

**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:

The Honorable Valerie E. Caproni

ALL ACTIONS

**JOINT DECLARATION OF VINCENT BRIGANTI AND ROBERT GERARD EISLER
IN SUPPORT OF (A) REPRESENTATIVE PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION SETTLEMENT WITH DEUTSCHE BANK; AND
(B) INTERIM CO-LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS'
FEES AND LITIGATION EXPENSES**

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Pursuant to 28 U.S.C. §1746, we, Vincent Briganti and Robert Gerard Eisler, declare:

1. We are, respectively, partners of the law firms of Lowey Dannenberg P.C. (“Lowey Dannenberg”) and Grant & Eisenhofer, P.A. (“Grant & Eisenhofer” and together with Lowey Dannenberg, “Interim Co-Lead Counsel”). By order dated November 25, 2014, the Court appointed Lowey Dannenberg and Grant & Eisenhofer as Interim Co-Lead Counsel for the putative class in the above-captioned action (the “Action”). ECF No. 17.¹ By order dated November 22, 2016, the Court appointed Interim Co-Lead Counsel as Settlement Co-Lead Counsel for the Settlement Class. ECF No. 166. We have been actively involved in prosecuting and resolving this Action, are familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as witnesses, we could competently testify thereto.

2. Unless otherwise defined herein, all capitalized terms have the same meanings ascribed to them in the Stipulation and Agreement of Settlement with Deutsche Bank, dated September 6, 2016 (the “Settlement Agreement”), attached as Exhibit 1 to the Declaration of Vincent Briganti, Esq. dated October 17, 2016. ECF No. 156-1.

3. We respectfully submit this Joint Declaration in support of the motions for final approval of the Settlement, for approval of the Distribution Plan for allocating the proceeds of the Settlement to eligible Class Members, and for an award of attorneys’ fees and payment of litigation costs and expenses (the “Fee and Expense Application”).

I. INTRODUCTION

4. The Settlement provides for \$38,000,000 in cash payments (the “Settlement Fund”) to the Settlement Class and, if approved, would resolve the Action with respect to Deutsche Bank. In addition to providing relief to the Settlement Class now, the Settlement avoids the substantial risk,

¹ Hereinafter, unless otherwise noted, all ECF citations are to the docket in *In re: London Silver Fixing, Ltd., Antitrust Litigation*, No. 14-md-2573 (S.D.N.Y.).

expense, and delay of taking this Action to trial against Deutsche Bank, including the risk that the Settlement Class would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation. At the same time, the Settlement also provides for Deutsche Bank's cooperation in the continuing prosecution of Representative Plaintiffs' claims against the remaining Defendants. As detailed below, Deutsche Bank's cooperation has provided added value to the Settlement.

5. The Settlement was the product of arm's length negotiations among experienced counsel. Representative Plaintiffs and Interim Co-Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims asserted in the Action at the time they reached the Settlement.

6. For each of these reasons, and those set forth below, we believe that the Settlement constitutes an excellent result for the Settlement Class in light of the substantial litigation risks, and that it should be approved.

7. We also believe that the Distribution Plan should be approved. The Distribution Plan was developed by Interim Co-Lead Counsel in consultation with Representative Plaintiffs' experts and the Settlement Administrator. It was designed to fairly and reasonably allocate the Net Settlement Fund among Authorized Claimants based on the estimated impact of Defendants' alleged misconduct on market transactions, while at the same time serving as a cost-efficient and equitable way to distribute the Net Settlement Fund. The Distribution Plan's approach to allocation is consistent with many other distribution plans that have been approved by courts in this District and elsewhere.

8. As to the Fee and Expense Application, the Class Notice informed the Settlement Class that Interim Co-Lead Counsel would apply for an award of attorneys' fees of \$11,400,000, which is 30% of the Settlement Fund, plus payment of litigation costs and expenses not to exceed \$2,100,000, and interest on such attorneys' fees and litigation costs and expenses.

9. Consistent with the Notice, Interim Co-Lead Counsel move for an attorneys' fee award of 30% of the total Settlement Fund (or \$11,400,000), plus payment of \$953,618.45 in litigation costs and expenses, and interest on such attorneys' fees and litigation costs and expenses. The Fee and Expense Application seeks attorneys' fees and payment of litigation costs and expenses in connection with the prosecution of this action. Unless otherwise stated, this Declaration focuses on the time period of April 12, 2014 (case inception) through October 31, 2020. Interim Co-Lead Counsel believe the requested attorneys' fee award is reasonable based on Interim Co-Lead Counsel's efforts, the risk they undertook, and the results they achieved. It is also consistent with the fee schedule provided to and considered by the Court in appointing our firms as Interim Co-Lead Counsel. The requested payment for litigation costs and expenses should also be approved because the expenses were reasonably and necessarily incurred in the prosecution of the Action.

10. This Declaration is organized as follows: (a) Section II provides an overview of Interim Co-Lead Counsel's efforts to investigate the Silver Fix market, develop Representative Plaintiffs' complaints and respond to Defendants' Rule 12 motions; (b) Section III describes the discovery undertaken to advance the Action and Representative Plaintiffs' claims; (c) Section IV sets forth the details concerning the negotiation processes that led to the Settlement; and (d) Section V sets forth Interim Co-Lead Counsel's total hours invested in prosecuting the Action along with the related lodestar, and the litigation costs and expenses incurred in furtherance of the Action.

II. CASE DEVELOPMENT, INITIAL PLEADINGS AND MOTIONS TO DISMISS

A. Initial Case Investigation

11. In March 2013, the U.S. Commodity Futures Trading Commission ("CFTC") revealed that it had "started internal discussions on whether the daily setting of gold and silver benchmarks is

open to manipulation.”² Interim Co-Lead Counsel began their 16-month investigation into the London Silver Fixing immediately thereafter. As part of their investigation, Interim Co-Lead Counsel engaged both economic and industry consultants to assist in their investigation of Defendants’ alleged collusive conduct. This process involved developing proprietary software to analyze *billions* of data points, including millions of bids, offers, and transaction prices in the COMEX silver futures market during the more than 3,000 fixing days during the relevant period. Interim Co-Lead Counsel also interviewed numerous industry insiders and ultimately retained a former highly placed market practitioner. Interim Co-Lead Counsel worked with these industry experts to understand the regulatory framework and to gain a thorough understanding of the silver market, including the changes and deficiencies in the methodology, structure, reporting and setting of the Silver Fix and their impact the price of silver futures contracts and physical silver. Additionally, Interim Co-Lead Counsel thoroughly vetted their clients’ data, in consultation with the economic experts, to confirm that Representative Plaintiffs entered into impacted Silver Instrument transactions during the relevant period.

B. Pleadings Development and Motion Practice

12. As a result of Interim Co-Lead Counsel’s investigation, 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 joined the Action by filing a companion complaint. *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 Defendants in a price-fixing conspiracy involving the Silver Fix and the silver market.

² *How London’s gold and silver price benchmarks are ‘fixed,’* REUTERS (Jan 17, 2014), <http://uk.reuters.com/assets/print?aid=UKBREA0G19J20140117>; *see also U.S. Probes Gold Pricing*, THE WALL STREET JOURNAL (Mar. 13, 2013), <https://www.wsj.com/articles/SB10001424127887324077704578358381575462340>.

13. Additional complaints alleging substantially the same conduct were subsequently filed. Interim Co-Lead Counsel moved to centralize all of the cases on August 5, 2014, working with counsel for other plaintiffs and counsel for Defendants to negotiate and propose a Stipulation and Order that was “so ordered” on August 28, 2014. *Nicholson v. The Bank of Nova Scotia, et al.*, No. 14-cv-5682 (DC) (S.D.N.Y.), ECF No. 20.

14. The matter went before the United States Judicial Panel on Multidistrict Litigation. On October 14, 2014, the MDL Panel issued an Order transferring the Action to the Southern District of New York and Your Honor. ECF No. 1.

15. On November 14, 2014, Lowey Dannenberg and Grant & Eisenhofer submitted their motion for appointment as Interim Co-Lead Counsel. ECF No. 14. On November 25, 2014, Lowey Dannenberg and Grant & Eisenhofer were appointed Interim Co-Lead Counsel based in part on the “expertise and the effort that the [firms] have made to investigate their claims...a particularly outstanding effort due to the thorough and contemporaneous nature of the allegations.” ECF No. 17, at 2. The Court also found that “are best suited to represent the interests of the class.” *Id.* at 1.

16. The Court entered the Civil Case Management Plan on October 14, 2014, setting a schedule for the Action. ECF No. 4.

17. Interim Co-Lead Counsel drafted and negotiated a proposed agenda for the Initial Conference with Deutsche Bank, BNS and HSBC, which was submitted to the Court along with a proposed schedule and positions on document preservation and discovery stay, on November 21, 2014. ECF No. 16. Interim Co-Lead Counsel prepared extensively for the Initial Conference, negotiating pretrial coordination with counsel in *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litig.*, No. 14-md-2548 (VEC) (“*Gold*”), and participated in the Initial Conference on December 3, 2014. The Court “so ordered” the Proposed Case Management Order the next day. ECF No. 24.

18. Throughout late 2014 and early 2015, Interim Co-Lead Counsel negotiated service of the complaint on certain foreign defendants as well as investigated default procedures for other defendants who initially failed to answer. Interim Co-Lead Counsel also continued to investigate the Silver market and work with their industry and economic experts to prepare an amended complaint. Interim Co-Lead Counsel identified an additional Defendant, UBS AG, and additional relevant economic analysis that would support Representative Plaintiffs' claims.

19. Representative Plaintiffs introduced those findings in the First Consolidated Amended Class Action Complaint ("FAC") filed on January 26, 2015. ECF No. 34. The FAC 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 that were 99.85% attributable to the Fix Price, which spot prices closely track. ECF No. 34. The FAC also expanded Representative Plaintiffs' claims by naming UBS and extending the class period.

20. On March 27, 2015, Deutsche Bank, BNS, and HSBC collectively, and UBS individually, filed motions to dismiss the FAC pursuant to Rule 12(b)(6), consisting of two memoranda of law (totaling 60 pages) and two declarations with a combined 18 exhibits. ECF Nos. 56-61. Defendants argued, *inter alia*, that Representative Plaintiffs did not have cognizable antitrust claims because they did not adequately allege an unlawful agreement or coordinated conduct among Defendants, and if they had, that the alleged coordination did not cause any harm to competition. Defendants also challenged Representative Plaintiffs' standing under the Sherman Act, arguing that Representative Plaintiffs failed to allege that they were efficient enforcers or that they suffered antitrust injury or any injury in fact. In opposing the Commodity Exchange Act ("CEA") claims, Defendants argued that Representative Plaintiffs failed to allege manipulative conduct and actual damages. In addition, Defendants claimed that Representative Plaintiffs failed to allege that silver prices were

artificial or that Defendants had the ability or intent to cause artificial pricing. Finally, Defendants challenged Representative Plaintiffs' antitrust and CEA claims as time-barred.

21. After Defendants filed their motion to dismiss the amended complaint in March 2015, Interim Co-Lead Counsel began analyzing and preparing arguments to refute the arguments in Defendants' motion to dismiss. Interim Co-Lead Counsel worked collaboratively in researching case law to distinguish the law and positions Defendants took in their motions to dismiss.

22. Prior to and after Defendants filed their motions to dismiss the First Amended Complaint, Interim Co-Lead Counsel were also preparing a further amended complaint based on developments arising from its continued case investigation. On April 17, 2015, Representative Plaintiffs filed a Second Consolidated Amended Class Action Complaint ("SAC"), bolstering the factual allegations based on additional investigation and the publication of additional government investigation reports, and adding a claim for manipulation by false reporting and fraud and deceit in violation of the CEA. ECF No. 63.³

23. Defendants Deutsche Bank, BNS and HBC collectively, and UBS individually, filed motions to dismiss the SAC on May 29, 2015. The briefing consisted of a combined 60 pages in two memoranda of law and a declaration with 17 exhibits. ECF Nos. 73-77. Defendants again challenged Representative Plaintiffs' claims under the Sherman Act and the CEA, arguing the Representative Plaintiffs, *inter alia*, did not have antitrust standing; failed plausibly to allege scienter, artificial prices, manipulation, and damages under the CEA; and that Representative Plaintiffs' claims were untimely. In addition, Defendants asserted that the SAC was inconsistent with the FAC and that it was based solely on paid-for expert work.

³ On April 20, 2015, the Court found Defendants' motions to dismiss the FAC moot based on the filing of the SAC. ECF No. 64.

24. Interim Co-Lead Counsel spent considerable effort developing Representative Plaintiffs' opposition to Defendants' motions to dismiss. Interim Co-Lead Counsel collaborated on the strategy for the opposition memoranda and an initial division of work to respond to the arguments. On July 13, 2015, Representative Plaintiffs filed two memoranda of law in opposition to Defendants' motions to dismiss totaling 57 pages. ECF Nos. 83, 87.⁴

25. On August 10, 2015, Defendants Deutsche Bank, BNS, and HSBC collectively, and UBS individually, filed two reply briefs totaling 25 pages. ECF Nos. 96-97.

26. At about the same time Interim Co-Lead Counsel began to work on Representative Plaintiffs' opposition briefs, on June 10, 2015, the Court entered Joint Order No. 1, ordering the parties to present a non-adversarial tutorial on the silver market generally, the makeup of silver market participants and the various types of investments they make (spot contracts, derivatives, ETFs, etc.), the exchanges and other means by which market participants execute trades, the organizational structure applicable to silver traders employed at the Defendant banking institutions, and the history and evolution of the London Silver Market Fixing Ltd. ECF No. 80. Interim Co-Lead Counsel submitted proposals for the contents and structure of the tutorial. ECF Nos. 81, 90, 91. After submitting the proposed topic list to the Court, Interim Co-Lead Counsel conferred several times with their consultants to prepare PowerPoint slides and talking points for the tutorial, coordinated with counsel in the related *Gold* case, and negotiated with opposing counsel. Interim Co-Lead Counsel continued to prepare and revise the materials until just prior to the tutorial. On September 9, 2015, the Court heard the day-long tutorial, which included a 107-page PowerPoint presentation.

27. On April 11, 2016, the parties had a teleconference with the Court regarding the protocol for oral argument on the pending motions to dismiss. That same day, the Court provided a

⁴ Representative Plaintiffs filed a corrected version to one of the opposition briefs on July 14, 2015.

non-exhaustive list of topics with respect to Defendants' motions to dismiss that the parties were to address at oral argument. ECF No. 115.

28. On April 18, 2016, the Court heard oral argument on the motions to dismiss the SAC. Interim Co-Lead Counsel prepared for oral argument by, among other things: (i) reviewing and analyzing the positions of all parties; (ii) conducting additional legal research regarding issues raised in the submissions and refining arguments related to the discussion topics identified by the Court; (iii) consulting with Representative Plaintiffs' experts on factual and economic arguments; (iv) outlining and drafting an oral presentation; and (v) discussing strategy.

29. Interim Co-Lead Counsel continued their research while the motions to dismiss were pending, tracking cases that might have an impact on Representative Plaintiffs' claims or demonstrate a further development in the law. Prior to and following oral argument, Interim Co-Lead Counsel identified four cases which dealt with issues germane to the pending motions, including *Alaska Electrical Pension Fund, et al., v. Bank of America Corp.*, 175 F. Supp. 3d 44 (S.D.N.Y. 2016) ("ISDAFix") (supporting Representative Plaintiffs' ability to demonstrate Article III standing, antitrust injury, and timeliness), *see* ECF No. 111; *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759 (2d Cir. 2016) (supporting the use of economic evidence to support an inference of conspiracy and Representative Plaintiffs' antitrust standing arguments), *see* ECF No. 127; *Ploss v. Kraft Foods Group, Inc. et al.*, 197 F. Supp. 3d 1037 (N.D. Ill. 2016) (the first decision interpreting and sustaining a manipulative device claim under the then-new Section 6(c)(1) of the CEA, and doing so in ways supportive of Representative Plaintiffs' allegations), *see* ECF No. 141; and *In re Foreign Exch. Benchmark Rates Antitrust Litigation*, 13 Civ. 7789 (LGS), 2016 WL 5108131 (S.D.N.Y. Sept. 20, 2016), *see* ECF No. 149. Interim Co-Lead Counsel also responded to Defendants' submission of *In re Aluminum Warehousing Antitrust Litigation*, 833 F.3d 151 (2d Cir. 2016), *see* ECF No. 145 (distinguishing Representative Plaintiffs' direct antitrust injury from those of the *Aluminum* plaintiffs, who had not paid the prices they alleged had been manipulated).

30. On October 3, 2016, the Court held that Representative Plaintiffs stated antitrust claims for price fixing and unlawful restraint of trade, and CEA claims for price manipulation, manipulation by false reporting and fraud and deceit, aiding and abetting, and principal-agent liability against Defendants BNS and HBC. The Court also granted Representative Plaintiffs leave to replead in light of Representative Plaintiffs' receipt of cooperation materials from Deutsche Bank in connection with the Settlement. ECF Nos. 152-53. UBS's motion to dismiss was granted in its entirety. ECF No. 151.

31. Following the Court's dismissal of UBS, and based on the additional information obtained from, among other sources, a review of documents identified in Deutsche Bank's document production, Interim Co-Lead Counsel started working on a proposed Third Consolidated Amended Class Action Complaint ("TAC") that included claims against newly identified defendants Barclays Bank PLC, Barclays Capital Inc., and Barclays Capital Services Ltd. (together "Barclays"); BNP Paribas Fortis S.A./N.V. ("Fortis"); Standard Chartered Bank ("Standard Chartered"); and Bank of America Corporation, Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Inc. (together "Bank of America"), as well as renewed claims against UBS (together with Barclays, Fortis, Standard Chartered, and Bank of America, "Non-Fixing Banks"). On November 17, 2016, the parties participated in a telephonic conference with the Court concerning procedures for filing the forthcoming Proposed TAC under seal.

32. Interim Co-Lead Counsel prepared and filed a motion for leave to file the TAC on December 7, 2016 supported by a 16-page memorandum of law and the proposed TAC with voluminous appendices analyzing silver spot, futures, and overall market price spikes and deviations throughout the relevant time period. ECF Nos. 179-80. In the proposed TAC, Interim Co-Lead Counsel attempted to address identified pleading deficiencies as to Defendant UBS and added claims for collusive price manipulation against the new defendants, whose identities and involvement in the

alleged conspiracy were unknown to Representative Plaintiffs until they received and reviewed the documents and data Deutsche Bank produced as cooperation in connection with its Settlement with Representative Plaintiffs (collectively, the “Deutsche Bank Cooperation Materials”). The Proposed TAC further bolstered allegations as to BNS and HSBC (“Fixing Defendants”), as to which the Court previously held that claims had been stated.

33. On December 7, 2016, Defendant UBS filed a 19-page memorandum in opposition to Representative Plaintiffs’ motion for leave to file the TAC, arguing that Representative Plaintiffs had not plausibly alleged UBS’s liability for the alleged fixing-based conspiracy, that amendment would be futile and cause prejudice to UBS, and that the Court lacked jurisdiction over UBS. ECF No. 181.

34. On December 22, 2016, after additional research and analysis, Interim Co-Lead Counsel filed their 15-page response to each argument in UBS’s opposition. ECF No. 193.

35. Interim Co-Lead Counsel continued to review the Deutsche Bank Cooperation Materials and to monitor the status of public government investigations into the Silver Fix and related manipulative activity. On April 27, 2017, Interim Co-Lead Counsel submitted a letter to the Court seeking leave to amend certain allegations in the Proposed TAC based on information revealed by subsequent Deutsche Bank productions. ECF No. 235.

36. On May 31, 2017, David Liew, a former Deutsche Bank trader, pled guilty to conspiracy to commit wire fraud and spoofing charges. Then, on June 2, 2017, the CFTC entered an order instituting proceedings and imposing remedial sanctions against Mr. Liew. On June 5, 2017, Interim Co-Lead Counsel submitted to the Court a copy of Mr. Liew’s plea agreement and the CFTC’s Order Instituting Proceedings Pursuant to Sections 6(C) and 6(D) of the CEA, Making Findings and Imposing Remedial Sanctions against Mr. Liew as supplemental authority in support of Representative Plaintiffs’ motion for leave to file the Proposed TAC. ECF No. 248. On June 6, 2017, the Fixing Defendants filed under seal a letter in response, arguing that Representative Plaintiffs’ letter should

have been filed under seal and that the information Representative Plaintiffs had provided did not support their claims. Representative Plaintiffs filed a response the next day, asserting that sealing the letter was inappropriate and the Fixing Defendants' request for factual findings at the pleadings stage was improper. ECF No.251

37. On June 8, 2017, the Court granted Representative Plaintiffs leave to file the Proposed TAC, and to incorporate amendments to certain paragraphs requested on April 27, 2017. ECF No. 253. The Court further instructed the parties to confer and to jointly propose a schedule for briefing on the Non-Fixing Bank Defendants' motions to dismiss, as well as to confer on whether discovery should be stayed pending the Court's ruling on those motions. *Id.*

38. On June 15, 2017, after analyzing the Liew plea agreement and CFTC Order, Representative Plaintiffs sought leave to add allegations to the Proposed TAC reflecting such newly discovered information. ECF No. 256. The Court granted Representative Plaintiffs' Request that same day. ECF No. 257.

39. On June 16, 2017, Representative Plaintiffs filed the TAC. ECF No. 258. In addition to detailing newly available material from ongoing government investigations and criminal proceedings, Interim Co-Lead Counsel incorporated factual allegations based on the more than 350,000 pages of documents and 75 audio tapes contained within the Deutsche Bank Cooperation Materials.

40. On August 25, 2017, the Fixing Defendants filed their respective Answers to the TAC. ECF Nos. 298-99. Interim Co-Lead Counsel analyzed the Answers and raised concerns about certain deficiencies via letter. The parties exchanged e-mails and met and conferred, and ultimately resolved any concerns.

41. On September 11, 2017, the Non-Fixing Banks filed a joint motion to dismiss the TAC pursuant to Rule 12(b)(6) for failure to state a claim and a 59-page supporting joint memorandum

of law. ECF Nos. 302–03. The Non-Fixing Banks raised similar challenges to Representative Plaintiffs’ claims as had the Fixing Defendants, arguing that Representative Plaintiffs failed to adequately allege coordinated conduct among Defendants, antitrust or CEA standing, injury in fact, antitrust injury, or CEA price manipulation, price artificiality, and scienter. The Non-Fixing Banks also asserted that Representative Plaintiffs’ new CEA allegations failed for the same reasons and contended that Representative Plaintiffs’ CEA claims were time-barred. Four defendants—Barclays, Fortis, Standard Chartered, and UBS (the “PJ Defendants”)—argued that Representative Plaintiffs failed to establish personal jurisdiction over them pursuant to Rule 12(b)(2). ECF No. 303.

42. That same day, Fortis filed a supplemental memorandum of law in support of the joint motion to dismiss, arguing that the Court lacked personal jurisdiction over it, Representative Plaintiffs’ claims against Fortis were not plausible, and that the antitrust claims against Fortis were time barred. ECF No. 306. Bank of America also filed a supplemental memorandum of law in support of the joint motion to dismiss, arguing that the TAC failed to allege facts sufficient to support a plausible inference that Bank of America participated in an antitrust conspiracy or violated the CEA. ECF No. 308. UBS filed a declaration in support of the joint motion to dismiss, attaching 27 exhibits (some filed under seal) containing excerpts of certain trader chats identified in the TAC and providing certain additional information about those chats. ECF No. 309. Several supporting documents were also filed under seal: Barclays filed a declaration in support of the joint motion to dismiss, attaching seven exhibits. Fortis filed two declarations with one exhibit each in support of its argument that the Court lacked personal jurisdiction over Barclays. Standard Chartered also filed a supplemental memorandum and declaration attaching an exhibit in support of the joint motion to dismiss and claiming that the TAC failed to allege sufficient facts to confer personal jurisdiction over Standard Chartered or to state claims against Standard Chartered. Public versions of the sealed documents were filed on September 19, 2020. ECF Nos. 313-17

43. Interim Co-Lead Counsel analyzed the submitted motion, memoranda, declarations, and exhibits, and assessed the relevant law and the facts. They observed, for example, UBS failed to disclose that one of its precious metal traders was located and charged by the DOJ in Connecticut for misconduct relating to this Action. Interim Co-Lead Counsel filed a letter motion on September 15, 2017 detailing such omission and seeking limited jurisdictional discovery. ECF No. 311.

44. Together, Fortis, Barclays, and Standard Chartered filed a seven-page letter motion opposing Representative Plaintiffs' request for jurisdictional discovery on September 25, 2017. ECF No. 322. The opposition asserted that Representative Plaintiffs had filed procedurally improper and overbroad discovery requests and failed to make the requisite showing for jurisdictional discovery. *Id.* UBS filed its own opposition to Representative Plaintiffs' application for jurisdictional discovery, asserting the activity detailed in the aforementioned criminal complaint was irrelevant; that Representative Plaintiffs had not made a *prima facie* showing of personal jurisdiction; and that the court should stay the request for jurisdictional discovery until the resolution of the pending 12(b)(6) motion. ECF No. 323.

45. Interim Co-Lead Counsel responded to the PJ Defendants' oppositions on September 29, 2017, arguing for the Court's specific personal jurisdiction over the PJ Defendants and seeking leave to test the PJ Defendants' jurisdictional assertions through limited discovery. ECF No. 326. The Court decided to hold Plaintiffs' application for jurisdictional discovery in abeyance pending the completion of briefing on the Non-Fixing Banks' motions to dismiss for lack of personal jurisdiction. ECF No. 328.

46. Interim Co-Lead Counsel coordinated preparation of Representative Plaintiffs' opposition to the Non-Fixing Banks' motions to dismiss the TAC, holding at least ten team meetings over the course of a month to discuss opposition strategy and to review and improve the content of the opposition draft. On November 17, 2017, Interim Co-Lead Counsel filed a comprehensive brief

responding to the Non-Fixing Banks' joint motion to dismiss the TAC (ECF No. 336) and three supplemental memoranda of law in opposition to the supplemental memoranda filed by Bank of America, Fortis, and Standard Chartered. ECF Nos. 332, 333, 335.

47. On December 22, 2017, the Non-Fixing Banks filed a joint reply brief in support of their motion to dismiss, ECF No. 338, and Bank of America, Standard Chartered, and Fortis each filed individual supplemental reply memoranda of law. ECF Nos. 339–341.

48. Even after the Non-Fixing Banks' motions to dismiss were fully briefed, Interim Co-Lead Counsel continued to monitor government investigations and case decisions relevant to this Action. On January 29, 2018, the CFTC, the DOJ, and the FBI's Criminal Investigative Division announced criminal and civil enforcement actions against UBS, Deutsche Bank, HSBC and former traders at those banks, as well as individuals at other firms charged with spoofing and other offenses involving precious metals. Interim Co-Lead Counsel analyzed the impact of the CFTC's Orders and Complaint, DOJ's Criminal Complaint, and supporting affidavit on the pending motions to dismiss the TAC. On February 5, 2018, Interim Co-Lead Counsel submitted these filings as additional supplemental authority in opposition to Defendants' motions to dismiss the TAC, arguing that the new filings detailed previously unknown acts of manipulation, plausibly supported the Court's personal jurisdiction over UBS, and reinforced allegations that Defendants caused artificial prices in the silver market. ECF No. 344.

49. On February 23, 2018, the Second Circuit issued its opinion in *Charles Schwab Corp. v. Bank of America Corp.*, 883 F.3d 68 (2d Cir. 2018). After analyzing the decision, Interim Co-Lead Counsel determined that it provided supplemental authority in opposition to the Non-Fixing Banks' motions to dismiss because it confirmed the Court had personal and conspiracy jurisdiction over Defendants. Interim Co-Lead Counsel filed a letter with the Court setting forth this reasoning on March 12, 2018. ECF No. 349.

50. On April 11, 2018, the Court ordered supplemental briefing regarding “[w]hether for purposes of the extraterritoriality analysis pursuant to *Loginovskaya v. Batratchenko*, 764 F.3d 266 (2d Cir. 2014), the relevant transaction under 7 U.S.C. §25(a)(1)(D)(ii) [the CEA] is the plaintiff’s purchase or sale of a futures or options contract, the defendant’s underlying bad conduct (*e.g.*, spoofing or other manipulative trading tactics), or both; and [w]hether, in light of *Tower Research Capital*, the Second Circuit’s decision in *Parkcentral Global Hub Ltd. v. Porsche Auto Holdings SE*, 763 F.3d 198 (2d Cir. 2014), applies to claims pursuant to the CEA.” ECF No. 351. Interim Co-Lead Counsel conducted legal research on the relevant statutory provisions and cases, and prepared and submitted a ten-page supplemental memorandum of law on April 25, 2018. ECF No. 353.

51. On May 10, 2018, the Non-Fixing Banks submitted *Harry v. Total Gas & Power N.A., Inc.*, 889 F.3d 104 (2d Cir. 2018), as supplemental authority in support of their pending motion to dismiss the TAC. ECF No. 354. Interim Co-Lead Counsel responded, refuting the Non-Fixing Banks’ assertions that Representative Plaintiffs had failed to plausibly allege CEA claims against the Non-Fixing Banks for manipulating the Silver Fix and prices, as well as that Representative Plaintiffs could not demonstrate antitrust injury. ECF No. 356. On July 25, 2018, the Court granted the Non-Fixing Banks’ motion. ECF No. 363.

III. DISCOVERY

52. To achieve maximum results, Interim Co-Lead Counsel deployed their human and technological resources to obtain and analyze relevant documents and data. They also utilized economic and industry experts to inform them on what information to look for, develop appropriately targeted discovery requests, and to efficiently and effectively review the materials they received. Discovery is ongoing, and Interim Co-Lead Counsel continue to collect, review, and analyze documents and responses from party and non-party sources and prepare for depositions. At the same

time, Representative Plaintiffs and Interim Co-Lead Counsel effectively responded to discovery requests propounded by the Fixing Defendants.

A. Discovery of Defendants

53. On December 13, 2014, following the initial conference in this matter and before Representative Plaintiffs filed the FAC, the Court imposed a discovery stay other than as to document preservation subpoenas and production by consent. ECF No. 24.

54. While formal discovery was stayed, Interim Co-Lead Counsel worked with their experts and industry consultants to develop an informal and formal discovery strategy, including researching potential third parties and preparing and serving non-party preservation notices. Interim Co-Lead Counsel frequently corresponded with experts regarding economic analysis they performed on the Silver market and worked closely with experts to understand the impact of such analysis on the allegations of Representative Plaintiffs' complaint. Interim Co-Lead Counsel worked closely with experts to analyze trade day impact, price spikes, silver spot prices, and target manipulation analysis and worked with their experts to develop additional market analysis to further support Representative Plaintiffs' claims.

55. Upon reaching the Settlement with Deutsche Bank, Interim Co-Lead Counsel obtained proffers from Deutsche Bank and obtained the Deutsche Bank Cooperation Materials. Interim Co-Lead Counsel designed and implemented a strategy to review and analyze the materials for use in an amended complaint and discovery. Within the Deutsche Bank Cooperation Materials, attorneys identified various manipulative trading strategies allegedly implemented by Defendants to maintain the price of physical silver and silver financial instruments at artificial levels during the Class Period.

56. Documents and data from Deutsche Bank also identified alleged co-conspirators involved in manipulating the Silver Fix and provided information about the scope of the manipulation,

including specific dates of manipulation. The instances of manipulation found in the Deutsche Bank Cooperation Materials helped Interim Co-Lead Counsel to later prepare specific document requests of Defendants and perform targeted searches of Defendants' productions.

57. In connection with the Deutsche Bank Settlement and production of the Deutsche Bank Cooperation Materials, Interim Co-Lead Counsel negotiated a supplemental protective order that was filed with the Court on June 2, 2016, to which the Fixing Defendants and UBS objected. *See* ECF Nos. 129-30. The parties along with Deutsche Bank engaged in lengthy negotiations concerning the supplemental protective order but were not able to come to agreement concerning the Fixing Defendants and UBS's request to be simultaneously provided the Deutsche Bank Cooperation Materials despite the pending discovery stay. Interim Co-Lead Counsel prepared Representative Plaintiffs' portion of the June 17, 2016 Joint Letter in which Representative Plaintiffs argued in opposition to the Fixing Defendants and UBS's request to immediately access the Deutsche Bank Cooperation Materials. *See* ECF No. 134. The Court held a hearing on June 20, 2016, during which the Court advised that it would hold in abeyance a decision on the supplemental protective order and directed the parties to continue their negotiations. *See* June 20, 2016 Hearing Tr. at 15-16, ECF No. 137.

58. Starting in late 2016, Interim Co-Lead Counsel undertook numerous tasks to advance discovery against Defendants, including negotiations with opposing counsel via meet-and-confers and e-mail exchanges and coordinating discussions regarding proposed discovery plans and case management strategy amongst themselves and when appropriate, with additional Plaintiffs' Counsel.

59. After the Court issued its ruling granting-in-part and denying-in-part Defendants' motion to dismiss the SAC, and while the parties were briefing Representative Plaintiffs' motion to file a TAC, the parties met and conferred to discuss a joint proposal concerning the proposed schedule for discovery and class certification. Representative Plaintiffs and Defendants were unable to agree on

a proposed joint schedule, and on December 1, 2016, they submitted competing case management proposals and scheduling orders. ECF Nos. 172-73. On December 8, 2016, the Court held a status conference to discuss among other things, the issues concerning the case management proposals and litigating foreign data privacy issues. *See* ECF Nos. 182, 189.

60. On December 9, 2016, the Court issued Order No. 13, which directed to parties to produce, among other things, initials disclosures under FED. R. CIV. P. 23(a), documents and data used to develop the SAC, Deutsche Bank Cooperation Materials, and documents produced by BNS and HSBC to “non-affiliated entities” including regulatory agencies. ECF No. 185. Order No. 13 stayed discovery as to the new parties to be added as Defendants in the TAC, and also directed the parties to meet and confer concerning a case management plan, e-discovery and document production protocols.

61. Interim Co-Lead Counsel subsequently engaged in extensive meet-and-confers and e-mail exchanges with Defendants’ counsel to prepare a confidentiality stipulation (ECF No. 203) and the ESI protocol (ECF No. 375). Representative Plaintiffs’ consultants provided valuable input as Interim Co-Lead Counsel negotiated and revised the ESI protocol template. Experts were consulted to discuss data needs from Defendants and to understand data issues in productions.

62. On January 9, 2017, the DOJ Criminal Division Fraud Section filed under seal a motion to intervene and sought a one-year discovery stay in this case as to certain documents that previously had been produced to the DOJ. ECF No. 200 (redacted version). Interim Co-Lead Counsel prepared a proposal to address the DOJ’s concerns, which the DOJ rejected. In a January 19, 2017 letter (filed under seal), Interim Co-Lead Counsel presented the same proposal to the Court, noting the DOJ’s opposition. On February 8, 2017, via sealed order, the Court granted the requested stay.

63. In connection with the Court’s June 8, 2017 Order granting Representative Plaintiffs leave to amend and file the Proposed TAC, the Court directed Representative Plaintiffs and counsel

for the Fixing Defendants to confer on whether discovery should be stayed pending the Court's ruling on the Non-Fixing Banks' motions to dismiss. ECF No. 253. Interim Co-Lead Counsel conferred with counsel for the Fixing Defendants, whose position was that all discovery should be stayed. On June 23, 2017, Representative Plaintiffs filed a letter arguing that discovery (other than fact depositions) should not be stayed further and proposing a relevant time period for production of documents and transaction data, relevant custodians, categories of documents, the scope of transaction data and audio calls. ECF No. 266. On June 27, 2017, the Court entered an order staying discovery pending a decision on the Non-Fixing Banks' motions to dismiss. ECF No. 268.

64. On June 23, 2017, the Non-Fixing Banks, like the Fixing Defendants before them, sought access to the Deutsche Bank Cooperation Materials. ECF No. 267. Interim Co-Lead Counsel prepared an opposition to this request which they filed on June 30, 2017. ECF No. 282. The Court denied the Non-Fixing Banks' attempt to obtain the production of the Deutsche Bank Cooperation Materials on July 10, 2017. ECF No. 290.

65. In light of the DOJ discovery stay, on August 24, 2017, Interim Co-Lead Counsel sought leave to serve a preservation subpoena on a third party, which the Court granted the next day. ECF No. 297. Interim Co-Lead promptly served the preservation subpoena on August 28, 2017.

66. In September 2017, the DOJ arrested a former UBS precious metals trader and charged him with wire fraud, commodity fraud, and spoofing. See *United States v. Andre Flotron*, 3-17-cr220 (D. Conn. 2017). After a superseding indictment, the trader was tried in April 2018 on conspiracy to commit commodity fraud. Interim Co-Lead Counsel assigned attorneys to attend each day of his six-day trial and document the testimony and evidence that could further assist in the prosecution of the Action.

67. In conjunction with the July 25, 2018 Order resolving the Non-Fixing Banks' motions to dismiss the TAC, the Court ordered the parties to submit a proposed case management order and

scheduled a conference to discuss the proposed order and scope of discovery in the Action. ECF No. 363. The parties, including parties in the *Gold* matter, engaged in numerous calls and emails and exchanged several drafts as they negotiated a proposed schedule, which Interim Co-Lead Counsel submitted to the Court on August 30, 2018. ECF No. 370.

68. The Court held a status conference on September 5, 2018, during which it addressed the scope of discovery, the status of the DOJ stay, and pretrial coordination of the *Gold* and *Silver* Actions. The next day, the Court entered an order setting forth the discovery schedule, and directing the parties to meet and confer regarding custodial documents, transaction data, non-custodial documents, fixing call recordings and other audio files, and the relevant time period, and ordering the parties to provide monthly status letters regarding the progress of discovery, beginning February 2019. ECF No. 371. The Order also provided that discovery in the Action should be coordinated with the *Gold* case. *Id.*

69. In the September 6, 2018 Order, the Court also ordered the parties to meet and confer with the Department of Justice concerning the DOJ's ongoing request to stay production of the Deutsche Bank Cooperation Materials. ECF No. 371. The parties met and conferred on September 11, 2018 and submitted on September 14, 2018 an update informing the Court that they anticipated the stay could be lifted shortly. ECF No. 373. On October 2, the DOJ withdrew its request for a stay of discovery of the Deutsche Bank Cooperation Materials or any other discovery in the Action. ECF No. 377. The Court terminated the stay on October 10, 2018. ECF No. 378.

70. Upon the commencement of the formal discovery process, Interim Co-Lead Counsel were able to collect transaction data, audio files, privilege logs, and other like information. Teams of attorneys analyzed and synthesized information to help Interim Co-Lead Counsel create a roadmap of BNS's and HSBC's involvement in the alleged manipulation, and to identify what information gaps still needed to be addressed.

71. Interim Co-Lead Counsel served Representative Plaintiffs' First Request for Production of Documents ("First Request") on the Fixing Defendants on September 24, 2018. Among other things, the First Request asked for all documents that previously had been produced to government regulators during the course of those regulators' investigations into the manipulation of the silver market. That same day, Representative Plaintiffs requested information from the Fixing Defendants concerning the computer systems where potentially responsive data could be stored, including a list of available fields and the production of sample data from those systems. Over the next two months, the Fixing Defendants produced sample data from their computer systems.

72. Interim Co-Lead Counsel and their consultants analyzed the data samples, which typically consisted of one month's worth of the Fixing Defendants' transaction data. Interim Co-Lead Counsel and their experts created a target list of data fields with descriptions to be in the full data production that they shared with each Fixing Defendant's counsel. Negotiations regarding transaction data were extensive and extremely detailed, involving many separate meet and confers with each Fixing Defendant regarding the availability of specific data fields and the temporal scope of the data. Each time Interim Co-Lead Counsel received a data sample from a Fixing Defendant, their consultants analyzed the data and identified data deficiencies and questions. Using this information, Interim Co-Lead Counsel drafted follow-up deficiency letters and additional questions that were presented to the Fixing Defendants.

73. On October 3, 2018, Interim Co-Lead Counsel served a Second Request for Production of Documents ("Second Request"). Defendants responded and objected to Representative Plaintiffs' First and Second Requests on November 2, 2018.

74. Interim Co-Lead Counsel also met and conferred with the Fixing Defendants regularly throughout the course of the litigation to develop search terms, agree on a relevant period for the production of documents and data, custodians, and scope of production.

75. On December 14, 2018, the parties submitted a joint letter setting forth numerous areas of dispute regarding the scope of discovery that they had been unable to resolve, including the time of day for which the Fixing Defendants would search for documents, the relevant time period for which documents would be produced, the scope of non-fixing audio files to be provided, and the Fixing Defendants' request regarding expert materials. ECF No. 386. The Court set a conference for January 3, 2019, to address these issues, and Interim Co-Lead Counsel prepared for the hearing, researching and refining their legal positions and continuing to negotiate with the Fixing Defendants up to and during the course of the status conference.

76. At the January 3, 2019 conference, the Court granted Representative Plaintiffs' request for a broader time period for responsive discovery, including audio files, ordered the Fixing Defendants to provide samples of audio files, and gave guidance on the appropriate scope of search terms. Pursuant to the Court's Order after the status conference, ECF No. 389, the parties continued to meet and confer on open issues. Interim Co-Lead Counsel and the Fixing Defendants negotiated the scope of audio file production extensively via calls, emails, and letter correspondence. Interim Co-Lead Counsel researched and proposed creative solutions to facilitate the broadest production of audio files with the least amount of burden, including investigating the feasibility of using transcription software and/or vendors and proposing a multi-layered review process whereby Interim Co-Lead Counsel would first conduct a relevance review of BNS' and HSBC's audio files for relevance, subject to a subsequent privilege review by counsel for the Fixing Defendants. While Interim Co-Lead Counsel was able to reach some agreements with HSBC, BNS rejected proposals to facilitate the production of a reasonable set of audio files. During these negotiations, Interim Co-Lead Counsel researched and prepared a motion to compel the Bank of Nova Scotia to make a bulk production of audio files, submitting a six-page letter motion to the Court on February 1, 2019. ECF No. 396. Ultimately, Interim Co-Lead Counsel negotiated access to a sample of silver fixing call. HSBC agreed

to produce a sample of Silver fixing calls on behalf of both Fixing Defendants, and Interim Co-Lead Counsel withdrew their motion without Court intervention. ECF No. 400.

77. On February 5, 2019, Representative Plaintiffs made an initial proposal of more than 150 search strings to which the Fixing Defendants objected on the grounds of burden and relevance. Fixing Defendants provided de-duplicated and unique hit counts in order to substantiate their positions, which Interim Co-Lead Counsel reviewed. The parties agreed on the use of more than 200 unique search strings, many of which contained subparts with connectors. Interim Co-Lead Counsel worked with individual Fixing Defendants to arrive at mutually agreeable alterations to the global search terms where the Fixing Defendant was unable to run terms for technical reasons or where the terms presented unique burdens.

78. Interim Co-Lead Counsel and the Fixing Defendants also negotiated, reviewed information regarding, and refined the list of custodians for document production, ultimately agreeing to 23 custodians for HSBC and 20 custodians for BNS.

79. The parties negotiated the scope of the Fixing Defendants' production of custodial documents and non-custodial documents over many months in 2018 and into 2019, discussing among other issues the various physical and electronic sources to be searched and the date range for the production. The parties ultimately agreed to a time period of January 1, 2007 through September 30, 2014 for documents and the period January 1, 2007 through September 30, 2015 for transaction data. Data privacy issues concerning the transaction data were raised, and the parties continued to negotiate over the unmasking or pseudonymization of such data.

80. On January 4, 2019, the Court amended the date for the parties to begin submitting monthly discovery status reports to March 1, 2019. ECF No. 389. Since then (with the exception of February and October 2020), Interim Co-Lead Counsel have exchanged drafts—often numerous

versions—with the Fixing Defendants before filing the monthly status reports. Negotiations over the substance have often been extensive and contentious.

81. Interim Co-Lead Counsel conducted legal research to resolve issues such as foreign data privacy to receive productions from Defendants incorporated overseas. The discovery work also included more than 15 letters to Court to resolve various discovery related disputes and status updates.

82. Interim Co-Lead Counsel coordinated with e-discovery vendors over the course of discovery regarding productions by various Defendants. Interim Co-Lead Counsel used technologically assisted document review software to leverage potential key terms through smart searches, “relational searching,” and other analytic tools. These tools identified relevant documents, followed themes and dates of conversations, and matched them to significant individuals. Using these tools, Interim Co-Lead Counsel identified potential instances of agreement or manipulation, admissions of manipulation, and other relevant documents among the approximately 2.5 million documents received from BNS, HSBC, and Deutsche Bank totaling more than 15 million pages. On November 19, 2019, Representative Plaintiffs sent each Fixing Defendant a letter requesting information regarding its search methodology (*e.g.*, search terms or technology assisted review (“TAR”)), custodians, date ranges, format of production, and whether any documents were unavailable or not reasonably accessible. Interim Co-Lead Counsel also managed processing and loading of production data on the e-discovery platform.

83. To date, Representative Plaintiffs have received more than nine million pages of documents and one million transactions from HSBC and more than three million pages of documents and 3.5 million transactions from BNS. The Deutsche Bank Cooperation Materials yielded another five million-plus transactions and 2.65 million pages of documents.

84. The volume of discovery required Interim Co-Lead Counsel to develop a strategy on how to best review the large production. Interim Co-Lead Counsel held more than fifty calls to

develop and frequently revise strategy as the document review progressed. Interim Co-Lead Counsel reviewed (and continue to review) discovery and prepared memoranda regarding key documents and casts of characters lists, initially to facilitate negotiations of search terms and custodians, and later to identify potential witnesses and to prepare for depositions. In addition, Interim Co-Lead Counsel held weekly calls to assess document review findings and adjust strategy as needed. Based on the review of discovery, Interim Co-Lead Counsel also prepared three different sets of deficiency letters.

85. Representative Plaintiffs and the Fixing Defendants also had extensive negotiations over scope and form of privilege logs for responsive documents withheld from production, including whether the Fixing Defendants would produce categorical or traditional, line-by-line privilege log. ECF No. 460. The parties eventually reached a compromise, and the Fixing Defendants served their initial privilege logs on September 30, 2020. Interim Co-Lead Counsel began reviewing and analyzing the claims of privilege, preparing deficiency correspondence and then negotiating with the Fixing Defendants regarding those deficiencies. This process ultimately resulted in the Fixing Defendants producing several revised privilege logs and documents which had been de-designated and removed from the privilege logs.

86. In 2019, Interim Co-Lead Counsel started working on the deposition protocol. After coordinating with Fixing Defendants' counsel, Interim Co-Lead Counsel revised draft versions of a deposition protocol. On March 29, 2019, the parties submitted, and on April 1, 2019, the Court so ordered the finalized deposition protocol. ECF No. 408. Due to the COVID-19 pandemic, the parties negotiated a remote deposition protocol, which the Court "so ordered" on November 4, 2020. ECF No. 474.

87. Early in 2020, Interim Co-Lead Counsel started conducting meet and confers with Defendants regarding issues related to witness identification. 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).

88. Interim Co-Lead Counsel have worked extensively on deposition preparation, including on deposition scheduling issues with Defendants' counsel. Attorneys have been preparing and revising deponent-specific deposition outlines as document review progressed and as additional relevant documents were found. To date, Interim Co-Lead Counsel have noticed three depositions, negotiated three deposition subpoenas of former employees, and taken one deposition.

89. Throughout the discovery process, Interim Co-Lead Counsel exchanged numerous emails and calls with the Fixing Defendants, either jointly or individually. In addition to holding over 75 meet-and-confers, Representative Plaintiffs have drafted and refined numerous emails and letters raising issues in advance of a call or following up on outstanding items after a call.

90. Starting in April 2019, Interim Co-Lead Counsel drafted and served 18 subpoenas for documents and transaction data on third parties, including the Intercontinental Exchange, Bloomberg, Refinitiv, and the CME, as well as Bank of America/Merrill Lynch, Barclays, BNP Paribas, Citibank, Credit Suisse, JP Morgan, MF Global, SG Americas, Standard Chartered, and UBS. Since then, Interim Co-Lead Counsel have been negotiating with multiple third parties in an attempt to receive their relevant silver transaction data pursuant to those subpoenas. Certain third parties raised concerns with respect to confidentiality regarding the third parties' data being unmasked in Defendants' and the CME's data. Representative Plaintiffs raised those concerns with the Fixing Defendants and continue to negotiate a solution that will satisfy confidentiality concerns for all parties and third parties. Multiple third parties have made rolling productions of documents and data relevant to this Action all of which Representative Plaintiffs continue to review and analyze for factual development of their claims.

B. Discovery of Representative Plaintiffs

91. Pursuant to Defendants' request and prior to the start of formal discovery, on January 23, 2017, Representative Plaintiffs produced redacted trading reports detailing their silver transactions that form the basis of their claims.

92. On September 24, 2018, pursuant to the start of formal discovery, the Fixing Defendants propounded 36 requests for production ("Requests") on each of the Representative Plaintiffs.

93. Attorneys and staff committed a substantial effort to respond on Representative Plaintiffs' behalf to the Fixing Defendant's Requests. Interim Co-Lead Counsel requested multiple meet and confers with the Fixing Defendants over the scope of the Requests and were able to reach an agreement as to the scope of production required by the Requests, thereby avoiding motion practice.

94. In addition, Interim Co-Lead Counsel coordinated with Representative Plaintiffs to gather the responsive information and develop responses to the document requests. Interim Co-Lead Counsel or additional Plaintiffs' Counsel set up individual conferences with each Representative Plaintiff regarding electronic search methods in preparation for an initial collection of documents. Interim Co-Lead Counsel and/or additional Plaintiffs' Counsel interviewed each Representative Plaintiff regarding the likely places that relevant documents may be stored for this litigation (hard and electronic documents) as well as any and all individuals that might have relevant documents in their possession, custody, or control.

95. Interim Co-Lead Counsel engaged an e-discovery vendor to image the hard drives and email boxes of Representative Plaintiffs. Interim Co-Lead Counsel set up individual consultations between Representative Plaintiffs and the e-discovery vendor to ensure that all personal and confidential data in the hands of each individual and Representative Plaintiff was protected to the

greatest extent possible, while also finding relevant documents consistent with the electronic search terms and otherwise. Thousands of documents were collected for the purpose of identifying information responsive to the Requests.

96. After conducting a reasonable investigation with the assistance of Representative Plaintiffs, Interim Co-Lead Counsel prepared their Objections and Responses to the Requests, which were served on Defendants or about November 2, 2018.

97. Once the electronic discovery vendor collected the electronic documents, Interim Co-Lead Counsel ran search terms against that data and reviewed the resulting set of documents for responsiveness to the Requests. Interim Co-Lead Counsel also reviewed responsive documents for privilege and, after redacting any confidential information, produced the non-privileged documents to the Fixing Defendants. Hundreds of responsive documents were collected from Representative Plaintiffs Norman Bailey, Robert Ceru, Christopher DePaoli, John Hayes, Laurence Hughes, KPFF Investment, Inc., Kevin Maher, Eric Nalven, J. Scott Nicholson, and Don Tran.

98. On January 24, 2019, BNS filed a letter motion seeking to compel Representative Plaintiffs to produce consultant analyses. ECF No. 394. Interim Co-Lead Counsel extensively researched the law and prepared a response that they filed on January 31, 2019. ECF No. 395. The Court granted BNS's motion to compel on February 25, 2019. ECF No. 403. 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.

99. 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: (1) to vacate its February 25, 2019 Order requiring the production of materials protected under Federal Rule of Civil Procedure 26(b) and the work-product doctrine; and (2) to deny the Fixing Defendants' motion to compel such materials. *J. Scott Nicholson, et*

al., v. HSBC Bank USA, N.A., et al., 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. *Id.*, ECF No. 41 (2d Cir. Jul. 25, 2019).

100. The parties subsequently negotiated over the consultant materials, with Representative Plaintiffs responding to numerous requests for clarification and confirmation from the Fixing Defendants. Representative Plaintiffs produced approximately 1.7 terabytes of uncompressed market data to the Fixing Defendants along with all non-privileged code files necessary to generate the analyses included in the SAC. Representative Plaintiffs additionally reproduced certain code files at their own expense with annotations and comments designed to assist Defendants by, for example, directing them to specific functions used to generate the figures in the SAC.

101. Negotiations continued between the Parties resulting in multiple subsequent collections. Interim Co-Lead Counsel continued to follow up with brokers and supplemented the Representative Plaintiffs' productions with any additional materials found as required by the Federal Rules.

102. On September 24, 2018, Defendants served interrogatories on Representative Plaintiffs. Interim Co-Lead Counsel researched set up consultations with each Representative Plaintiff to prepare a response to each of the Interrogatories. On or about November 2, 2018, Interim Co-Lead Counsel served objections and responses to the interrogatories.

103. The Fixing Defendants have noticed and taken the deposition of one Representative Plaintiff. Interim Co-Lead Counsel prepared the Representative Plaintiff for the deposition, discussing how the deposition will be conducted and the type of questions that may be posed. The Representative Plaintiff sat for a 5-hour deposition on January 5, 2021.

IV. DEUTSCHE BANK SETTLEMENT NEGOTIATIONS

104. In 2015 and 2016, Interim Co-Lead Counsel engaged in extensive settlement negotiations with Deutsche Bank. The negotiations with Deutsche Bank over the material terms of the Settlement took place over several months starting in December 2015 and continuing until the Deutsche Bank Settlement Agreement was executed on September 6, 2016.

105. Following initial phone calls with Deutsche Bank's counsel in December 2015, Interim Co-Lead Counsel and Deutsche Bank's counsel held a number of settlement discussions and exchanged numerous correspondence in an effort to reach a resolution 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. During these meetings and discussion, the parties exchanged views on the risks of the case, the likely damages, and potential terms for a settlement. Interim Co-Lead Counsel presented what they perceived to be the strengths and weaknesses of the claims and defenses, as well as Deutsche Bank's litigation exposure. Interim Co-Lead Counsel dedicated significant time developing its settlement strategy and preparing talking points and presentations in support of the strategy.

106. 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. The negotiations as to the scope of the cooperation provisions continued for several months. Given that this is the first settlement in the case, it was Interim Co-Lead Counsel's view that the cooperation provisions of the deal were extremely important to their ability to maximize the overall recovery for the class against the Non-Settling Defendants. The negotiations as to the scope of the cooperation provisions continued for several months.

107. As settlement discussions advanced, Interim Co-Lead Counsel prepared a term sheet that set out the essential terms of the parties' settlement. On April 13, 2016, counsel for Deutsche Bank and Interim Co-Lead Counsel signed a Binding Settlement Term Sheet ("Term Sheet"). The Term Sheet set forth the terms on which the parties agreed, subject to the negotiation of a full Settlement Agreement, to settle Representative Plaintiffs' claims against Deutsche Bank. At the time the Term Sheet was executed, Interim Co-Lead Counsel was well-informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims and defenses asserted. By letter dated April 13, 2016, the Parties reported to the Court via ECF that the Term Sheet had been executed and advised the Court that the Term Sheet would be superseded by a formal settlement agreement. ECF No. 116.

108. After the term sheet was executed in early 2016, Interim Co-Lead Counsel and Deutsche Bank spent several more months preparing and revising the settlement agreement and finalizing agreement on key provisions such as the scope of cooperation. To that end, drafts of the Deutsche Bank Settlement Agreement went back and forth between the parties, and numerous contested issues were raised, negotiated and resolved, including without limitation, continuing negotiations over the scope of Deutsche Bank's cooperation, the scope of the releases, and the circumstances under which the parties could terminate the Settlement. On September 6, 2016, Representative Plaintiffs and Deutsche Bank formally executed the Settlement Agreement.

109. The negotiations leading to the Deutsche Bank Settlement were entirely non-collusive and strictly arm's length. During the course of negotiations, Interim Co-Lead Counsel had the benefit of developing information from various sources, including government settlements and orders, other public accounts of manipulation involving the Silver Fix and other investigations, counsel's investigation into the Settlement Class' claims, industry and expert analysis, and information shared by Deutsche Bank during the settlement negotiations. Interim Co-Lead Counsel were involved in all

aspects of the settlement negotiations on behalf of Representative Plaintiffs and were well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the claims against Deutsche Bank. The Deutsche Bank Settlement involves a structure and terms that are common in class action settlements in this District. The consideration that Deutsche Bank agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval.

110. On October 17, 2016, Representative Plaintiffs filed a motion for Preliminary Approval of Class Action Settlement, a 25-page memorandum in support, and 2 declarations with 3 combined exhibits. ECF Nos. 154-56.

111. On October 27, 2016, the Court ordered Interim Co-Lead Counsel to provide a supplemental submission in support of the motion for preliminary approval addressing issues relating to the class definition and the duration of the settlement class period. ECF No. 158. Interim Co-Lead Counsel researched and drafted the requested supplemental memorandum of law, which was filed with the Court on November 18, 2016. ECF No. 165

112. On November 23, 2016, the Court preliminarily approved the Settlement as set forth in the Settlement Agreement, as being within the range of what may be found to be fair, reasonable, and adequate to the Settlement Class for the claims against Deutsche Bank. ECF No. 166. The Court conditionally certified the following Settlement Class:

All persons or entities that transacted in U.S.-Related Transactions in or on any over-the-counter market (“OTC”) or exchange in physical silver or in a derivative instrument in which silver is the underlying reference asset (collectively, “Silver Instruments”), at any time from January 1, 1999 through the date of this Settlement Agreement. “U.S.-Related Transaction” means any transaction in a Silver Instrument (a) by any person or entity domiciled in the U.S. or its territories, or (b) by any person or entity domiciled outside the U.S. or its territories but conducted, in whole or in part, in the U.S. or its territories. Excluded from the Settlement Class are Defendants, and their officers, directors, management, employees, subsidiaries, or affiliates. Also excluded is the Judge presiding over this action, his or her law clerks, spouse, and any person within the third degree of relationship living in the Judge’s household and the

spouse of such a person. Also excluded are the DB Released Parties; and any Class Member who files a timely and valid request for exclusion.

Id.

113. The Court granted Interim Co-Lead Counsel leave to defer providing notice of the Deutsche Bank Settlement in order to permit them to obtain and analyze transaction data and consult experts on the appropriate methodologies for distributing the Net Settlement Fund to Settlement Class Members. *Id.* The Distribution Plan was developed by Interim Co-Lead Counsel in consultation with experts and the Settlement Administrator. It was designed to fairly, reasonably, and efficiently allocate the Net Settlement Fund among Claimants. Since November 2017, Interim Co-Lead Counsel have engaged in comprehensive discussions with experts to assist with formulating the Distribution Plan. Interim Co-Lead Counsel reviewed Deutsche Bank's transaction data and corresponded with experts about such data. Interim Co-Lead Counsel had numerous exchanges with experts regarding the various data sources that could be used to develop a plan of allocation and strategized on how to obtain certain data that may not have been publicly available.

114. On June 25, 2020, Interim Co-Lead Counsel moved for approval of the class notice plan and preliminary approval of the Distribution Plan for the Deutsche Bank settlement, with a memorandum and declaration in support. ECF Nos. 449-452. The Court held a hearing on the motion on July 24, 2020 and raised certain questions about the notice procedure. Interim Co-Lead Counsel responded via letter brief on July 31, 2020, ECF No. 458, to which the Court responded on August 3, 2020. ECF No. 459.

115. Interim Co-Lead Counsel filed revised versions of the Proposed Order and Notice Documents in light of the Court's August 3, 2020 Order on August 5, 2020. ECF No. 463. That same day, the Court approved the class notice plan, preliminarily approved the distribution plan for the settlement with Deutsche Bank and scheduled the hearing for final approval of the settlement. ECF. No. 464.

V. INTERIM CO-LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES

116. The Lowey Dannenberg partner primarily responsible for developing and executing the case strategy was Vincent Briganti, working together with partners Thomas Skelton, Christian Levis and senior associate Johnathan Sereczynski. The Grant & Eisenhofer partner primarily responsible for developing and executing the case strategy was Robert Eisler working together with partner Deborah Elman, senior counsel Chad Holtzman and associate Julia McGrath. As Interim Co-Lead Counsel's firm résumés (*see* Declaration of Vincent Briganti dated January 21, 2021, Ex. C; Declaration of Robert G. Eisler dated January 21, 2021, Ex. B, filed herewith) demonstrate, Interim Co-Lead Counsel are skilled and accomplished litigators in the antitrust and commodities litigation fields with successful track records in some of the largest class actions throughout the country, including within this Circuit.

117. As they prosecuted this Action, Interim Co-Lead Counsel allocated work assignments amongst themselves in a manner that facilitated efficiency and avoided unnecessary duplication of effort. Interim Co-Lead Counsel utilized additional Plaintiffs' Counsel as needed to contribute information they developed during their initial investigations for the benefit of the Class, coordinate with Representative Plaintiffs when needed, assist with discovery and deposition preparation, and to conduct research and prepare memoranda used to develop arguments, briefs, and strategy for the case. Work assignments were allocated to appropriate personnel based on skill, experience, and availability. Interim Co-Lead Counsel coordinated work regularly and monitored the work performed by the attorneys, paralegals, and professionals at their firms and the staff from additional Plaintiffs' Counsel that were used to provide additional support with particular tasks.

118. Interim Co-Lead Counsel bore the risk of litigating and funding this Action entirely on a contingent basis. There are numerous contingency-fee cases in which counsel have contributed

thousands of hours of service to the class' claims and advanced substantial sums of money, only to receive no compensation for their work.

119. Notwithstanding, Interim Co-Lead Counsel fully devoted substantial attorney time and resources to the prosecution of the Action. Early on, recognizing the complexities of the claim, Interim Co-Lead Counsel also involved expert resources, which further increased the financial risk they undertook. Expert costs so far are \$689,301.16, or approximately 72.3% of total costs. The expenditure of these and other litigation costs were reasonably necessary to effectively litigating the Action and are further evidence of Interim Co-Lead Counsel's commitment. Summaries of the expenses by category can be found in each firm's separate declaration in support of the Fee and Expense Application.

120. The firms that served as additional Plaintiffs' Counsel devoted appropriate staff time and resources towards this Action for the benefit of the Settlement Class. Accompanying the Fee and Expense Application are the Declaration of Linda P. Nussbaum dated January 20, 2021 on behalf of Nussbaum Law Group, P.C.; Declaration of Manuel J. Dominguez dated January 21, 2021 on behalf of Cohen Milstein Seller & Toll, PLLC; Declaration of Thomas H. Burt dated January 21, 2021 on behalf of Wolf Haldenstein Adler Freeman & Herz LLP; and Declaration of Michael Dell'Angelo dated January 21, 2021 on behalf of Berger Montague PC. As described in the declarations, the firms assisted Interim Co-Lead Counsel by contributing information resulting from their initial investigations into the alleged misconduct, preparing the amended complaints, facilitating the production of discovery for Representative Plaintiffs, reviewing documents obtained through discovery and providing analysis, and preparing for depositions, among other work. The firms each also advanced reasonable expenses in this Action, and a number contributed to a litigation fund maintained by Interim Co-Lead Counsel to fund primarily expert expenses.

121. The following chart summarizes the aggregate hours and lodestar of Plaintiffs' Counsel, as set forth in more detail in the separate firm declarations.

Firm Name	Hours	Lodestar
Lowey Dannenberg	27,833.00	\$18,772,282.00
Grant & Eisenhofer	24,318.10	\$10,877,614.50
Nussbaum Law Group	5,816.50	\$3,201,263.50
Cohen Milstein	2,673.25	\$872,886.25
Wolf Haldenstein	571.30	\$319,319.00
Berger Montague	147.90	\$84,678.00
Total:	61,360.05	\$34,128,043.25

122. The expenses paid from the litigation fund were as follows.

Litigation Fund Disbursements	
Expense Category	Amount
Experts & Consultants	\$575,265.67
Total:	\$575,265.67

123. The other expenses of each firm, combined, were as follows.

Firm Disbursements	
Expense Category	Amount
Court Costs	\$5,330.85
Experts/consultants	\$114,035.49
Federal Express	\$535.26
Hearing Transcripts	\$3,021.27
Computer Research	\$48,241.39
Messenger/delivery	\$102.82
Photocopies - in House	\$23,505.93
Postage	\$1,318.57
Service of Process	\$3,678.23
Special Supplies	\$667.32
Telephone/telecopier	\$2,448.80
Travel	\$23,854.80
Miscellaneous	\$2,914.61
Document Production/Discovery	\$148,697.44
Total:	\$378,352.78

VI. CONCLUSION

124. For the reasons set forth above and in the accompanying memoranda of law, we respectfully submit that: (i) the terms of the Settlement are fair, reasonable, and adequate in all respects and should be approved; (ii) the Distribution Plan is fair and reasonable and should be approved; and (iii) the Fee and Expense Application is reasonable, supported by the facts and law, and should be granted.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 21, 2020, in White Plains, New York.

/s/ Vincent Briganti

Vincent Briganti
Lowey Dannenberg, P.C.
44 South Broadway, Suite 1100
White Plains, NY 10601
Email: vbriganti@lowey.com

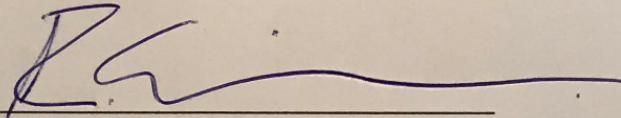
I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 21, 2020, in Philadelphia, Pennsylvania.

Robert G. Eisler
Grant & Eisenhofer P.A.
485 Lexington Ave., Fl. 29
New York, NY 10017
reisler@gelaw.com

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 21, 2020, in White Plains, New York.

Vincent Briganti
Lowey Dannenberg, P.C.
44 South Broadway, Suite 1100
White Plains, NY 10601
Email: vbriganti@lowey.com

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 21, 2020, in New York, New York.



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