulation were filed by different counsel (both in this District and in the District of New Jersey), Lead Counsel worked diligently to organize the litigation efficiently so as to avoid unnecessary delay or costs to the Class. Lead Counsel's negotiations resulted in the voluntary dismissal of the New Jersey action (and its refiling in this District) to avoid the delay and expense associated with a proceeding before the

[2] *See* Matthew Leising and Tom Schoenberg, *CFTC Said to Alert Justice Department of Criminal Rate Rigging*, BLOOMBERG, Sept. 8, 2014, http://www.bloomberg.com/news/2014-09-08/cftc-said-to-alert-justice-department-of-criminal-rate-rigging.html.

Judicial Panel on Multidistrict Litigation. *See* Joint Decl. ¶18. Lead Counsel also engaged in extensive discussions to achieve unanimity regarding which firms would serve as Lead Counsel to avoid an unnecessarily contested leadership fight. *Id.* ¶19.

At the same time, Lead Counsel continued to work with our economists to carry out further analyses of ISDAfix submission and trading patterns. As a result, the complaints filed by Lead Counsel were very well-developed, informed by considerable expertise, and supported by economic and other evidence.

B. Pleadings and Motions to Dismiss

Following the appointment of Lead Counsel on November 25, 2014 (*see* Dkt. No. 137), we prepared a consolidated complaint. Without the benefit of government indictments or guilty pleas,[3] Lead Counsel scoured the public record for facts probative of collusion and continued their extensive work with consultants to develop theories consistent with complicated economic evidence. Lead Counsel also identified and conducted interviews with industry experts and witnesses with knowledge of the underlying facts. These efforts led to the filing of the Consolidated Amended Complaint in February 2015 (the "Amended Complaint"). *See* Dkt. No. 164. The Amended Complaint detailed in over 120 pages an alleged conspiracy by Defendants to manipulate ISDAfix rates at the expense of their counterparties and the interest rate swaps market more generally. At the time the Amended Complaint was filed, Lead Counsel had incurred almost $1.2 million in expert fees, not to mention millions of dollars more in attorney time and other expenses.

Defendants moved to dismiss, filing (between opening papers and replies) nearly 90 pages of briefing. *See* Dkt. Nos. 172-175, 203, 204. Defendants argued that Plaintiffs: failed

[3] The first CFTC settlement arising out of ISDAfix manipulation (with Barclays) did not occur until May 20, 2015.

plausibly to allege each Defendants' participation in a conspiracy to restrain trade; lacked antitrust standing; did not plead injury-in-fact or damages; did not state claims for breach of contract, tortious interference, or unjust enrichment; and were barred by statutes of limitations from asserting many of their claims. *See id.* Lead Counsel's opposition briefs provided thoroughly researched responses to these arguments, and spanned nearly 65 pages. *See* Dkt. Nos. 194, 195. In March 2016, the Court largely denied Defendants' motion. *See* Dkt. No. 209.

In January 2017, Plaintiffs moved for leave to amend to add additional named plaintiffs to protect against any purported standing or other class certification issues that Defendants might raise. *See* Dkt. Nos. 352, 353. Defendants opposed (*see* Dkt. Nos. 361, 362), but on February 1, 2017 the Court granted Plaintiffs' motion (*see* Dkt. No. 379) and a Second Consolidated Amended Complaint ("SCAC") was filed less than a week later (*see* Dkt. No. 387).

Defendants moved to dismiss the SCAC in three separate briefs (*see* Dkt. Nos. 397, 399, 402), arguing principally that Plaintiffs lacked standing to pursue antitrust claims arising from plain vanilla swaps outside the interdealer context, and also seeking to eliminate some common law claims against certain Defendant entities. Lead Counsel again devoted substantial time and resources to thoroughly and vigorously oppose these motions. *See* Dkt. Nos. 408-412. The Court largely sided with Plaintiffs, granting Nomura Securities' partial motion and trimming claims against Wells Fargo in a way that did not impact the Class, but rejecting Defendants' challenge to Plaintiffs' antitrust claim. *See* Dkt. No. 568.

C. Discovery

Lead Counsel began taking discovery immediately following the Court's May 2016 initial conference and entry of the Case Management Plan and Scheduling Order (Dkt. No. 224). Lead Counsel satisfied Plaintiffs' initial disclosure obligations, negotiated a comprehensive protective order (*see* Dkt. No. 257) and ESI protocol (*see* Dkt. No. 268), and initiated substantial

fact discovery, prioritizing class certification discovery in accordance with the Court's scheduling order. *See* Joint Decl. ¶¶33-37.

Over the course of the next year, Lead Counsel served 89 requests for production on the Defendant Banks and 75 requests for production on ICAP. After negotiations stretching over many months, the parties agreed to search terms and custodians. Defendants eventually produced over 21 million pages of documents and hundreds of hours of audio recordings. Plaintiffs' counsel reviewed and/or coded over 12 million pages of documents, compiling and synthesizing this enormous body of evidence in order to prosecute the case. Audio files were also transcribed and reviewed—crucial evidence, as many participants in Defendants' conspiracy conducted their trades on recorded lines that captured important conversations and revealed evidence corroborating Plaintiffs' allegations. *See* Joint Decl. ¶¶14, 45, 61.

Lead Counsel reviewed this large volume of documents efficiently and effectively, dividing Defendants across the three Lead Counsel firms (and Labaton Sucharow LLP ("Labaton")), but closely coordinating our efforts by using sophisticated web-based document review platforms and other innovative technology. Lead Counsel trained a large team of attorneys to analyze the documents, and employed cutting-edge analytical tools to identify which categories of documents to review and the order in which to review them.

Lead Counsel reviewed thousands of documents per day, using what was learned on each day to inform which documents were reviewed the next. Important documents were circulated and discussed daily among the attorneys. As threads of the conspiracy were uncovered, Lead Counsel assigned responsibility for mastering them to associates on the team. Lead Counsel developed the various pieces of the conspiracy into a coherent narrative using a secure, internal website maintained by Lead Counsel that enabled real-time, team-wide distribution and analyses

of documents and work product. The proprietary knowledge-sharing tools we used in this case directly contributed to the speed and efficiency by which Lead Counsel were able to learn key elements of the case.

By the end of 2016, Lead Counsel had created a detailed, multi-year, and multi-layered chronology of the alleged conspiracy and had identified many of the key witnesses. This work product was crucial for the initial round of depositions. It allowed counsel to master the topics on which we were deposing senior officers of the Defendants. The document work led directly to several important admissions that contributed to the Settlements.

Lead Counsel also served seven third-party document subpoenas and eight third-party deposition subpoenas, yielding tens of thousands of pages of documents containing key information from these deponents, including former employees of Defendants. *See* Joint Decl. ¶¶66-70. For example, Lead Counsel obtained important documents regarding the conduct of ICAP and panel banks from ISDA, a trade association involved in the formation and oversight of ISDAfix. As a result, Lead Counsel obtained important admissions at the Rule 30(b)(6) deposition of ISDA in London about ISDA's lack of knowledge of the manner in which Defendants had secretly corrupted the protections established by ISDA for the ISDAfix setting process. Lead Counsel also served numerous interrogatories, filling crucial holes in Plaintiffs' knowledge.

Lead Counsel also ensured that Plaintiffs met their own discovery obligations, producing over five million pages of communications, trade documentation, and other materials, in response to several rounds of lengthy requests for production, which were propounded both by Defendants as a collective group and by seven individual Defendants in May 2016, December

2016, and February 2017. *See* Joint Decl. ¶¶53-57. Plaintiffs also negotiated and responded to Defendants' (both collective and individual) May 2016 interrogatories.

Lead Counsel conducted discovery efforts aggressively, but professionally. Despite our best efforts, there were several instances where discovery disputes necessitated Court intervention. *See* Joint Decl. ¶¶36, 57. Some of the more significant disputes were:

- Plaintiffs successfully moved to compel the production of regulatory materials when Defendants refused to produce materials exchanged with regulators investigating misconduct related to ISDAfix. *See* Dkt. Nos. 269, 270, 306, 338, 349, 351. In response to Plaintiffs' persistent efforts on this issue, the Court ultimately issued an Opinion ordering the production of regulatory materials shown or provided to the CFTC or DOJ concerning ISDAfix manipulation. Dkt. No. 357.

- Plaintiffs defeated the motion to quash their subpoena issued to Charles Fletcher, Head of Global USD Interest Rate Derivatives and a Managing Director at Defendant Deutsche Bank during most of the Class Period. *See* Dkt. Nos. 445, 446, 455. The Court denied the motion "substantially for the reasons set forth in Plaintiffs' opposition." Dkt. No. 456.

- Plaintiffs prevailed in their motion to compel the production of additional materials from Morgan Stanley. *See* Dkt. Nos. 434-36. Judge Peck ordered Morgan Stanley to produce the relevant documents within two weeks. *See* May 10, 2017 Unnumbered Docket Minute Entry & Dkt. No. 467.

Over the first half of 2017, Lead Counsel took nearly 40 fact depositions. Depositions began on January 27, 2017, and continued at a rapid pace through the Spring and Summer of 2017. *See* Joint Decl. ¶¶58-62. Both traders and high-level superiors were deposed, filling out Plaintiffs' understanding of Defendants' scheme—its operations, its regularity, its participants, and its timeframe. The depositions taken by Lead Counsel were carefully prepared for and generally taken by seasoned examiners with considerable experience. As a result of these cumulative efforts, Plaintiffs believe that virtually every deposition led to damaging admissions and blows to the credibility of Defendants' witnesses. This was despite the fact that Defendants' witnesses were uniformly well-prepared by their own able counsel.

D. Class Certification and Expert Work

Lead Counsel marshaled their considerable discovery efforts to present a compelling motion for class certification in July 2017. *See* Joint Decl. ¶¶71-77. The motion was accompanied by three detailed expert reports, each of which supported Plaintiffs' theory of why class treatment was not only possible, but necessary to secure any meaningful relief for investors harmed by the alleged collusive scheme. The Defendants who had not yet settled strenuously opposed Plaintiffs' motion, including by moving to exclude each of the experts who offered opinions in support of class certification. Lead Counsel defended Plaintiffs' experts in depositions, deposed Defendants' own experts (after extensively analyzing their theories and relevant literature), and filed papers (briefs and expert reports) in January 2018 in support of class certification as well as in opposition to the motions to exclude. *See* Joint Decl. ¶¶78-82. In all, the Court received over 300 pages of briefing on class certification and related expert issues (not to mention hundreds of pages of expert reports).

Lead Counsel undertook important work with multiple experts at all stages of this case. Pre-suit investigation, discovery, and the construction of a rigorous class-wide approach to proving injury and quantifying damages each depended heavily on close collaboration with highly knowledgeable, experienced experts. Some of the key areas in which experts were involved and their contributions are summarized below.

1. Professor Craig Pirrong

Lead Counsel retained Craig Pirrong, Ph.D., Professor of Finance and Director of the Global Energy Management Institute at the University of Houston Bauer College of Business, to develop a class-wide damages model. As described in detail in Plaintiffs' motion for class certification, based on market microstructure principles and economic analysis, Prof. Pirrong developed a model for how prices would have behaved in the absence of Defendants'

manipulation. In connection with this assignment, Prof. Pirrong applied market microstructure concepts in an empirical analysis that generated an illustrative artificiality ribbon capable of quantifying damages in a formulaic way over the Class Period.

2. Compass Lexecon

Lead Counsel also retained Compass Lexecon ("Compass"), a world-renowned data analytics and economic consulting firm with expertise in derivatives and financial markets. Compass assisted with data-related tasks throughout the case. This work included, *inter alia*, extensive efforts to help Lead Counsel understand the various complex financial products at issue. As discussed in the class certification papers and depositions relating thereto, Compass also supported Prof. Pirrong in the preparation and development of his expert reports and opinions. Compass has been vital in understanding the data at issue in this case and then translating that knowledge into class-wide techniques for measuring damages.

This work and the resulting expertise positioned Compass well to assist with the development of the Plan of Distribution, to which the Court has granted final approval in the context of the first ten Settlements, and which the Court has preliminarily approved for the settlement with the last five Defendants. Over the course of 2017 and into 2018, Lead Counsel and Compass examined substantial data from the first ten settling Defendants and developed a multi-pool, multi-instrument distribution model able to account for substantive differences between the types of impact suffered by differently-positioned participants in the interest rate derivatives market and other markets connected to the ISDAfix rate setting process. Lead Counsel and Compass continued to refine the Plan of Distribution, resulting in the detailed plan presented to the Court in March of 2018. *See* Dkt. Nos. 602 at 28-33 and 602-1.

3. Other Experts

Lead Counsel retained a number of other experts at various stages of the litigation to assist with tasks ranging from empirical analysis to translating trader jargon. A summary of these experts' work is as follows:

- As noted above, Professor Rosa Abrantes-Metz and Fideres played a key role in Lead Counsel's pre-suit investigation, and were indispensable in acquiring, analyzing, interpreting, and applying collusion "screens" to the ISDAfix submission data that formed, in substantial part, the basis for Plaintiffs' antitrust theory in the pleadings.

- Lead Counsel worked extensively with industry veteran Robert Farrell throughout discovery to better understand the logistics, jargon, customs, and practices of the traders and brokers whose communications form the backbone of the documentary evidence obtained from Defendants. Mr. Farrell reviewed and provided commentary on discovery obtained from Defendants, including both interpretations of Defendants' communications and trading positions.

- Plaintiffs also retained Dr. Michael Williams, an industrial organization economist. Dr. Williams analyzed Defendants' practice of rubberstamping the ICAP reference rates—a phenomenon alleged in the pleadings and confirmed by the documents obtained through the discovery process. Dr. Williams also analyzed whether rubberstamping was consistent with Defendants' unilateral self-interest in the absence of the conspiracy, and situated Defendants' conspiracy in terms of the economic concept of a focal point.

This expert work assisted the attorneys in developing legal theories and in turn developing evidence needed to prove Plaintiffs' claims. Because of the complex subject matter and nature of the claims, the use of numerous experts was required to present a coherent view of the case at class certification. Harmonizing the use of multiple experts required considerable skill and coordination among Lead Counsel. Each of these experts were invaluable, and their considerable costs are commensurate with the contributions they made. Without them, the results achieved for the Class would not have been possible.

E. Settlement and Mediation

As Plaintiffs diligently pursued their claims in all the ways outlined above, there were times when certain Defendants approached Lead Counsel to explore a potential settlement. The

first such discussions began late in the summer of 2015, following the early June filing of Plaintiffs' oppositions to Defendants' motions to dismiss, and before a decision on the motions to dismiss had been issued. Plaintiffs initially obtained an agreement in principle with Barclays in September 2015. After this, Lead Counsel contacted other Defendants or, in some cases, received communications from other Defendants, regarding their interest in possible resolution of the case. These arm's-length negotiations occurred over the course of several years, both in person and over the phone, from late summer of 2015 through summer of 2017. The negotiations with each Settling Defendant were hard-fought and at times contentious. Once the Court largely denied Defendants' motions to dismiss in March 2016, the pace and tenor of these negotiations changed dramatically, with the first seven settling Defendants signing Settlement Agreements in the month following the Court's ruling.

As document discovery was underway and a host of depositions loomed on the horizon, Goldman Sachs decided to settle in late October 2016. Lead Counsel also engaged in proactive mediation efforts before the Hon. Layn Phillips (Ret.). Judge Phillips conducted a structured mediation session at which the parties were given the opportunity to formally exchange their respective views of the merits of Plaintiffs' case. Judge Phillips also provided subsequent mediation assistance in the form of private conversations with each of the parties, relaying settlement offers and positions between the parties. These negotiations were crucial in Plaintiffs arriving at Settlements with HSBC and UBS in June 2017.

Under the terms of each of the first ten Settlements, Lead Counsel received extensive document and data discovery, which was invaluable in helping Plaintiffs understand the scope and methods of Defendants' misconduct and informed Plaintiffs' motion for class certification. *See* Joint Decl. ¶¶44-52. We also received proffers from each of the settling Defendants, which

further illuminated the role of the remaining Defendants in the overall conspiracy. The negotiations regarding data and data systems were vital in securing needed information from the settling Defendants, as well as guiding how to approach more adversarial data-related negotiations with the remaining Defendants. The data received from all Defendants also informed, among other things, the Plan of Distribution.

Plaintiffs and the five Newly Settling Defendants engaged in arm's-length negotiations from February to May 2018, at times with individual Defendants, at times with sub-groups of Defendants, and ultimately with a global group of all remaining Defendants. Plaintiffs' class certification motion and Defendants' *Daubert* challenges were fully briefed in February 2018, and in mid-April the Court scheduled a May 16, 2018 evidentiary hearing on these contentious and highly complex disputes, in which an expert from each side would offer testimony and be subject to cross-examination.

The significant preparation that this hearing entailed proved to be a catalyst for accelerated settlement negotiations. *See* Joint Decl. ¶¶83-88. With the motions fully briefed and the parties engaged in intensive hearing preparation, each side could take stock of their chances and the risks involved. Although Plaintiffs were confident in their class certification positions, many issues were in play and a realistic assessment required acknowledging that there was no guarantee the Class would be certified, and the Class risked recovering little or nothing from the remaining Defendants if that were to occur.

At this critical juncture, the remaining Defendants collectively initiated serious settlement overtures as a group. Starting on May 10, and continuing around the clock for the next four days, Lead Counsel and the Newly Settling Defendants were in near-constant communication, engaging in sustained negotiations that ultimately proved fruitful, producing terms of a

settlement in principle. The intensive, joint discussions with all five remaining Defendants ultimately resulted in a $96 million figure that Lead Counsel—based on our extensive knowledge of the relevant legal landscape and experience in the case—believes reasonably balances a variety of competing factors, including the value of the claims, the risk of non-recovery, and the benefit of a guaranteed and faster resolution.

II. LEAD COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE

"Attorneys whose work created a common fund for the benefit of a group of plaintiffs may receive reasonable attorneys' fees from the fund." *See In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *16 (S.D.N.Y. April 26, 2016) ("*CDS*"). Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method" although "the trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). *See also* Fitzpatrick Decl. ¶¶10-11.

The percentage method provides "appropriate financial incentives" necessary "to attract well-qualified plaintiffs' counsel who are able to take a case to trial," while also "directly align[ing] interests of the class and its counsel" by providing "a powerful incentive for the efficient prosecution and early resolution of litigation." *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355, 359 (S.D.N.Y. 2005). Without "adequate attorneys' fee awards, many antitrust actions would not be commenced, since the claims of individual litigants, when taken separately, often hardly justify the expense of litigation." *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2011 WL 2909162, at *6 (E.D.N.Y. July 15, 2011).

Awarding reasonable attorneys' fees from the common fund recognizes and compensates Lead Counsel's efforts in bringing and prosecuting this case, and advances the purpose of the antitrust laws, which rely on private actions like this one to further important public-policy goals.

See Pillsbury Co. v. Conboy, 459 U.S. 248, 262-63 (1983) (noting importance of private actions "as a means of furthering the policy goals of . . . the federal antitrust laws"); *see also N. Pac. Ry. Co. v. U.S.*, 356 U.S. 1, 4 (1958) (the federal antitrust laws protect "free and unfettered competition as the rule of trade," based on the notion that the "unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions").

A. Lead Counsel's Fee Request is Reasonable Under the Percentage of the Fund Method

Lead Counsel requests 30% from the settlement funds, which falls well within the range of fees found to be reasonable by courts in this Circuit and elsewhere for cases of comparable magnitude and complexity. *See In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (D. Kan. July 29, 2016) (awarding 33.33% of $835 million settlement); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1241 (S.D. Fla. 2006) (awarding 31.33% of $1.06 billion settlement); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2013 WL 1365900, at *20 (N.D. Cal. Apr. 3, 2013) (awarding 28.6% of $1.08 billion settlement); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.3% of $510 million settlement); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1358 (S.D. Fla. 2011) (awarding 30% of $410 million settlement); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10 (D.D.C. July 16, 2001) (awarding 34.06% of $359 million settlement); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, 2016 WL 4126533, at *1 (N.D. Cal. Aug. 3, 2016) (awarding 27.5% of $576.75 million settlement).[4].

[4] *See also In re Pfizer Sec. Litig.*, 04-cv-9866, Dkt. No. 727 (S.D.N.Y. Dec. 21, 2016) (awarding 28% of $486 million settlement); *In re U.S. Foodservice, Inc. Pricing Litig.*, No. 07-md-1894, Dkt. No. 521 (D. Conn. Dec. 9, 2014) (awarding 33.33% $297 million settlement); *In*

Focusing on antitrust cases in particular, based on extensive research (contained in Exhibit 1 to the Joint Declaration), Lead Counsel are aware of 40 federal antitrust class actions between 2004 and 2018 in which at least one fee award was based on a common fund of at least $100 million. For those cases that settled for between $500 million and $1 billion, the average fee award percentage was 28.82%, the median award was 29.25%, and the average lodestar multiplier (where available) was 2.57. Prof. Fitzpatrick, who has published some of the more comprehensive empirical research into class action settlements and attorneys' fees ever conducted, similarly concludes that the requested fees are reasonable in light of "the fees that have been awarded in other class action cases and the research on the economics of class action litigation." Fitzpatrick Decl. ¶¶4, 7.[5]

Dahl v. Bain Capital Partners, in which the court awarded 33% of $590.5 million antitrust settlement, is analogous and instructive. *See Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388, Dkt. No. 1095 (D. Mass. Feb. 2, 2015). Prof. Fitzpatrick notes the similarity of *Dahl* to this litigation in terms of magnitude, risk, and complexity. *See* Fitzpatrick Decl. ¶21. In both cases, extensive pre-suit investigations were undertaken at great expense and without assistance from government investigations, extensive fact and expert discovery was taken, and major motions briefed. *Id*. However, in comparison, the recovery obtained here was extraordinary—approximately 35% to 73% of the anticipated trial demand—far exceeding the recoveries achieved in the typical antitrust case. *Id*. ¶¶21-22.

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re Oxford Health Plans, Inc. Sec. Litig., 2003 U.S. Dist. Lexis 26795, at *13-14 (S.D.N.Y. June 12, 2003) (awarding 28% of $300 million settlement).

[5] As Prof. Fitzpatrick notes, the amount of fees sought by Lead Counsel is well supported by case law if understood as separate requests for 30% of each of eleven settlements. *See* Fitzpatrick Decl. ¶¶15, 17 (noting that when viewing "class counsel's fee requests as reflecting separate (but related) settlements entered into at different times during the pendency of the case," the fee requests "fall within *the most common fee range*: between 30% (inclusive) and 35%").

With regard to question #4 posed by the Court in its May 29, 2018 order (*see* Dkt. No. 646), the decision whether to award fees as a percentage of the gross amount of the settlement proceeds or the amount of net expenses is left to courts' discretion. In either approach, the touchstone is reasonableness. *See In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 n.34 (E.D.N.Y. 2003) (rejecting objector argument the court "should award attorneys' fees calculated on the net recovery to the Class, excluding costs and expenses" and noting that "it makes no difference whether attorneys' fees are based on the net or gross recovery, so long as the fee is reasonable") *aff'd* 396 F.3d 96, 121-24 (2d Cir. 2005). *See also Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000) (holding same, and observing that "the reasonableness of attorneys' fees is not measured by the choice of the denominator").

Lead Counsel submits that calculating a percentage award based on the gross common fund results in a reasonable fee for the reasons detailed herein. Percentage fee awards based on the gross settlement fund are routine, both in this Circuit and across the country. *See, e.g.*, *Kiefer v. Moran Foods, LLC*, 2014 WL 3882504, at *8 (D. Conn. Aug. 5, 2014) ("the Supreme Court, the Second Circuit, and other Circuit Courts have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund"); *De Jesus v. Incinia Contracting, Inc.*, 2018 WL 3343236, at *2 (S.D.N.Y. June 22, 2018) (awarding fees as percentage of gross settlement fund); *Gordon v. Sonar Capital Mgmt. LLC*, 2016 WL 4272994 (S.D.N.Y. Aug. 10, 2016) (same).

B. The Requested Fees Are Appropriate Under the *Goldberger* Factors

The requested fee award is also supported by the six factors that guide fee determinations set forth in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). Under *Goldberger*, courts weigh "(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 considerations." *Id.* at 50.

1. The Risk of the Litigation (Factor 3)

The most important *Goldberger* factor is often the case's risk. *Goldberger*, 209 F.3d at 54 (risk is "perhaps the foremost factor to be considered in determining whether to award an enhancement"). Risk can vary based on many factors, including the novelty of the legal claims, the complexity of the subject matter, and the existence or stage of a relevant (or even parallel) government action. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 147 (S.D.N.Y. 2010). The "litigation risk must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55; *see also Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 257-58 (7th Cir. 1988) (stating that "[t]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them").

The risk Lead Counsel faced here was high, as the Court has noted, for a number of reasons. *See* May 30, 2018 Fairness Hr'g Tr. ("Tr.") at 27:11-12, 17-20 ("Plaintiffs faced considerable risks in proceeding all the way to judgment. . . . [H]ad the case proceeded to final judgment there is no guarantee that plaintiffs would have satisfied their burdens of proving the existence of an antitrust conspiracy, injury, causation and damages").

Lead Counsel did not have the benefit of government indictments, consent decrees, or guilty pleas. Plaintiffs were ahead of the CFTC, which had only entered into settlements with five Defendants arising out of ISDAfix related misconduct at the time of Plaintiffs' last Settlement. And the CFTC was not pursuing the same claims as Plaintiffs, and thus did not have to demonstrate elements such as standing, collusion, injury, class treatment, or actual damages. Nor did the CFTC even need to prove actual manipulation, as all of the settlements thus far concern only "attempted manipulation." *See TFT-LCD*, 2013 WL 1365900, at *7-8 (finding

that, in a case with guilty pleas which established liability, other risks the case presented warranted an upward adjustment of the fee).

Thus, this is not an instance where plaintiffs were merely following the lead of the government, "arriving on the scene after some enforcement or administrative agency has made the kill." *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992). *See also Wal-Mart*, 396 F.3d at 122 (noting risk that "plaintiffs' counsel did not have the benefit of 'piggybacking' off of a previous case").

Risk was also heightened here because Lead Counsel was up against fourteen global financial institutions and a large interdealer broker, which collectively have virtually unlimited resources and the ability to fight this case for years at the trial and appellate level. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (noting the substantial risk associated with antitrust litigation which is likely to be "lengthy and hard-fought"). Without investing the necessary resources and being willing to staff the right number and types of attorneys and support personnel, it would have been easy for the army on Defendants' side to overwhelm Plaintiffs.

Lead Counsel's legal theories also faced risks at multiple stages of this litigation. Defendants contested these legal theories vigorously, and there was always the chance their arguments might prevail (as they did on certain common law claims).

For example, Defendants contested standing. At the time Plaintiffs filed their case and briefed their opposition to Defendants' motions to dismiss, Judge Buchwald's opinion in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, 935 F. Supp. 2d 666 (S.D.N.Y. 2013) ("*LIBOR I*"), which ruled that the plaintiffs lacked antitrust standing in the context of another financial benchmark, had not yet been reversed. *See Gelboim v. Bank of Am. Corp.*, 823 F.3d

759 (2d Cir. 2016). Defendants relied on *LIBOR I* extensively in their 2015 motion to dismiss briefing. It was up to Lead Counsel to persuade the Court that *LIBOR I* was both incorrect and distinguishable, or else the case could have ended on the pleadings.

A specific risk also existed that Lead Counsel would be unable to prove collusion, with Defendants sure to advance their "bad apple" defense at every turn. As noted, ISDAfix-related conduct was referred to the DOJ by the CFTC, and one of the deponents invoked the Fifth Amendment rather than answer any questions.[6] As of yet, the DOJ has not taken any public action related to ISDAfix, civil or criminal.

With respect to damages—an inherently complex matter in many antitrust cases—there were risks associated with establishing a class-wide damages model. *See In re Platinum and Palladium Commodities Litig.*, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) ("in any market manipulation or antitrust case, Plaintiffs face significant challenges in establishing liability and damages"). Plaintiffs' case relies on proving what prices would have been in a hypothetical world where ISDAfix was not manipulated.

Defendants argued from the outset that such an effort would be too speculative to support a damages award. They also took the position that damages could not be calculated on a class-wide basis, and attacked Plaintiffs' expert models. As the Court recently observed, the outcome of Plaintiffs' effort to certify the classes was far from certain. *See* Tr. at 28:1-5 ("suffice it to say, my engagement with those [class certification and *Daubert*] motion papers, the many hundreds if not thousands of pages of them, certainly gives me a firm basis on which to conclude that the matters here are complicated and plaintiff's success was by no means guaranteed").

[6] At his deposition in this matter, a former Deutsche Bank employee invoked his Fifth Amendment right to avoid self-incrimination in response to questions about his desk's USD ISDAfix practices, highlighting that Defendants' misconduct may well have criminal implications.

These attacks would, no doubt, have continued through all later stages, including any trial. *See In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009) (noting that "uncertain" damages and issues pending regarding class certification "were significant risks remaining in this litigation"). *See also In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) (approving fee request and noting that "[t]here is no guarantee of reaching trial, and even a victory at trial does not guarantee recovery … [a]n appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself"); Fitzpatrick Decl. ¶23 ("If one goes through each step in this litigation decision tree and assigns probabilities of success to the class at each step and then multiplies all of those probabilities together, it becomes quite clear that the recoveries here are much better than the class was likely to obtain had litigation continued.").

Moreover, given the contingent nature of the action, counsel expended many tens of thousands of hours of effort in spite of the possibility that we might never be compensated. *See In re Beacon Assocs. Litig.*, 2013 WL 2450960, at *13 (S.D.N.Y. May 9, 2013) (emphasizing that the risks of the litigation strongly supported the requested fee where "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").

For those of Lead Counsel that do not work exclusively on contingency arrangements, these hours could have been expended on other matters, including for clients paying hourly rates. *See City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award"); *Jermyn v. Best Buy Stores, L.P.*, 2012 WL 2505644, at *10 (S.D.N.Y. June 27, 2012) ("[T]he risk of non-

payment in cases prosecuted on a contingency basis where claims are not successful . . . can justify higher fees"). This risk and delay weighs strongly in favor of the requested fee. *See In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) ("A significant factor in awarding the full one-third requested is the delay in payment. Class counsel have labored for approximately six years, including pre-suit investigation, without any payment.").

In total, through August 31, 2018, counsel have invested over 158,000 hours on this case for over four years, all without any guarantee of recovery.[7] *See In re Hi-Crush Partners L.P. Secs. Litig.*, 2014 WL 7323417, at *16 (S.D.N.Y. Dec. 19, 2014) (granting fee application in full and noting significance of how counsel undertook representation of the plaintiffs and the class "on a wholly contingent basis, investing substantial time and funds to prosecute this Action, without any guarantee of compensation"); *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *21 (S.D.N.Y. Sept. 9, 2015) (granting fee application in full and noting that counsel "would not have been compensated . . . at all had it been unsuccessful in this litigation").

In short, Lead Counsel faced myriad risks with this case. The only certainty was that any recovery would be achieved only after lengthy, difficult, and costly effort.

2. Public Policy Considerations (Factor 6)

Public policy also strongly supports the requested fee award. Without private counsel taking on the risk of this lawsuit, and having the skill and resources to pursue the claims vigorously, the Class here would have recovered nothing, and important public interests would not have been vindicated. *See CDS*, 2016 WL 2731524, at *18 ("It is important to encourage top-tier litigators to pursue challenging antitrust cases. . . . Our antitrust laws address issues that

[7] This includes not only case investigation and prosecution, but also intricate and time-consuming settlement administration tasks.

go to the heart of our economy. Our economic health, and indeed our stability as a nation, depend upon adherence to the rule of law and our citizenry's trust in the fairness and transparency of our marketplace.").[8] Even though the CFTC has reached settlements with certain Defendants that arise out of ISDAfix-related misconduct, it has not done so under the antitrust laws, and injured investors will not receive compensation from these settlements. *See* Fitzpatrick Decl. ¶¶13-14 ("[T]he government has no obligation to distribute any of its penalties to class members. Thus, again, for many class members, it is the class action or nothing at all.").

This case is thus a prime example of why public policy favors enforcement of the antitrust laws through suits by private attorneys general. *See Pillsbury*, 459 U.S. at 262-63 (emphasizing "the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws").

Awarding a reasonable percentage of the common fund properly motivates zealous enforcement of the antirust laws and incentivizes skilled counsel to bring meritorious cases even where, at the outset, the prospect of any recovery is uncertain. *Cf. Flag Telecom Holdings*, 2010 WL 4537550, at *29 ("In order to 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

[8] *See also In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *5 (E.D. Tenn. May 17, 2013) (awarding 33.33% of settlement and noting that: "[F]ailing to fully compensate class counsel for the excellent work done and the various substantial risks taken would undermine society's interest in the private litigation of antitrust cases. Society's interests are clearly furthered by the private prosecution of civil cases which further important public policy goals, such as vigorous competition by marketplace competitors. . . . The sheer size of the outlay for out-of-pocket expenses by class counsel illustrates one of the reasons why. Awards of substantial attorneys' fees in cases like this are necessary to incentivize attorneys to shoulder the risk of nonpayment to expose violations of the law and to achieve compensation for injured parties.").

counsel, the remuneration should be both fair and rewarding"); Fitzpatrick Decl. ¶14 ("[I]t is important in my opinion that courts set fees such that class action lawyers have the incentive to maximize the compensation they recover and the deterrence they generate. In my opinion . . . granting class counsel's fee requests here are consistent with these goals.").

The Settlements achieved here were also accomplished expeditiously relative to how long it would take to proceed to trial and resolve any appeals, sparing Class members from "unnecessary delay" and allowing "the judicial system to focus resources elsewhere." *See Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474 (S.D.N.Y. 2013); *see also Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001) (public policy favors the resolution of class actions through settlement). An advantage of the percentage method of calculating attorneys' fees is that it *incentivizes*, rather than *discourages*, such efficient resolutions. *See Manual for Complex Litigation, Fourth* §14.121 (2004) ("[O]ne purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation"). Accordingly, public policy strongly supports Lead Counsel's requested fee.[9]

[9] With respect to the Court's question (*see* Dkt. No. 646, #6) regarding timing of payment of fees, Lead Counsel submits that it is routine and there is ample authority for payment upon resolution of the fee application, rather than waiting for payment to all Authorized Claimants or resolution of an appeal by any potential objector. *See, e.g.*, *In re LivingSocial Mktg. & Sales Practice Litig.*, 298 F.R.D. 1, 22 n.25 (D.D.C. 2013) (rejecting challenge to provision providing that counsel be paid "in short order, even if an appeal is taken" and noting that "[t]here is ample authority" for the provision); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575004, at *1 (N.D. Cal. Dec. 27, 2011) (noting that federal courts "routinely approve settlements that provide for payment of attorneys' fees prior to final disposition in complex class actions" and collecting authority); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 479 (S.D.N.Y. 1998) (rejecting objection that fees should not be paid "prior to class members' receipt of their allocations" and concluding "the norm" is for courts to direct "that the entire fee award be disbursed immediately upon entry of the award, or within a few days thereafter").

3. Magnitude and Complexity of the Case (Factor 2)

"[A]ntitrust cases, by their nature, are highly complex," *Wal-Mart*, 396 F.3d at 122, and "[a]ntitrust class actions are notoriously complex, protracted, and bitterly fought." *Meredith*, 87 F. Supp. 3d at 669. Complexity was also inherent in the case because Defendants' conspiracy involved fifteen entities, and occurred over more than seven years. *Cf. Wal-Mart*, 396 F.3d at 122 (noting the case was "especially large and complicated" where it involved "almost every U.S. bank" and millions of class members). All of the risks described in the foregoing section, as well as the scope of the action (the class period alleged, the volume of documents produced, the number of depositions taken, the length of the many rounds of briefing, and the difficulty of the subject matter) demonstrate that this case is more complex than most.

But the complexity here goes far beyond even what a tallying up of the number of parties and disputes would suggest. This is because, as the Court is aware, this case involves the sophisticated, hidden manipulation of a relatively obscure financial benchmark. *See* Tr. at 27:11-15 (noting that the "considerable risks" Plaintiffs faced were "exacerbated by the complexity of the sophisticated financial instruments involved in this case, the nature and size of the derivatives market, and the number and resources of the defendants"). Lead Counsel had to master market issues connected with complex financial instruments so as to be able to litigate effectively complex legal issues concerning the plausibility of conspiracy, antitrust standing, tolling, and contract interpretation. Two of the primary sources of evidence—trade data and recordings/transcripts of trader-broker interactions—required careful analysis in order to develop a coherent picture of what actually occurred and when. Lead Counsel coordinated closely with industry experts to ensure that the significance of this data and documentary evidence was appreciated, and that all possible inculpatory evidence was identified and understood in its proper context. The nature of this case also demanded that Lead Counsel master the intricacies of sophisticated financial products and

derivatives in order to understand and marshal evidence, effectively take depositions, build a damages model, and brief dispositive, discovery, and class certification motions.

Consider, for example, the challenges presented by the relative obscurity of the ISDAfix benchmark and the interrelated nature of the markets at issue. To measure "true ISDAfix," Plaintiffs did not just compare ISDAfix to some alternative bellwether, but instead designed an entire litigation engine around a plan to (a) find traders expressly admitting—often, in veiled jargon—they were engaging in trades for improper purposes; (b) matching the trader's words to trades to transactions among a sea of data that was not even timestamped, to confirm a manipulation attempt was actually made; and then (c) working with experts master the field of market microstructure as to create a modeling technique that, while well-grounded in the law, facts, and literature, by necessity involved a multitude of moving parts, any one of which was a potential vulnerability. None of these solutions were taken off the shelf, but were effectively pioneered for this case. The number of ways such a chain could have gone wrong—either on the facts, or on the law—are many, as evidenced by, of course, the many pages spent by both sides at the certification stage.

For many reasons, then, a fee award that accounts for the prosecution of litigation that was extraordinary in complexity and scope is particularly appropriate here. *See NASDAQ*, 187 F.R.D. at 488 (noting that many questioned "the feasibility of a class action encompassing 1,659 different securities, and more than a million class members" and that "the issues were novel and difficult requiring a challenge to a long-standing industry practice and the exercise of skill and imagination"). *See also* Fitzpatrick Decl. ¶23 ("the class faced a litany of legal and factual barriers").

4. Quality of Representation and Time Spent (Factors 4 and 1)

"[T]he quality of representation is best measured by results… ." *Goldberger*, 209 F.3d at 55. As detailed above, Lead Counsel obtained $504.5 million in Settlements along with important cooperation provisions along the way. The $504.5 million in settlement funds represents approximately 35% to 73% of Plaintiffs' anticipated trial demand, which is an extraordinary result. All of the work performed by Lead Counsel, from inception through the final June 22, 2018 settlement, contributed to Lead Counsel's cumulative understanding of the strengths and weaknesses of their claims, and all work since the final settlement was executed has been undertaken for the benefit of the Class.

Prof. Fitzpatrick characterizes the results Lead Counsel achieved as "impressive when measured against the considerable risks the class faced in this litigation." Fitzpatrick Decl. ¶23. Lead Counsel's ability to obtain such substantial recoveries from aggressive, well-funded Defendants represented by top-flight counsel is a testament to the skill with which Lead Counsel has prosecuted this case. *See Fleisher*, 2015 WL 10847814, at *22 ("The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work."); *NASDAQ*, 187 F.R.D. at 489 (approving fee award where defense counsel included "the nation's biggest and best defense firms operating on a seemingly unlimited budget over a period of four years").

The quality of Lead Counsel's representation is also evidenced by our ability to staff this sprawling case as the needs of the litigation demanded. Lead Counsel met the challenge of litigating against up to fifteen Defendants at once by employing a strategy that required the efficient deployment of a large amount of resources. To do so, counsel drew upon over 200 attorneys and support personnel who collectively billed over 158,000 hours. The case was massive, with nearly 21.5 million pages of documents produced by Defendants and third-parties (nearly 13 million of which were actually reviewed and analyzed by Lead Counsel). Lead

Counsel also brought sufficient resources to the case to litigate it properly. When Settlements occurred, Lead Counsel efficiently reallocated resources and leveraged the cooperation provisions of the Settlement Agreements to continue and enhance the prosecution of the case against the remaining Defendants.

Lead Counsel are also among the most experienced and skilled antitrust and class action litigators in the country. Each firm has led several prior mega-fund cases involving the financial markets and has successfully tried class action cases. Lead Counsel's reputation (numerous former federal prosecutors actively litigated this case) conveyed a credible trial threat that no doubt entered Defendants' calculus when deciding to settle and negotiating terms.[10]

C. The Lodestar Cross-Check Supports the Requested Fee

The lodestar fee calculation method has "fallen out of favor" in this Circuit. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). *See also* Fitzpatrick Decl. ¶9. Accordingly, the lodestar method is used in this Circuit only "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. The primary purpose of the lodestar cross-check is to ensure that counsel are not enjoying an unwarranted windfall.

The cross-check in this case makes clear that there is no windfall. Plaintiffs' counsel (Lead Counsel and all associated counsel) have collectively spent over 158,000 hours on this matter from inception as of August 31, 2018. At current rates, these hours translate into almost

[10] Because *Goldberger* Factor 5 (the requested fee in relation to the settlement) is discussed above (*see* Section II.A), this topic is not addressed again in this Section.

$90 million in total lodestar.[11] Lead Counsel's request for $151,350,000 in attorneys' fees thus represents a total multiplier of approximately 1.68.[12] A modest multiplier is entirely appropriate, as "the common fund fee award, as a contingent fee award, should often (if not always) be higher than counsel's lodestar itself. This is true because the fee reflects both the provision of legal services and the loan to the class of the attorney's resources and services, at the risk of recovering nothing." *Newberg on Class Actions* § 15:73 (5th ed. 2018). *See also* Fitzpatrick Decl. ¶29 ("[T]he lodestar multiplier shows that their fee requests will end up paying [Lead Counsel] only a small premium over their normal, risk-free hourly rates—a smaller premium than is probably warranted in the light of the risk that they would have recovered nothing").

The lodestar cross-check is appropriately performed with the cumulative hours figure where there are successive settlements because the reasonableness of a fee request is appropriately measured over the life of the case, as all work undertaken by Lead Counsel relates to our efforts on behalf of Plaintiffs and the Class. *See, e.g.*, *Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, 2015 WL 6964973, at *1, *3, *7 (E.D.N.Y. Nov. 10, 2015) (performing cross-check using cumulative lodestar from case inception through mid-August 2015 in evaluating interim fee request relating to eleven settlements that received preliminary approval from October 2013 through April 2015); *Drywall Antitrust Litig.*, 2018 WL 3439454, at

[11] The exact figure is $89,729,629.97. The lodestar is calculated at current hourly rates. *See Reiter v. MTA New York City Transit Auth.*, 457 F.3d 224, 232 (2d Cir. 2006) (lodestar should be calculated using "current rather than historic hourly rates"); *E.F. ex rel. N.R. v. New York City Dep't of Educ.*, 2012 WL 5462602, at *2 (S.D.N.Y. Nov. 8, 2012), *adopted*, 2014 WL 1092847 (S.D.N.Y. Mar. 17, 2014) ("Because a party is entitled to be compensated for the delay in payment, the appropriate rate to apply is counsel's current rate, rather than historical rates").

[12] This request also includes discrete tasks performed by associated counsel Berger Montague P.C.; Grant & Eisenhofer P.A.; Labaton Sucharow LLP; and McCulley McCluer PLLC, who also filed cases that were consolidated into the lead action prosecuted by Lead Counsel. Lead Counsel delegated certain tasks to associated counsel where specific efficiencies existed that inured to the Class's benefit.

*20 (conducting cross-check with aggregate lodestar through the end of 2017 where settlements with various defendants occurred over nearly three years starting in early 2015); *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *1, *6 (E.D.N.Y. Oct. 9, 2015) (performing cross-check with cumulative lodestar from December 2006 through June 2014 for settlements dated from October 2013 to May 2014); *NASDAQ*, 187 F.R.D. at 489.[13]

The approximately 1.68 multiplier is modest, especially for a case of this size and complexity. And it is squarely within—indeed, well below—the range awarded by courts in this District, as well as across the country. *See, e.g.*, *Beckman*, 293 F.R.D. at 481 ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Asare v. Change Group of N.Y., Inc.*, 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *City of Providence*, 2014 WL 1883494, at *13 (noting that "lodestar multiples of over 4 are awarded by this Court"); *CDS*, 2016 WL 2731524, at *17 (awarding fees equivalent to a lodestar "multiple of just over 6"); *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.").

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[13] *See also In re Auto. Parts Antitrust Litig.*, 2017 WL 3525415, at *4 n.2 (E.D. Mich. July 10, 2017) ("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 [plaintiffs'] 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 [plaintiffs] classes.") (collecting authority for approach); *cf. In re Processed Egg Prods. Antitrust Litig.*, No. 08-md-2002, Dkt. No. 1570 at 1, n.1 & Dkt. No. 1537-1 at 2, 5, 19-20 (E.D. Pa. Nov. 20, 2017) (approving cross-check using cumulative lodestar from inception through June 2017 for December 2016 settlement and noting that "[i]n calculating a lodestar award to evaluate a settlement . . . courts may include the time spent by counsel performing tasks that are not directly related to the settlement").

Prof. Fitzpatrick's empirical study likewise supports the reasonableness of the multiplier here. In his study, there were seven fee awards in settlements between $250 million and $1 billion. Fitzpatrick Decl. ¶28. The lodestar multipliers in those cases were 1, 2.40, 2.89, 3.33, 3.50, 5.85, and 6. *Id.* All but one of these would be larger than the one that results here. *Id.* In addition, relative to other antitrust cases of similar size, ours would be a modest multiplier. For the five antitrust cases identified by Lead Counsel with settlements between $500 million and $1 billion for which a lodestar multiplier is available, the average multiplier was 2.57. *See* Ex. 1 to Joint Decl. at 1-2. For the 39 mega fund antitrust cases listed in Lead Counsel's chart for which a lodestar multiplier is available, the average multiplier was 2.61. *Id*. at 1-6.

Here, a multiplier of less than 1.7 is also reasonable given the factors discussed above, and especially the level of risk involved. *See, e.g., McDaniel v. County of Schenactady*, 595 F.3d 411, at 424 (2d Cir. 2010) ("The level of risk associated with litigation . . . is perhaps the foremost factor to be considered in assessing the propriety of a multiplier . . .").[14] Even an upper range multiplier can be unproblematic because courts should not limit fee awards in a way that "penaliz[es] plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial." *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) (awarding 31.7% in fees, where multiplier was 7.6). *See also Beckman*, 293 F.R.D. at 482 (awarding one-third of fund, representing a 6.3 multiplier, in part to avoid "penalizing plaintiffs' counsel for achieving an early settlement, particular where, as here, the settlement amount is substantial").

[14] *See also City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974) ("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."), *abrogated on other grounds by Goldberger*, 209 F.3d 43; *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (appropriate to take this contingent fee risk "into account in determining the appropriate fee to award").

The Settlements here occurred at various points of the multi-year life cycle of complex antitrust litigation. The very earliest occurred roughly a year and a half after the matter had been initiated (about two and a half years after Lead Counsel began their investigation). By this point, the Court had rendered its thorough March 2016 opinion resolving Defendants' lengthy motions to dismiss, validating the plausibility of Plaintiffs' legal theories and the extensive empirical work that supported them. Other Settlements came just weeks before the July 1, 2017 deadline for fact discovery related to class certification. *See* Dkt No. 458. By the time of these June 2017 Settlements, scores of depositions—including of senior officials at Defendants—had been taken or noticed, millions of pages of documents had been produced by Defendants and reviewed by Plaintiffs, and Plaintiffs' anticipated motion for class certification was looming on the horizon. The most recent settlement was reached after the case was nearing a pivotal climax—a looming ruling on class certification, a complex determination in itself made all the more byzantine because of the subsidiary challenges to the admissibility of expert work underpinning various aspects of Plaintiffs' class analysis.

While the time at which they were entered into varied among the Settlements, Lead Counsel agreed to each only when we thought the timing was right. We were motivated by a desire to provide substantial and prompt relief to the Class, and in the context of the first ten Settlements, secure confirmatory discovery that would further advance the case and strengthen the evidence against the then-remaining Defendants. Lead Counsel should be rewarded for settling when they did, as well as for their success in the face of great risk. As a result of Lead Counsel's work and willingness, the Class will receive significant financial redress for wrongs they have already waited too long to see remedied.

D. The Reaction of the Settlement Class Supports the Requested Fee

Finally, the preliminary reaction of Class Members to the settlement and Lead Counsel's fee request confirms the reasonableness of the request. *See Hi-Crush*, 2014 WL 7323417, at *18 ("In addition to the criteria set forth in *Goldberger*, courts in the Second Circuit consider the reaction of the Class to the fee request in deciding how large a fee to award."). The Court-approved notices, which were widely disseminated in January and August 2018 informed Class Members that Lead Counsel may seek a fee of up to 30%, expenses, and interest thereon. No Class Member objected in connection with the first notice. To date, none have done so in connection with the second. This uniform reaction confirms the fee request's reasonableness. *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594 (S.D.N.Y. 2008). Lead Counsel will update the Court regarding the reaction of the Class in our October 23, 2018 reply papers.

III. LEAD COUNSEL'S EXPENSES ARE REASONABLE

"Counsel are entitled to be reimbursed for the reasonable expenses advanced in class litigation." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 469 (S.D.N.Y. 2004); *see also In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). In a common fund case, compensable expenses include "reasonable expenses normally charged to fee paying clients." *5 Newberg on Class Actions* § 16:5 (5th ed. 2018) (collecting cases).

As detailed in the declarations of Daniel L. Brockett, Brian O. O'Mara, Daryl F. Scott, and Gregory Asciolla filed concurrently herewith, Lead Counsel and Labaton have incurred a total of $18,347,596.00 in expenses. As also described in the declarations of Michael Dell'Angelo (Berger Montague P.C.), Robert Eisler (Grant & Eisenhofer, P.A.), and Stuart McCluer (McCulley McCluer PLLC), a total of $82,091.63 expenses was incurred by other

counsel, for total expenses of all counsel in the amount of $18,429,687.63. From the inception of this Action, Lead Counsel were aware that they might not recover any of the expenses they incurred and, at a minimum, would not recover any expenses until the action was resolved, in whole or in part. We also understood that, even assuming the Action was ultimately successful, an award of expenses would not compensate them for the lost use or opportunity cost of funds advanced to prosecute the case. Thus, Lead Counsel were motivated to, and did, take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the action. We maintained strict control over the expenses. The majority of the expenses incurred were paid out of a litigation fund created and maintained by Lead Counsel. Payment of expenditures from the litigation fund required personal approval from a partner of the Lead Counsel firm supervising the vendor.

For the reasons discussed above, "substantial expenses were necessary in this complex antitrust case." *Meredith*, 87 F. Supp. 3d at 671. The lion's share of these expenses (over $16 million, or 87% of total expenses) are for Plaintiffs' experts, who were key to the successful prosecution of this matter. *See In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 1:13-cv-07789-LGS, Dkt. No. 1115, at 3 (Aug. 16, 2018) (reimbursing over $17 million in expenses incurred from experts and consultants); *CDS*, 2016 WL 2731524, at *18 (reimbursing over $10 million in expenses and noting that "[m]ost of these expenses were incurred in connection with retention of experts" and that this "expert work was essential to the litigation and invaluable to the Class"). As described above and in the accompanying Joint Declaration, the work of experts was crucial to nearly every step of this case, from conducting our pre-suit investigation to interpreting various discovery to developing models for class certification to crafting a plan of distribution for the settlement funds.

The balance of Lead Counsel's expenses are composed of routine litigation expenses such as online legal research, document imaging and copying, deposition transcription and videotaping, travel expenses, other litigation support services, and mediation fees. These expenses have been reviewed by Lead Counsel and were found to be reasonable. To be conservative in this fee application, Lead Counsel have voluntarily made reductions to several expense categories.

There is "no reason to depart from the common practice in this circuit of granting expense requests." *Visa Check/Mastermoney*, 297 F. Supp. 2d at 525 (granting $18.7 million expense request where bulk of expenses were "experts and consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses"). *See also Foreign Exch. Benchmark Rates*, No. 1:13-cv-07789-LGS, Dkt. No. 1115 (granting request for interim reimbursement of over $22 million of litigation expenses); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2018 WL 3863445, at *5 (S.D.N.Y. Aug. 14, 2018) (granting $14.85 million interim expense reimbursement request); *Pfizer*, No. 1:04-cv-09866, Dkt. No. 727 (awarding over $20 million in expenses).

IV. INCENTIVE AWARDS FOR THE CONTRIBUTIONS OF NAMED PLAINTIFFS ARE APPROPRIATE

Finally, Lead Counsel seek incentive awards for the named plaintiffs to compensate them for the significant time they devoted to this case and in recognition of the results they were crucial to obtaining. As this Court has observed, "service awards are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiff." *Sanz v. Johny Utah 51 LLC*, 2015 WL 1808935, at *1 (S.D.N.Y. Apr. 20, 2015) (Furman, J.). Incentive awards also compensate for and recognize contributions to the

advancement of policy goals and class-wide benefits. *See Spann v. AOL Time Warner Inc.*, 2005 WL 1330937, at *9 (S.D.N.Y. June 7, 2005) ("an incentive award may be given to compensate named plaintiffs for efforts expended for the benefit of the lawsuit"); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (affirming incentive awards in antitrust case and noting they "reward the public service of contributing to the enforcement" of laws).

Each of the named plaintiffs was a proposed class representative and each was actively engaged in the litigation, making invaluable contributions far beyond merely lending their names to the lawsuit. These efforts are described in detail in the declarations of Enno Blaz (EAA), Paul Edwards (Portigon AG), Gregory Stokes (Alaska Electrical Pension Fund), Joshua Stein (Montgomery County), Tracy Kahn (Genesee), Doreen McCall (Pennsylvania Turnpike), Rebecca Salerni (City of New Britain); and Scott Fergus (Washington County). Moreover, several named plaintiffs spent substantial sums of money to advance the claims of the Class. EAA and Portigon, for example, collectively incurred more than $125,000 in discovery and travel costs, none of which was advanced by counsel. These "out-of-pocket costs to named plaintiffs are . . . plainly reimbursable." *Warren v. Xerox Corp.*, 2008 WL 4371367, at *6 n.3 (E.D.N.Y. Sept. 19, 2008).

Discretionary incentive awards are routinely made in class actions, including antitrust matters. *See Newberg on Class Actions* §§ 17:1, 17:3 (5th ed. 2018) ("Empirical evidence shows that incentive awards are now paid in most class suits"). The amounts sought here—$100,000 for each of EAA and Portigon, and $50,000 for each of the other named plaintiffs—are in line with awards made in other, similar cases. *See Laydon v. Mizubo Bank, Ltd.*, No. 12-cv-3419, Dkt. No. 724, at 2 (S.D.N.Y. Nov. 10, 2016) (approving total award of $580,000 for four named plaintiffs); *Air Cargo*, 2015 WL 5918273, at *5 (approving $90,000 awards to each of six class

representatives where they "expended a significant amount of time and incurred substantial burdens in assisting with this litigation"); *Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (awarding $50,000 incentive awards to each of four named plaintiffs and noting that such awards were "in line with other cases").[15]

Here, the requested awards would appropriately recognize that each named plaintiff committed a significant amount of time to the case, stood up to a powerful group of Wall Street banks with no guarantee of any recovery, and played a crucial role in vindicating the private enforcement of our antitrust laws—in this instance, before the government took any action (and even then, not under the antitrust laws). *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004) (noting that incentive payments are "particularly appropriate" in cases where "there was no preceding governmental action alleging a conspiracy"). The requests for each class representative will be summarized in the proposed order filed concurrently with Plaintiffs' October 23 reply brief.

CONCLUSION

For the foregoing reasons, Plaintiffs and Lead Counsel respectfully request that the Court grant their application for attorneys' fees and payment of expenses, and interest on such fees and expenses at the same rate as the earnings in the settlement funds, accruing from the inception of the Fund, as well as incentive awards in the amounts set forth above. Plaintiffs will submit an appropriate proposed order in connection with their October 23 reply papers.

[15] *See also, e.g.*, *Vitamin*, 2012 WL 5289514, at *11 (granting request for $50,000 incentive award to both class representatives based on their work "responding to discovery requests, including collectively producing over 10,000 pages of documents, sitting for depositions, and agreeing to appear at trial" in a complex and lengthy matter); *Wright v. Stern*, 553 F. Supp. 2d 337, 342-48 (S.D.N.Y. 2008) (approving incentive awards of $50,000 to each of eleven named plaintiffs).

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