IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE LONDON SILVER FIXING, LTD. ANTITRUST LITIGATION	14-MD-02573-VEC 14-MC-02573-VEC
This Document Relates to: ALL ACTIONS	The Honorable Valerie E. Caproni

MEMORANDUM OF LAW IN SUPPORT OF INTERIM CO-LEAD COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Lowey Dannenberg, P.C. ("Lowey") and Grant & Eisenhofer P.A. ("Grant & Eisenhofer" and, collectively with Lowey, "Interim Co-Lead Counsel") respectfully submit this motion for an attorneys' fee award of 30% ($11,400,000) of the $38,000,000 common fund established by the Settlement with Deutsche Bank[1] and an award of $953,618.45 (2.51% of the common fund) for their litigation costs and expenses, plus interest on the awards at the same rate that is earned by the Settlement Fund.[2] The requested fee award is consistent with the graduated fee schedule the Court considered in appointing lead counsel and found "more effectively ensures that counsel's compensation will be adequate . . . ." ECF No. 17 at 3. Interim Co-Lead Counsel achieved a substantial recovery from Deutsche Bank in this complex litigation that will provide welcome relief to Settlement Class Members. The requested awards provide reasonable compensation to Plaintiffs' Counsel[3] from the common fund created by their efforts and reimburse them for the reasonable and necessary expenses incurred litigating this Action from the inception of the case in 2014 through October 31, 2020.

INTRODUCTION

This Action is among the most challenging, expansive, and evolving cases in which Interim Co-Lead Counsel have been involved. Billions of silver market data points have been analyzed, including almost 18 million spot market silver bid and ask quotes, for more than 3,300 fixing dates.

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[1] Unless otherwise defined herein, capitalized terms have the same meaning as defined in the Stipulation and Agreement of Settlement with Deutsche Bank AG, Deutsche Bank Americas Holding Corporation, DB U.S. Financial Markets Holding Corporation, Deutsche Bank Securities, Inc., Deutsche Bank Trust Corporation, Deutsche Bank Trust Company Americas, Deutsche Bank AG New York Branch, and their subsidiaries and affiliates (collectively "Deutsche Bank") dated September 6, 2016 ("Settlement Agreement"). *See* ECF No. 156-1. Unless otherwise noted, ECF citations are to the docket in the Action, and internal citations and quotations marks are omitted.

[2] *See, e.g.,* Order, *In re Petrobras Securities Litig.*, No. 14-cv-9662 (JSR) (S.D.N.Y. June 29, 2018), ECF No. 837 (awarding interest on attorneys' fee and expense awards at the same rate as earned by the settlement fund).

[3] "Plaintiffs' Counsel" means Interim Co-Lead Counsel, Nussbaum Law Group, P.C. ("NLG"), Cohen Milstein Sellers & Toll, PLLC ("Cohen Milstein"), Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein"), Berger Montague PC ("Berger Montague"), and Greenwich Legal Associates LLC ("GLA"). NLG and GLA jointly represent Representative Plaintiff Kevin Maher. Cohen Milstein serves as counsel for Laurence Hughes. Wolf Haldenstein were the lawyers for Don Q. Tran. Berger Montague represent John Hayes and KPFF Investment, Inc. GLA jointly represents Don Q. Tran and Christopher DePaoli with Grant & Eisenhofer.

After numerous interviews with industry experts and in-depth investigation by counsel, Interim Co-Lead Counsel prepared initial comprehensive complaints that, in retrospect, were just the starting point for things to come. Ultimately, three amended consolidated class action complaints were filed, each adding significant new allegations revealed from Interim Co-Lead Counsel's investigation and regulatory findings. After defending the Class' claims against two rounds of motions to dismiss, during which discovery was stayed, Interim Co-Lead Counsel aggressively advanced their efforts to obtain critical documents from The Bank of Nova Scotia ("BNS") and HSBC. In discovery so far, almost 3.7 gigabytes of data (reflecting approximately 4.7 million transactions) and over 12 million pages of documents have been produced. Cooperation from Deutsche Bank pursuant to its Settlement has yielded an additional 2.6 million pages of documents and five million transactions. Depositions have commenced, with Interim Co-Lead Counsel preparing to take more than twenty party and third party depositions.

Absent Interim Co-Lead Counsel's investment of time and resources, this Action may not have advanced or resulted in the Settlement with Deutsche Bank that will benefit the Class. Since 2014, Lowey and Grant & Eisenhofer alone have devoted over 50,000 hours to prosecuting antitrust and Commodity Exchange Act ("CEA") claims on behalf of a Class of silver market participants harmed by Defendants' alleged manipulation of the Silver Fix. Interim Co-Lead Counsel developed the allegations in Representative Plaintiffs' complaints and shaped the litigation strategy for this Action using critical information and analysis obtained from their independent investigation, consulting experts, regulatory disclosures, Deutsche Bank's cooperation materials, and party and third-party discovery. Their efforts were met (and continue to be met) with fierce opposition from Defendants resulting in, among other things, two rounds of motions to dismiss briefing, numerous letter motions and contentious ongoing negotiations over the scope of discovery. Given the vigorous defense, led by some of the top antitrust, CEA, and class action attorneys in the country,

the results Interim Co-Lead Counsel have achieved so far in the Action are commendable. Deutsche Bank agreed to a settlement negotiated by Interim Co-Lead Counsel that, if approved by the Court, will yield a recovery of $38 million for the Settlement Class (plus interest and less taxes, administrative costs, and other fees and expenses approved by the Court). Discovery is ongoing against BNS and HSBC, which remain in the Action following the Court's partial denial of their motion to dismiss.

In appointing Lowey and Grant & Eisenhofer as Interim Co-Lead Counsel, the Court cited among other things the resources the firms would bring to bear to achieve the best outcome for the Class. ECF No. 17 at 3. The achievements in this Action are a testament to the quality work and resources Interim Co-Lead Counsel, aided by additional Plaintiffs' Counsel, have invested in the litigation. Together with additional Plaintiffs' Counsel, more than 60,000 hours have been spent at a lodestar value of $34.1 million. At the same time, Interim Co-Lead Counsel judiciously managed expenses, spending $953,618.45, predominantly on experts. Consistent with representations made in their interim class counsel application, Interim Co-Lead Counsel request a fee of 30% of the Settlement Fund, which translates into a lodestar multiple of 0.33, along with reimbursement of the litigation expenses. As described *infra*, Interim Co-Lead Counsel believes that they lived up to the Court's expectations, and requests that the Court grant their attorneys' fee and expenses application.

ARGUMENT

I. INTERIM CO-LEAD COUNSEL'S FEE REQUEST IS FAIR AND REASONABLE

In common fund cases, the lawyers that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) ("*Goldberger*") (same). 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." *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010). The percentage method tends to be preferred as it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Espinal v. Victor's Cafe 52nd St., Inc.*, No. 16-cv-8057 (VEC), 2019 WL 5425475, at *1 (S.D.N.Y. Oct. 23, 2019) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.,* 396 F.3d 96, 121 (2d Cir. 2005)). This Court previously expressed preference for use of the percentage method in this Action noting, in its order appointing Interim Co-Lead Counsel, that their proposed sliding fee scale tied to the size of the common fund "more effectively ensures that counsel's compensation will be adequate without comprising an undue portion of a shared recovery." ECF No. 17 at 3.

Pursuant to the sliding fee scale included in their appointment application filed on November 14, 2014 (ECF No. 14 (redacted version)), Interim Co-Lead Counsel seek a fee of 30% of the common fund, or $11,400,000 to be allocated among Plaintiffs' Counsel in proportion to their contributions to the case. *See In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987).[4]

Interim Co-Lead Counsel's request is reasonable under the percentage method approach because it reflects a reasonable baseline fee fairly adjusted to account for the magnitude and complexity of this case, the work and risks Interim Co-Lead Counsel undertook to prosecute the Action, the skill and quality of Interim Co-Lead Counsel's work, and public policy considerations, thereby satisfying the *Goldberger* factors. *See Espinal*, 2019 WL 5425475, at *2. In addition, the

[4] Grant & Eisenhofer and GLA jointly represent Don Q.Tran and Christopher DePaoli, and NLG and GLA jointly represent Kevin Maher. Consistent the Rules of Professional Conduct (22 N.Y.C.R.R. § 1200.0) Rule 1.5(g), their respective joint representation agreements, which were executed by their respective clients, provide that GLA will receive up to 10% of Grant & Eisenhofer's or NLG's share of any Court-awarded attorneys' fees. This fee sharing agreement does not impact the amount of attorneys' fees to be sought or limit the benefits arising to the Settlement Class from the Settlement. *See In re Chi, Bridge & Iron Co. N.V. Secs. Litig.*, No. 17-cv-1580 (LGS), 2020 WL 1329354, at *10 (S.D.N.Y. Mar. 23, 2020) (finding a fee sharing agreement "unproblematic" where the attorneys for class representative agreed to split the work and awarded fees 50/50). Lowey does not have any fee sharing agreements subject to Rules of Professional Conduct (22 N.Y.C.R.R. § 1200.0) Rule 1.5(g).

lodestar cross-check confirms that the proposed fee is not a windfall for Interim Co-Lead Counsel, as the proposed fee represents just a fraction of Plaintiffs' Counsel's investment of time and human capital in the case. *See id.*

A. A 30% Fee Request Is Within The Range Of Reasonable Fee Awards In Class Action Cases Of Similar Magnitude And Complexity

To assess the reasonableness of a fee request based on a percentage of the fund, courts first look to "determine a baseline reasonable fee by reference to other common fund settlements of a similar size, complexity and subject matter." *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (LGS), 2018 WL 5839691, at *2 (S.D.N.Y. Nov. 8, 2018), *aff'd sub nom. Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019). Comparable cases serve as guideposts against which a court may measure the fee request and determine whether such a fee creates a windfall. Courts may also look to empirical data concerning attorneys' fee awards to assess the reasonableness of the request in the context of broader trends. *See, e.g.*, *Espinal*, 2019 WL 5425475, at *2 (citing research on settlements and fee awards by Brian T. Fitzpatrick, Theodore Eisenberg and Geoffrey P. Miller in determining attorneys' fee benchmarks); *accord In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020) (same).

1. The magnitude and complexity of the case justify the fee request

"Class actions have a well-deserved reputation as being most complex," *In re NASDAQ Market-Makers Antitrust Litig.,* 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("*NASDAQ III*"), with antitrust and commodities cases standing out as some of the most "'complex, protracted, and bitterly fought.'" *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (citations omitted); *see In re Platinum and Palladium Commodities Litig.*, No. 10-cv-3617, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) (noting that commodities cases are "complex and expensive" to litigate); *In re Vitamin C Antitrust Litig.*, No. 06 MD 1738 (BMC)(JO), 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012) (discussing the complexity of antitrust cases). This case is no exception, and courts

regularly find that a greater award is warranted where counsel is able to successfully prosecute these more complex cases. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award.").

To start, the silver market is sizeable, with billions of dollars of Silver Instruments affected by the Silver Fix each year. Third Consolidated Amended Class Action Complaint ("TAC"), ECF No. 258, ¶ 125. Defendants are alleged to have manipulated and conspired to manipulate the Silver Fix and the prices of numerous Silver Instruments in their favor over a period of at least seven years through a variety of strategies, including artificially suppressing the Silver Fix, improperly sharing confidential order information, and fixing bid-ask spreads on Silver Instruments. TAC ¶ 141. In addition to using information identified in regulatory findings, Interim Co-Lead Counsel conducted their own investigation into the silver market to uncover the facts concerning the scope and nature of the alleged manipulation. Joint Decl. ¶¶ 11, 18-19, 22. Collaborating with top industry experts, Interim Co-Lead Counsel developed economic evidence that supported Representative Plaintiffs' allegations of collusion and price manipulation in the silver market. *Id.* Interviews with industry insiders and a former highly placed silver market practitioner provided further insights that Interim Co-Lead Counsel leveraged to prepare a complaint that stated antitrust and CEA claims. *Id.* ¶¶ 11-12, 30.

Additionally, to provide the Court with the baseline knowledge that it needed to consider Representative Plaintiffs' claims, Interim Co-Lead Counsel prepared a tutorial on the silver market, while at almost the same time preparing their opposition to Defendants' motion to dismiss. *Id.* ¶¶ 23-26. As new information became available, Interim Co-Lead Counsel integrated new allegations into the complaints and defended two rounds of motions to dismiss briefing. *Id.* ¶¶ 18-25, 27-51. Discovery thus far has been contentious, with over 75 party meet-and confers involving negotiations

over search terms, custodians, transaction data and navigating foreign data privacy issues, among others. *Id.* ¶¶ 59, 61, 63-64, 67, 71-79, 85-89, 93, 98-101. Over 15 million pages of documents and more than 9.7 million transactions have been produced that Interim Co-Lead Counsel has reviewed or will review in advance of class certification, summary judgment and trial. *Id.* ¶ 83. These are just some of the challenges due to the immense size and complexity of this case, and they support distributing 30% of the common fund as the fee award.

2. Comparable cases and empirical studies further demonstrate that a 30% fee award is reasonable in relation to the Settlement

Attorneys' fee awards in other cases in this Circuit support the reasonableness of a 30% fee request. "[I]t is very common to see . . . 30% contingency fees in cases with funds between $10 million and $50 million." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) (Gleeson, J.) ("*Interchange Fee Litig.*"). Interim Co-Lead Counsel's fee request is based on the same graduated fee scale Judge Gleeson approved in *In re Payment Card.* Consistent with Judge Gleeson's observation, fee awards of around 30% have been granted in a number of cases in which the settlement amount has been $50 million or less. *See, e.g., Ferrick v. Spotify USA Inc.*, No. 16-cv-8412 (AJN), 2018 WL 2324076, at *10 (S.D.N.Y. May 22, 2018) (awarding 30% of the cash fund as attorneys' fees); *In re Sadia S.A. Sec. Litig.*, No. 08-cv-9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (30% of a $27 million settlement awarded to class counsel as fees); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05-cv-2237 (CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33 ⅓% in fees on a $20 million settlement); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (one-third of $35 million settlement fund awarded as attorneys' fees); *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007) (affirming district court attorneys' fees award of 30% of $42.5 million settlement fund). Moreover, courts have awarded fees of 30% or more in cases where the common fund is much greater than $50 million. *See, e.g.*, *In re Amaranth Natural Gas*

Commodities Litig., No. 07-cv-6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding attorneys' fees of 30% on a $77.1 million settlement); *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (awarding 30% of a $80 million settlement as attorneys' fees); *In re Bisys Sec. Litig.*, No. 04-cv-3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (granting attorneys' fee award of 30% of $65.87 million settlement).

Studies collecting empirical evidence of attorneys' fee awards also support the reasonableness of the requested fee award in relation to the Settlement. This Court has previously consulted such studies to evaluate the reasonableness of a requested fee award. *See Espinal*, 2019 WL 5425475, at *2 (citing Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards,* 7 J. EMPIRICAL LEGAL STUD. 811, 835 (2010); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements*: 1993-2008, 7 J. EMPIRICAL LEGAL STUD. 248, 262 (2010)). In Professors Eisenberg and Miller's most recent update to their study, which analyzed class action recoveries and fee awards nationwide between 2009 and 2013, they found that the average fee awards increased from 23% in the 1993 to 2008 period, to 27% during the 2009 to 2013 period. *See* Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. LAW J. 937, 947 (2017) ("Eisenberg & Miller III"). In the latest data, plaintiffs' counsel had achieved a mean settlement recovery of $501 million and a median recovery of $37.3 million. Over the same time period, the mean antitrust fee award in those case was 27% of the recovery, and 30% was the median fee award. *Id.* at 952 tbl. 4 (analysis of fee and class recoveries by category). Their analysis of attorneys' fees awards in this District and this Circuit indicates that 30% to 31% is the observed median fee, with the mean fee ranging between 27% and 28%. *Id.* at 950 tbl. 2, 951 tbl. 3. Interim Co-Lead Counsel's request falls right in line with the median observed attorneys' fees and is just slightly greater than the mean attorneys' fee award, further confirming its reasonableness.

B. The Remaining *Goldberger* Factors Support Granting A Fee Award At Or Greater Than The Comparable Baseline Awards In This District

After determining the baseline fee award, the Court may "increase[ ] or decrease[ ] [the fee percentage] based on consideration of the remaining *Goldberger* factors . . . ." *Espinal*, 2019 WL 5425475, at *3. Interim Co-Lead Counsel's requested fee award is amply supported by the remaining factors, including: "(1) the time and labor expended by counsel; . . . ; (3) the risk of the litigation . . . (4) the quality of representation; . . . . and (6) public policy considerations." *Goldberger*, 209 F.3d at 50. Moreover, if the Court determines that a lower baseline fee award should be its starting place, the factors detailed below would warrant an increase in the fee award to 30%.

1. Interim Co-Lead Counsel's time and labor support a 30% fee request

Through October 31, 2020,[5] Interim Co-Lead Counsel and additional Plaintiffs' Counsel committed over 60,000 hours of attorney and staff time to advance this Action on behalf of the Settlement Class. Joint Decl. ¶ 121. Interim Co-Lead Counsel contributed about 85% of those hours, using all necessary resources to navigate the challenges of the litigation. *Id.* These thousands of hours produced tangible benefits for the Settlement Class, including an in-depth case investigation and the preparation of pleadings that incorporated the best information and evidence that Interim Co-Lead Counsel's work had uncovered; success in overcoming BNS and HSBC's motion to dismiss in part; a comprehensive discovery effort and strategy; hard-fought negotiations with Deutsche Bank resulting in the Settlement; and the development of the Distribution Plan. Some of the work performed and resources involved in prosecuting the Action are summarized below and support the requested fee award.

[5] This application describes the audited hours, lodestar and expenses from the inception of the case in 2014 through October 31, 2020.

a. Case investigation and initial pleadings

As part of their investigation into the Silver Fix and the silver market, Interim Co-Lead Counsel interviewed numerous industry insiders and ultimately retained a former highly placed silver market practitioner. *Id.* ¶ 11. Interim Co-Lead Counsel worked with these industry experts to understand the regulatory framework and to gain a thorough understanding of the silver market. *Id.* Economics experts were engaged to help Interim Co-Lead Counsel detect anomalous activity in the silver market and determine whether manipulative conduct may have been the cause. *Id.* The experts identified and analyzed deficiencies in the methodology, structure, reporting, and setting of the Silver Fix, how the fixing process changed over time and how those changes impacted the price of silver futures contracts and physical silver. *Id.* They also conducted an empirical analysis of spot market silver prices, encompassing millions of bid and ask quotes, submitted over 3,000 fixing days, to identify the Defendants' activity within the spot silver market relative to the start of the Silver Fixing and the resulting Fix price, as compared to other active market participants. *Id.* The experts then measured the degree of impact of Defendants' conduct to determine the likelihood that such conduct was collusive. *Id.*

Interim Co-Lead Counsel considered the experts' findings and began to integrate statistical information with the facts they had developed from their own research to develop the initial complaints filed in the action. On July 25, 2014, Plaintiff J. Scott Nicholson filed the first case, *Nicholson v. The Bank of Nova Scotia, et al.*, No. 14-cv-5682 (DC) (S.D.N.Y.), in what would become this consolidated Action. Additionally, on July 31, 2014, Plaintiff Eric Nalven's companion complaint was filed. *Nalven v. The London Silver Market Fixing, Ltd. et al*, No. 14-cv-08189 (DC) (E.D.N.Y.). These complaints were the first to identify and allege the scope, duration, and involvement of certain Defendants in a price-fixing conspiracy involving the Silver Fix and the silver market. Joint Decl. ¶ 12.

b. Amended complaints and motions to dismiss

After the Court appointed Lowey and Grant & Eisenhofer as Interim Co-Lead Counsel, Representative Plaintiffs filed a total of three consolidated amended class action complaints. *Id.* ¶¶ 15, 19, 22, 39. The First Consolidated Amended Class Action Complaint ("FAC") added UBS AG as a Defendant and alleged direct evidence of collusion, consisting of quotations from chat room transcripts showing traders agreeing to fix prices in the secondary market and multiple instances of variations in closing prices for COMEX futures as 99.85% attributable to the Fix Price, which spot prices closely track. *Id.* ¶¶ 18-19. The Second Consolidated Amended Class Action Complaint ("SAC") bolstered the factual allegations based on additional investigation and the publication of additional government investigation reports and added a claim for manipulation by false reporting and fraud and deceit in violation of the CEA. *Id.* ¶ 22. The Third Consolidated Amended Class Action Complaint ("TAC") named four additional financial institutions (Bank of America Corporation and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Bank of America"); Barclays Bank plc ("Barclays"); Standard Chartered Bank ("SCB"); and BNP Paribas Fortis S.A./N.V. ("Fortis")) and certain affiliated institutions as defendants, and further bolstered the factual allegations based on Interim Co-Lead Counsel's additional investigation, the publication of government investigation reports, specifically the Swiss Financial Market Supervisory Authority's report of its investigation into UBS,[6] and cooperation materials from Deutsche Bank. *Id.* ¶¶ 31-32, 35-39; *see* ECF No. 258. The new factual allegations derived in large part from Deutsche Bank's cooperation materials were based on Interim Co-Lead Counsel's review of more than 350,000 pages of documents and 75 audio tapes. *Id.* ¶ 39.

[6] *See Foreign Exchange Trading at UBS AG: Investigation Conducted by FINMA*, FINMA (Nov. 12, 2014) http://www.finma.ch/e/aktuell/Documents/ubs-fx-bericht-20141112- e.pdf (hereinafter "UBS FINMA").

Deutsche Bank, BNS, HSBC and UBS moved to dismiss the SAC on May 29, 2015, filing two memoranda of law totaling 60 pages and a declaration with seventeen exhibits. *Id.* ¶ 23.[7] On July 13, 2015, Interim Co-Lead Counsel filed two memoranda of law in opposition to Defendants' motions to dismiss totaling 57 pages. *Id.* ¶ 24. After oral argument and submission of supplemental authority letters, on October 3, 2016, the Court denied in part and granted in part the motion to dismiss the SAC as against the Fixing Defendants[8] but granted UBS' motion to dismiss in its entirety. *Id.* ¶¶ 27-30.

On September 11, 2017, the Non-Fixing Banks[9] filed their motion to dismiss the TAC. *Id.* ¶¶ 41-42. Interim Co-Lead Counsel filed four memoranda totaling 75 pages to oppose the motion. Joint Decl. ¶ 46. In addition to filing and responding to supplemental authority letters, Interim Co-Lead Counsel prepared and filed the supplemental briefing requested by the Court. *Id.* ¶¶ 48-51.[10]

c. Discovery efforts

After discovery stays in the Action were lifted in fall 2018, Interim Co-Lead Counsel served Representative Plaintiffs' First Request for Production of Documents ("First Request") on September 24, 2018 and a Second Request for Production of Document ("Second Request") on October 3, 2018. *Id.* ¶¶ 71, 73. Over the next 26 months, more than 75 meet-and-confers were held with BNS and HSBC, either jointly or individually, and numerous correspondence were exchanged to address various responses and objections to the First and Second Requests and negotiate search

[7] While Interim Co-Lead Counsel were preparing Representative Plaintiffs' opposition, the Court entered Joint Order No. 1, ordering the parties to present a non-adversarial tutorial on the silver market generally. Joint Decl. ¶ 26. As Interim Co-Lead Counsel developed their strategy and prepared Representative Plaintiffs' opposition to Defendants' motion to dismiss, they also prepared for the requested tutorial. On September 9, 2015, Interim Co-Lead Counsel, along with counsel for the other parties, presented the tutorial to the Court. *Id.*

[8] "Fixing Defendants" are HSBC and BNS. In April 2016, Deutsche Bank filed notice withdrawing its participation in the motion to dismiss after executing the Settlement Term Sheet with Representative Plaintiffs. ECF No. 119.

[9] "Non-Fixing Banks" are Bank of America, Barclays, SCB, Fortis, and UBS.

[10] The Court ultimately held that the TAC stated an antitrust claim against the Non-Fixing Banks but dismissed the claims against the Non-Fixing Banks on antitrust efficient enforcer grounds. ECF No. 363.

terms, custodians, and the relevant time period for production of documents, audio files, and transaction data. *Id.* ¶¶ 69, 71-72, 74-77, 89. As BNS and HSBC began to produce information, Interim Co-Lead Counsel made targeted searches of HSBC's and BNS's productions based on documents and data provided by Deutsche Bank. *Id.* ¶ 56. Analytic tools such as technology assisted review leveraged key search terms and relational searching to identify relevant documents and individuals. *Id.* ¶ 82.

Interim Co-Lead Counsel have also responded to Defendants' discovery demands. *Id.* ¶¶ 91-103. On January 23, 2017, Representative Plaintiffs produced redacted trading reports per Defendants' request. *Id.* ¶ 91. On September 24, 2018, Defendants propounded 36 requests for production on each of the Representative Plaintiffs, resulting in the collection of thousands of documents for review by Plaintiffs' Counsel. *Id.* ¶¶ 92-95. Subsequent negotiations resulted in Interim Co-Lead Counsel collecting additional documents to respond to Defendants' requests. *Id.* ¶ 101. After review for privilege and relevance, Interim Co-Lead Counsel produced hundreds of documents from Representative Plaintiffs. *Id.* ¶ 97.

On September 24, 2018, Defendants served interrogatories on Representative Plaintiffs. *Id.* ¶ 102. Interim Co-Lead Counsel prepared and served responses and objections to the interrogatories on behalf of Representative Plaintiffs on November 2, 2018. *Id.* Representative Plaintiffs' interrogatory responses identified data sets used in the complaints, persons with relevant knowledge, and entities that possessed Representative Plaintiffs' transaction data. *Id.* Interim Co-Lead Counsel met and conferred with BNS and HSBC to develop search terms, agree on a relevant period for production of documents and data, custodians, and scope of production, including whether Representative Plaintiffs would produce consultant analysis used to prepare their complaints. *Id.* ¶¶ 74, 93. On January 24, 2019, Defendant BNS filed a letter motion seeking to compel Representative Plaintiffs to produce consultant analyses. *Id.* ¶ 98. Interim Co-Lead Counsel filed a response to the

letter motion on January 31, 2019. *Id.* The Court granted BNS' motion on February 25, 2019. *Id.* On March 29, 2019, Interim Co-Lead Counsel requested a stay of the Order taking effect in order that they could prepare an appeal to the Second Circuit, which the Court granted. *Id.* Interim Co-Lead Counsel filed a Petition for a Writ of Mandamus in the Second Circuit, including a 35-page memorandum of support and a 335-page appendix, requesting that the Court of Appeals direct the district court to vacate its order requiring the production of consultant materials and deny Defendants' motion to compel such materials. *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 19-815, ECF Nos. 1, 3 (2d Cir. Mar. 29, 2019). The Court of Appeals denied the writ without reaching the merits on July 25, 2019. Order, *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 19-815, (2d Cir. Jul. 25, 2019), ECF No. 41.

Due to the impact of COVID-19, Interim Co-Lead Counsel negotiated a remote deposition protocol with BNS and HSBC that the Court "so ordered" on November 4, 2020. Joint Decl. ¶ 86. The parties met and conferred multiple times and negotiated twelve depositions of HSBC (ten fact and two 30(b)(6) depositions) and eleven depositions of BNS (nine fact and two 30(b)(6) depositions). *Id.* ¶ 87. Interim Co-Lead Counsel have noticed three depositions so far, taken one deposition, and defended one of the Representative Plaintiffs' deposition. *Id* ¶¶ 88,.103.

In addition to party discovery, since April 2019, Interim Co-Lead Counsel has served 18 subpoenas for documents and transaction data from third parties to obtain additional information, including data on relevant Silver Instrument transactions. *Id.* ¶ 90. A number of these third parties have made rolling productions of documents and data that Interim Co-Lead Counsel have analyzed and will continue to analyze. *Id.*

d. Settlement negotiations with Deutsche Bank and development of Distribution Plan

The negotiations with Deutsche Bank over the material terms of the Settlement took place over several months starting in December 2015, after Deutsche Bank, BNS, HSBC and UBS'

motions to dismiss the SAC had been fully briefed, and continuing until the Deutsche Bank Settlement Agreement was executed on September 6, 2016. *Id.* ¶¶ 104-08. Following initial phone calls with Deutsche Bank's counsel in December 2015, Interim Co-Lead Counsel engaged in lengthy negotiations with Deutsche Bank's counsel over the material terms of the settlement, including the amount of the settlement consideration, the scope of the cooperation to be provided by the Deutsche Bank Defendants, the scope of the releases, and the circumstances under which the parties would have the right to terminate the settlement. *Id.* ¶ 105. In February 2016, Representative Plaintiffs reached an agreement with Deutsche Bank on the amount of the settlement, subject to the negotiation of other material terms of the deal. *Id.* ¶ 106. Deutsche Bank and Interim Co-Lead Counsel signed a settlement term sheet on April 13, 2016 and executed the Settlement Agreement on September 6, 2016. *Id.* ¶¶ 107-08.

To determine an equitable means by which to distribute the Settlement, Interim Co-Lead Counsel worked with experts to analyze market and transaction data from various sources, including party and non-party discovery. *Id.* ¶ 113. Ultimately, Interim Co-Lead Counsel, in consultation with their experts, developed a Distribution Plan which adopts a volume-based approach that utilizes information commonly available in the types of trading records maintained by institutional and retail investors alike (*e.g.*, buy/sell, number of contracts or ounces of silver, and transaction date) to allocate the Net Settlement Fund among Settlement Class Members based on their pro rata share of the total dollar value of silver traded in eligible transactions. *See* ECF No. 450 at 7. Like other volume-based plans, the Distribution Plan achieves a fair, reasonable, and adequate distribution of the Net Settlement Fund that reflects each Settling Class Member's pro rata share of the total volume of silver traded in eligible transactions after making certain economic and legal adjustments. The Distribution Plan also provides for certain legal adjustments, to reflect the reduced value of claims based on transactions entered during a portion of the Class Period when Plaintiffs' claims

were dismissed. *Id.* at 7-8. Finally, the Settlement Administrator will implement a reasonable minimum payment threshold of $15, to ensure that the administrative costs of issuing *de minimis* payments do not needlessly deplete the Net Settlement Fund. *Id.* at 10.

2. The fee request is warranted based on the risks of the litigation

The risk of the litigation is the preeminent *Goldberger* factor. *See Interchange Fee Litig.*, 991 F. Supp. 2d at 440 ("The most important *Goldberger* factor is often the case's risk"); *see also In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 12 Civ. 5575 (SWK), MDL 1500, 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 26, 2006) (the judiciary's focus is on "fashioning a fee" that encourages lawyers to "undertake future risks for the public good"); *Goldberger*, 209 F.3d at 54 ("We have historically labeled the risk of success as 'perhaps the foremost' factor to be considered in determining whether to award an enhancement."). In evaluating the risk, courts look to the facts and circumstances at the time the action was filed. *Goldberger*, 209 F.3d at 55. This case and the claims against Defendants were particularly high risk.

Risk of Prosecuting the Case as Interim Co- Lead Counsel: Interim Co-Lead Counsel have shouldered the substantial risk of prosecuting this Action. Litigating against some of the largest and most sophisticated global financial institutions required a significant commitment and investment of time, human capital, and physical resources, with no guarantee of recovering any of these costs. As previously noted, even before filing Representative Plaintiffs' complaint, Interim Co-Lead Counsel engaged top industry and subject matter experts to help provide crucial statistical insights that helped support the complaint. But all of that work was done at Interim Co-Lead Counsel's own expense. Such expenses were expected to increase dramatically once the Court held that Representative Plaintiffs' complaint stated antitrust and CEA claims.

Risk of Establishing Liability: When Interim Co-Lead Counsel filed the initial complaint, the state of the law was uncertain as to the liability of global financial institutions alleged to have

conspired to manipulate a benchmark set abroad, which impacted customers in the United States. For example, when the initial complaint was filed in 2014, at least one court found that financial institutions alleged to have conspired to manipulate a global financial benchmark could not be held liable for antitrust or CEA claims because of the cooperative nature for setting the benchmark. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 688 (S.D.N.Y. 2013) ("*LIBOR I*"). It would be another three years before the Second Circuit reversed this view and held that benchmark manipulation by the institutions charged with fixing the benchmark did constitute an antitrust injury against those who transacted in instruments priced in part or in whole by the benchmark. *See Gelboim v. Bank of America Corporation*, 823 F.3d 759, 777 (2d Cir. 2016).

In addition, the law was not clear as to the scope of impact for which Defendants could be held liable until after this Action was under way. As this Court noted, the Second Circuit held *in 2016* that "although as a general rule only participants in the defendant's market can claim an antitrust injury, plaintiffs in an affected secondary market may have antitrust standing if their alleged injuries are inextricably intertwined with the injury the defendants ultimately sought to inflict and if their injuries are the essential means by which defendants' illegal conduct brings about its ultimate injury to the marketplace." *In re London Silver Fixing, Ltd., Antitrust Litig.*, 213 F. Supp. 3d 530, 551 (S.D.N.Y. 2016) (quoting *In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d 151, 161 (2d Cir. 2016)).

At the outset of the litigation, it was also unclear whether the allegations Interim Co-Lead Counsel developed would be sufficient to state antitrust or CEA claims. Interim Co-Lead Counsel had to combine sufficient circumstantial (rather than direct) evidence with plus factors that could support an antitrust claim. Again, that required Interim Co-Lead Counsel to conduct a thorough investigation supported by expert analysis that would withstand Defendants' skillful opposition.

Risk of Establishing Damages: Interim Co-Lead Counsel also have the burden to prove actual damages. There are risks associated with establishing a class-wide damages model. *See In re Platinum and Palladium,* 2014 WL 3500655, at *12 ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). For example, Representative Plaintiffs' antitrust claims depended on showing what the Silver Fix would have been absent Defendants' alleged manipulation. Such a model would be subject to attacks, and an effective *Daubert* challenge, motion *in limine*, or cross-examination at trial could undermine the model and result in little or no recovery for the Class. Recovery in this case was by no means assured. Even in cases where the DOJ has secured a guilty plea, civil juries have found no damages for the same culpable conduct. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827 SI (N.D. Cal. Sept. 3, 2013), ECF No. 8562. "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *NASDAQ III*, 187 F.R.D. at 476; *see United States Football League v. National Football League,* 644 F. Supp. 1040, 1042 (S.D.N.Y. 1986) (jury awarded $1.00 in damages despite plaintiffs' verdict on antitrust claim) (cited in *NASDAQ III*), *aff'd,* 842 F.2d 1335, 1377 (2d Cir. 1988).

In spite of these risks, Interim Co-Lead Counsel took this case on a fully contingent basis, with Interim Co-Lead Counsel themselves devoting more than 50,000 hours and substantial firm resources and additional Plaintiffs' Counsel contributing another 10,000 hours to litigating this case for over six years. As Judge Gleeson aptly noted: "Counsel should be rewarded for undertaking [the above noted risks] and for achieving substantial value for the class. If not for the attorneys' willingness to endure for many years the risk that their extraordinary efforts would go uncompensated, the settlement would not exist." *Interchange Fee Litig.*, 991 F. Supp. 2d at 441. This risk factor supports a 30% fee award.

3. Interim Co-Lead Counsel has provided excellent representation

"[T]he quality of representation is best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). The Settlement will result in the recovery $38,000,000 on behalf of the Settlement Class. These funds will provide Class members with a measure of relief from Defendants' alleged misconduct. Beyond the monetary compensation, Interim Co-Lead Counsel also secured significant cooperation from Deutsche Bank that has provided Representative Plaintiffs with direct evidence to support their claims.

Interim Co-Lead Counsel have extensive experience prosecuting class action cases, including a number of the largest class action recoveries under the CEA, antitrust, and securities laws. This includes specific expertise in benchmark manipulation as demonstrated by Lowey's current tenure as lead or co-lead counsel in cases alleging anticompetitive and manipulative conduct for several benchmark rates, and in the last ten years alone Grant & Eisenhofer has recovered over $27 billion on behalf of public and private clients who have been damaged by corporate fraud, greed, and mismanagement. Additional examples of Interim Co-Lead Counsel's decades of experience with complex litigation are detailed in their firm resumes. *See* Declaration of Vincent Briganti dated January 21, 2021 ("Briganti Decl."), Ex. C; Declaration of Robert G. Eisler dated January 21, 2021 ("Eisler Decl."), Ex. B.

The quality of opposing counsel is another factor considered when evaluating the quality of the representation. *See Maley v. Del Global Techns. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002). Defendants have been represented by counsel from some of the top law firms in the United States. Defendants' counsel have fiercely defended the interests of their clients and committed significant resources on their end to help Defendants overcome Representative Plaintiffs' allegations. The

valuable settlement that Interim Co-Lead Counsel secured from Deutsche Bank cannot be understated given the caliber of defense counsel in this action. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries"); *NASDAQ III*, 187 F.R.D. at 488 (approving attorneys' fee award where defendants were represented by "several dozen of the nation's biggest and most highly regarded defense law firms."). This skill and quality of legal representation in this Action further supports the request of a 30% attorneys' fee award.

4. Public policy supports approval

Interim Co-Lead Counsel's decision to take on the risk of this lawsuit serves a vital interest, advancing the enforcement of private antitrust and CEA suits. *See In re GSE Bonds,* 2020 WL 3250593, at *5 ("Congress has encouraged enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future."). Their work has resulted in a non-reversionary settlement that will provide recompense for members of the public harmed by the misconduct while also deterring future misconduct. *See Espinal,* 2019 WL 5425475, at *3 ("The Second Circuit and courts in this District have taken into account the 'social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation' as a basis for increasing the percentage of the fund awarded to Class Counsel"). In light of the significant risks involved with prosecuting the Action, a substantial fee is appropriate to reward Interim Co-Lead Counsel for taking on the risks, and to encourage counsel to take on such risks in the future. *See e.g., In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014) ("Counsel's fees should reflect the important public policy goal of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest"). Further, awarding a reasonable percentage of the common fund further ensures that Interim Co-Lead Counsel retain the ability and incentive to pursue antitrust and CEA claims through trial, at their own expense and while further recovery is

uncertain. *See Goldberger*, 209 F.3d at 51 ("There is . . . commendable sentiment in favor of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.").

C. The Lodestar Cross-Check Further Confirms The Reasonableness Of The Requested Fees

Interim Co-Lead Counsel's fee request is also reasonable under the lodestar method, which has "fallen out of favor because it encourages bill-padding and discourages early settlements." *In re Colgate- Palmolive*, 36 F. Supp. 3d at 353. Courts in this Circuit use the lodestar calculation "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall," for example, if the multiplier is too large and "grossly disproportionate to the percentage fee award . . ." *Id.* There is no windfall here.

Lodestar is calculated by "multipl[ying] the reasonable hours billed by a reasonable hourly rate." *In re Colgate-Palmolive*, 36 F. Supp. 3d at 347. Courts use "prevailing market rates" and current rates to calculate the lodestar figure to account for the delay in payment. *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (citing *Missouri v. Jenkins by Agyei*, 491 U.S. 274, 283-84 (1989)). When used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

Since the inception of the Action through October 2020, Plaintiffs' Counsel have spent 61,360.05 hours prosecuting this case, which is a lodestar value of $34,128,043.25.[11] The current hourly billing rates for lawyers involved in litigation range from $250 to $1,025 and are largely similar to the rates this Court reviewed in appointing Interim Co-Lead Counsel. *See* ECF No. 17 at 3 ("[G]iven the case's size and complexity the Court finds that the hourly rates of the proposed

[11] Plaintiffs' Counsel have submitted declarations that reflect the firms' respective lodestar calculations based on current billing rates for contingent (and if applicable non-contingent) matters. *See* Briganti Decl. ¶ 7; Eisler Decl. ¶ 9; Declaration of Linda P. Nussbaum dated January 20, 2021 ("Nussbaum Decl.") ¶ 10 (on behalf of NLG); Declaration of Manuel J. Dominguez dated January 21, 2021 ("Dominguez Decl.") ¶ 10 (on behalf of Cohen Milstein); Declaration of Thomas H. Burt dated January 21, 2021 ("Burt Decl.") ¶ 9 (on behalf of Wolf Haldenstein); Declaration of Michael Dell'Angelo dated January 21, 2021 ("Dell'Angelo Decl.") ¶ 10 (on behalf of Berger Montague).

attorneys are generally reasonable."). Billing rates in the same range have been previously approved as reflective of market rates in New York for work of comparable size and complexity. *See, e.g.*, *In re Foreign Exchange*, 2018 WL 5839691 (granting fee award using partner rates up to $1,375 and associate rates of $350 to $700, *see* ECF No. 939); *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. April 26, 2016) (granting fee award using partner rates of $834 to $1,125 and associate rates of $411 to $714, *see* ECF No. 482). Interim Co-Lead Counsel monitored the work of Plaintiffs' Counsel and worked to minimize duplication. Timekeepers with less than 15 hours were excluded from the lodestar calculation as was time for activities not properly billed to the Action, including work relating to the preparation of this motion. Interim Co-Lead Counsel also applied an hourly rate cap of $250/hour for all first-level document review work.

Based on a fee award of 30% (or $11.4 million), the lodestar multiplier on the fee award is 0.33. Typically, courts will award fees with a positive multiplier (*i.e.*, a multiplier greater than 1) to "to reflect consideration of a number of factors, including the contingent nature of success and the quality of the attorney's work." *Maley*, 186 F. Supp. 2d at 370. Interim Co-Lead Counsel's multiplier reflects a negative multiplier, and even with the requested fee award, Interim Co-Lead Counsel will be well short of recouping their total human capital investment in the Action. Further, it is well below the range of multipliers approved in this and other circuits in cases involving similar complex and challenging claims. *See* 5 NEWBERG ON CLASS ACTIONS § 15:89 tbl. 2-4 (5th ed.) (describing empirical research which finds that the mean multiplier in antitrust cases, the mean multiplier awarded in the Second Circuit, and the mean multiplier applied to similarly sized settlements are all above 1.5); *see also Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5 as reasonable and observing that "multipliers of between 3 and 4.5 have become common"); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d at 347 (approving an award with a multiplier of 5.2 on the lodestar).

Nevertheless, this lodestar multiplier further confirms that the requested fee award of 30% is appropriate.

II. THE REQUESTED AWARD FOR INTERIM CO-LEAD COUNSEL'S EXPENSES IS ALSO REASONABLE

Attorneys whose work results in the recovery of a common fund "are entitled to the reimbursement of [reasonable] expenses" that have been advanced on the class' behalf. *Meredith Corp.*, 87 F. Supp. 3d at 671. In complex litigation involving antitrust and CEA claims, "substantial expenses [are] necessary," including costs related to initial investigations and research, testifying and consultant experts, discovery expenses, travel, postage and mailing, and copying costs. *Id.*; *see also Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192(CM), 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019). Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund*, 2019 WL 6889901, at *22.

As detailed in their accompanying declarations filed concurrently herewith, Plaintiffs' Counsel incurred $953,618.45 in expenses prosecuting this case between 2014 and October 31, 2020. *See* Briganti Decl. Ex. B; Eisler Decl. ¶ 11; Nussbaum Decl. ¶ 12; Dominguez Decl. ¶ 12; Burt Decl. ¶ 11; Dell'Angelo Decl. ¶ 12. This is less than the $2,100,000 Interim Co-Lead Counsel advised in the Court-approved notice sent to the Class. *See* Straub Affidavit, Ex. A, Mailed Notice at 7. Approximately 72.3% of these expenses ($689,301.16) went towards the expert work performed to analyze the silver market, analyze discovery materials, and develop the Distribution Plan. This expert analysis was "critically important" to the development of Representative Plaintiffs' complaint, formulation of Interim Co-Lead Counsel's argument and strategies, and the selection of a fair and equitable method to distribute the Settlement proceeds, and is among the type of expenses for which "[c]ourts routinely award" reimbursement. *In re Colgate-Palmolive*, 36 F. Supp. 3d at 353.

The next largest category of expenses was related to discovery costs, totaling $148,697.44, or 15.6% of all expenses paid. Interim Co-Lead Counsel achieved substantial savings in e-discovery

costs through use of their in-house technology platform to manage document hosting and technology assisted review capabilities that allowed critical documents to be identified sooner.

The remaining charges, comprising the remaining 12.1% of the reimbursement request, consist of travel and meal costs,[12] copying charges,[13] online research, filing and service fees, mailing, and telephone charges, among others. These are typical of out-of-pocket expenses that are routinely reimbursed from common funds and should be awarded here. *Yang v. Focus Media Holding Ltd.*, No. 11-cv-9051 (CM)(GWG), 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (finding computer research, photocopying, postage, meals, and court filing fees "necessary for Lead counsel to successfully prosecute this case").

CONCLUSION

For the foregoing reasons, we respectfully request that the Court approve the motion for attorneys' fees and reimbursement of expenses in the amounts set forth above.

[12] All air travel was limited to coach class seats, except in instances of overnight travel where counsel was expected to work upon arrival at the destination. Meals were capped at $50-$75 per day for lunch and dinner and permitted only when traveling.

[13] Internal copy charges were limited to $0.10 per page.

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White Plains, New York

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