

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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**NOTICE OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES  
AND PLAINTIFFS' REQUEST FOR INCENTIVE AWARDS**

**PLEASE TAKE NOTICE** that upon the accompanying memorandum of law, the Declaration of Vincent Briganti, the individual declarations filed herewith, the exhibits attached thereto, and the record herein, Class Counsel will respectfully move this Court, before the Honorable Sidney H. Stein, United States District Judge, at the United States District Court, Southern District of New York, 500 Pearl Street, New York, New York on September 27, 2023 at 10:00 a.m. for an order granting Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses and Plaintiffs' Request for Incentive Awards as fair, reasonable, and appropriate, and for such other relief as set forth in the proposed orders filed herewith.

Dated: August 9, 2023  
White Plains, New York

**LOWEY DANNENBERG, P.C.**

By: /s/ Vincent Briganti

Vincent Briganti  
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*Class Counsel*

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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**[PROPOSED]  
ORDER GRANTING CLASS COUNSEL'S MOTION FOR  
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

This matter came for a duly-noticed hearing on September 27, 2023 (the "Settlement Hearing"), upon Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of

Expenses (“Fee and Expense Application”) in the above-captioned action (the “Action”). The Court has considered the Fee and Expense Application and all supporting and other related materials, including the matters presented at the Settlement Hearing. Due and adequate notice of the Settlement Agreements entered into between Plaintiffs<sup>1</sup> and Settling Defendants<sup>2</sup> having been given to the Settlement Class Members, the Settlement Hearing having been held, and the Court having considered all papers filed and proceedings held herein, having found the Settlements to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. This Court has personal jurisdiction over Plaintiffs and the Settling Defendants and all Settlement Class Members who have not timely and validly requested exclusion, and subject matter jurisdiction over the Action to approve the Settlement Agreements and all exhibits attached thereto.

2. Notice of the Fee and Expense Application was provided to potential Settlement Class Members in a reasonable manner, and such notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure and due process requirements.

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<sup>1</sup> “Plaintiffs” are California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”).

<sup>2</sup> “Settling Defendants” are collectively JPMorgan Chase & Co. (“JPMorgan”); (2) NatWest Markets plc (f/k/a The Royal Bank of Scotland plc) (“RBS”); (3) Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, “Deutsche Bank”); (4) Credit Suisse Group AG and Credit Suisse AG (collectively, “Credit Suisse”); (5) NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (collectively, “ICAP”); and (6) TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (together, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, collectively with TP ICAP and Gottex, the “Settling Brokers”). The Stipulations and Agreements of Settlements as to the Settling Defendants (the “Settlement Agreements”) are attached to the Declarations of Vincent Briganti in support of the motions for preliminary approval of the Settlements. *See* ECF Nos. 151-1, 384-1, 384-2, 391-1, 432-1, and 454-1. Unless otherwise defined herein, all capitalized terms used have the meanings set forth and defined in the Settlement Agreements.

3. The Court hereby awards Class Counsel attorneys' fees of \$ \_\_\_\_\_ ( \_\_\_\_\_% of the total Settlement Fund), and litigation expenses of \$ \_\_\_\_\_, together with interest for the same time period and at the same rate as earned by the Settlement Fund until paid, which shall be paid out of the Settlement Fund.

4. Class Counsel is hereby authorized to allocate the attorneys' fees among Plaintiffs' Counsel in a manner in which, in Class Counsel's judgment, reflects the contributions of such counsel to the institution, prosecution and settlement in this Action.

5. In making this award of attorneys' fees and reimbursement of litigation expenses, the Court has considered and found that:

a. the Settlement Agreements with Settling Defendants have created a fund of \$73,950,000 in cash that Settling Defendants have paid into escrow pursuant to the terms of the Settlement Agreements;

b. Class Members who or which submit valid Proofs of Claim and Release will benefit from settlements reached because of the efforts of Plaintiffs' Counsel;

c. Plaintiffs' Counsel have prosecuted the Action and achieved the Settlements with skill, perseverance, and diligent advocacy;

d. The Action involves numerous complex factual and legal issues and was actively litigated and, in the absence of a settlement, would have involved lengthy proceedings with uncertain resolution of the numerous complex factual and legal issues;

e. Had Class Counsel not achieved these Settlements with the Settling Defendants, there would remain a significant risk that Plaintiffs and the Settlement Class may have recovered less or nothing from the Settling Defendants;

f. The contingent nature, substantial risks and complexity of the Action favor the fee percentage awarded above;

g. Public policy considerations support the requested fee, as only a small number of firms have the requisite expertise and resources to successfully prosecute cases such as the Action;

h. Notice was disseminated stating that Class Counsel would be moving for attorneys' fees of not more than 28% of the Settlement Fund and reimbursement of litigation expenses and costs not to exceed \$750,000, plus interest; and

i. The amount of attorneys' fees awarded and expenses to be paid from the Settlement Fund are fair and reasonable in view of the applicable legal principles and the particular facts and circumstances of the Action.

6. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over the Parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of this Order.

7. In the event that a Settlement is terminated or the Effective Date does not occur in accordance with the terms of the Settlement Agreement, as to that Settlement, this Order shall be null and void, of no further force or effect, and without prejudice to any of the Parties, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Parties.

8. Pursuant to the Settlement Agreements, the attorneys' fees and expense awards are independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlements and are also independent of the Court's consideration of the Distribution Plan.

9. The attorneys' fees and reimbursement of expenses awarded herein may be paid to

Class Counsel from the Settlement Fund immediately upon entry of this Order, subject to the terms, conditions, and obligations of the Settlement Agreements which terms, conditions, and obligations are incorporated herein.

**IT IS SO ORDERED.**

Signed this \_\_\_\_ day of \_\_\_\_\_, 2023.

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Honorable Sidney H. Stein  
United States District Judge

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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**[PROPOSED]  
ORDER AWARDING INCENTIVE AWARD TO PLAINTIFFS**

This matter came for a duly-noticed hearing on September 27, 2023 (the "Settlement Hearing"), upon Class Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses and Plaintiff's Request for Incentive Awards ("Fee and Expense Application") in the



above-captioned action (the “Action”). The Court has considered the Fee and Expense Application and all supporting and other related materials, including the matters presented at the Settlement Hearing. Due and adequate notice of the Settlement Agreements entered into between Plaintiffs<sup>1</sup> and Settling Defendants<sup>2</sup> having been given to the Settlement Class Members, the Settlement Hearing having been held, and the Court having considered all papers filed and proceedings held herein, having found the Settlements to be fair, reasonable and adequate, and otherwise being fully informed in the premises and good cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. This Court has personal jurisdiction over Plaintiffs and Settling Defendants (the “Parties”) and all Settlement Class Members who have not timely and validly requested exclusion and subject matter jurisdiction over the Action to approve the Settlement Agreements and all exhibits attached thereto.

2. Notice of the Fee and Expense Application was provided to potential Settlement Class Members in a reasonable manner, and such notice complies with Rule 23(h)(1) of the Federal Rules of Civil Procedure and due process requirements.

3. The Court hereby awards Incentive Awards as follows in recognition of the

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<sup>1</sup> “Plaintiffs” are California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”).

<sup>2</sup> “Settling Defendants” are collectively JPMorgan Chase & Co. (“JPMorgan”); (2) NatWest Markets plc (f/k/a The Royal Bank of Scotland plc) (“RBS”); (3) Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, “Deutsche Bank”); (4) Credit Suisse Group AG and Credit Suisse AG (collectively, “Credit Suisse”); (5) NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (collectively, “ICAP”); and (6) TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (together, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, collectively with TP ICAP and Gottex, the “Settling Brokers”). The Stipulations and Agreements of Settlements as to the Settling Defendants (the “Settlement Agreements”) are attached to the Declarations of Vincent Briganti in support of the motions for preliminary approval of the Settlements. *See* ECF Nos. 151-1, 384-1, 384-2, 391-1, 432-1, and 454-1. Unless otherwise defined herein, all capitalized terms used have the meanings set forth and defined in the Settlement Agreements.

recipient's contributions related to the Action on behalf of the Settlement Class:

- a. \$30,000.00 to California State Teachers' Retirement System;
- b. \$30,000.00 to Richard Dennis;
- c. \$30,000.00 to Fund Liquidation Holdings LLC.

4. Without affecting the finality of this Order in any way, this Court hereby retains continuing jurisdiction over the Parties and the Class Members for all matters relating to this Action, including the administration, interpretation, effectuation, or enforcement of this Order.

5. In the event that a Settlement is terminated or the Effective Dates does not occur in accordance with the terms of the Settlement Agreement, as to that Settlement, this Order shall be null and void, of no further force or effect, and without prejudice to any of the Parties, and may not be introduced as evidence or used in any actions or proceedings by any Person against the Parties.

6. Pursuant to the Settlement Agreements, Incentive Awards are independent of the Court's consideration of the fairness, reasonableness, and adequacy of the Settlements and are also independent of the Court's consideration of the Distribution Plan.

7. The Incentive Awards may be paid from the Settlement Fund upon entry of this Order, subject to the terms, conditions, and obligations of the Settlement Agreements which terms, conditions, and obligations are incorporated herein.

**IT IS SO ORDERED.**

Signed this \_\_\_ day of \_\_\_\_\_, 2023.

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Honorable Sidney H. Stein  
United States District Judge

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

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FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Docket No. 15-cv-00871  
(SHS)

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

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**DECLARATION OF BENJAMIN M. JACCARINO, ESQ.,  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Benjamin M. Jaccarino, Esq., pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a Partner with the law firm of Lovell Stewart Halebian Jacobson, LLP (“Lovell Stewart”). I respectfully submit this declaration in support of Class Counsel’s<sup>1</sup> Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”) in connection with services rendered in the above-captioned action (“Action”).

2. The statements herein are true to the best of my personal knowledge, information and belief based on the books and records of Lovell Stewart and information provided by its attorneys and staff. Lovell Stewart’s time and expense records are prepared and maintained in the ordinary course of business.

3. At all times relevant hereto, Lovell Stewart served as additional counsel for California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”). This Court appointed Lowey Dannenberg, P.C. (“Lowey”) as Class Counsel for the Settlement Class in connection with each of the six Settlements in the Action. *See* ECF Nos. 159, 426, 428-29, 440, 457 (orders preliminarily approving each Settlement).

4. I am one of the attorneys who oversaw my Firm’s involvement in the Action. Lovell Stewart’s time and expense records (including, where necessary, backup documentation)

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<sup>1</sup> Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Settlement Agreements with: JPMorgan Chase & Co. (ECF No. 151-1); NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (ECF No. 384-1); Deutsche Bank AG and DB Group Services (UK) Ltd. (ECF No. 384-2); Credit Suisse Group AG and Credit Suisse AG (ECF No. 391-1); NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (ECF No. 432-1); and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (collectively, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, together with TP ICAP and Gottex, the “Settling Brokers”) (ECF No. 454-1).

have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform with directions from Class Counsel and/or my Firm's practice. Accordingly, the time reflected in Lovell Stewart's fee compensable lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and achieve the Settlements before the Court.

5. The services Lovell Stewart performed on behalf of the putative class in connection with the prosecution of the litigation include but are not limited to the following:

- Conduct and assist with research and drafting of the complaint and amended complaint allegations, including investigation of facts and development of legal arguments;
- Draft responsive pleadings to the motions to dismiss;
- Research regarding personal jurisdiction over foreign Defendants, the elements of the substantive claims, the availability of a private claim for relief, the extraterritorial application of law, national service of process, stipulated admissions, ISDA agreements, subject matter jurisdiction, antitrust, and RICO;
- Review of documents, investigation, and fact research to prepare chronologies reflecting and correlated Defendants allegedly violative conduct;
- Translate and review foreign language documents;
- Conduct review of audio files produced by Defendants;
- Review, comment on, and draft supplemental authority letters;
- Work with Counsel to develop settlement strategy;

- Prepare settlement slides correlating information derived from fact research and discovery materials;
- Participate in settlement negotiations;
- Prepare for hearings before the Court;
- Develop submission analysis by in house derivatives experts in conjunction with consultants and experts;
- Analyze and interpret trader shorthand, extracting evidence from chats regarding collusion and conspiracy, and correlating same;
- Review and analyze potential benchmarks;
- Create an analysis of, and analyze CDS ranking and submissions by Defendants;
- Review and comment on mediation brief;
- Prepare for and participate in mediation session;
- Extensive work with experts regarding modeling and analyses;
- Draft conspiracy chronology and narrative from evidence discovered in case;
- Review and comment on term sheets;
- Review and comment on settlement agreements; and
- Advise on development of plan of distribution.

6. Set forth below in ¶ 7 is a summary reflecting the amount of fee compensable time Lovell Stewart's attorneys and professional support staff worked on the Action from the inception of the case to June 30, 2023, the timekeeper's current billing rates, and the corresponding lodestar calculations of that work based on the current hourly billing rates. For timekeepers involved in first-level document review, their lodestar calculation has been adjusted to cap the billing rate for any document review work at \$400/hour. Further, for personnel no longer employed by Lovell

Stewart, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. Timekeepers that billed less than 10 hours billed in this Action have been excluded. The time and lodestar incurred preparing the Fee and Expense Application have also been excluded. The schedule was prepared based upon daily time records maintained by Lovell Stewart's attorneys and professional support staff in the ordinary course of business. Each timekeeper listed below was a full-time employee of the firm, except for James Payne, who formerly worked for the Firm full time. James Payne was brought into this Action specifically for his experience with antitrust and commodities cases and his ability to translate and review Swiss-German language documents.

7. Lovell Stewart's total fee compensable time for which it seeks an award of attorneys' fees is summarized below.

<b>Timekeeper Name</b>	<b>Position<sup>2</sup></b>	<b>Hourly Rate</b>	<b>Total Hours from inception through 6/30/2023</b>	<b>Total Lodestar from inception through 6/30/2023</b>
Christopher Lovell	P	\$1,210	514.10	\$622,061.00
Jody Krisiloff	P	\$1,035	243.30	\$251,815.50
Gary Jacobson	P	\$1,020	225.60	\$230,112.00
Victor Stewart	P	\$1,020	364.60	\$371,892.00
Jason Eyster	P	\$920	979.50	\$901,140.00
Craig Essenmacher	P	\$900	67.50	\$60,750.00
Merrick Rayle	OC	\$850	218.30	\$185,555.00
Misa Shimada	OC	\$835	265.90	\$222,026.50
Ben Jaccarino	P	\$675	310.60	\$209,655.00
Travis Carter	A	\$600	212.90	\$127,740.00
Fred Isquith	P	\$535	37.00	\$19,795.00
Tobias Fenton	A	\$400	265.70	\$106,280.00
<b>Professional Staff</b>				
Howard Hill	DA	\$350	461.85	\$161,644.00
Keith Andrews	PL	\$300	12.20	\$3,660.00
Katie Hill	PL	\$215	460.00	\$98,900.00
<b>Document Reviewers</b>				
James Payne	DR	\$185	818.50	\$151,422.50
<b>TOTAL</b>			<b>5,457.55</b>	<b>\$3,724,448.50</b>

8. The total fee compensable time for which Lovell Stewart has spent working on the Action to date is 5,457.55 hours. The total lodestar value of these professional services is \$3,724,448.50. For the Court's reference, we attach as Exhibit 1 a resume describing Lovell Stewart's qualifications and brief biographies of its current attorneys who provided services in this

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<sup>2</sup> "P" refers to Partners. "OC" refers to Of Counsel. "A" refers to Associates. "PL" refers to Paralegals. "DR" refers to Document Review Attorneys. "DA" refers to Derivatives Analyst. The hourly rates for the partners, of counsel, associate attorneys and professional support staff in my firm included above are the same rates charged for their services in which have been accepted and approved in other complex class action litigation. *See, e.g., Sullivan v. Barclays PLC, et al*, 13-cv-2811, Dkt. 550; *In re: Zinc Antitrust Litig.*, ECF No. 14-cv-3728, Dkt. 327; *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 CIV. 2613, 2020 WL 6891417 (S.D.N.Y. Nov. 24, 2020).



Action. Also attached as Exhibit 2 is a chart further listing the timekeepers involved in the various litigation activities and a summary of the hours spent on each respective activity.

9. The Firm's total lodestar does not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

10. As detailed and categorized in the below schedule, Lovell Stewart has paid a total of \$116,786.73 in expenses from inception to present for which it is currently requesting reimbursement.

Expense Categories	Cumulative Expenses
Travel - Airfare, Lodging, Meals, Taxi	\$6,165.58
Computer Research, Databases & Docket	\$18,152.48
Conferences, Meetings, Telephone, & Telecopier	\$38.16
Publications, Library, and Subscriptions	\$86.03
Professional, Consulting, or Expert Fees	\$92,228.00
Postage, Mailing, FedEx, UPS, Fares & Messengers	\$116.48
<b>TOTAL</b>	<b>\$116,786.73</b>

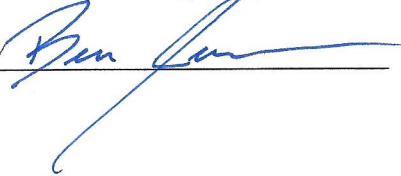
11. The above schedule was prepared using information from Lovell Stewart's books and records, including the Firm's expense records. These books and records are prepared from expense reports, receipts, check and bank records and other source materials.

12. Approximately 79% (\$92,228.00) of Lovell Stewart's total expenses included payments to various experts and consultants that were engaged to assist with the prosecution of this litigation. Experts and consultants were used to explain and understand trader jargon; assist with developing a class model; research and conduct analyses on benchmarks; and assist with proposals for developing a plan of allocation. Another 15.5% (\$18,152.48) of Lovell Stewart's total expenses was spent in connection with discovery-related and computer research expenses in

this Action, including Westlaw which related specifically to work performed in this Action. The two categories comprised over 94.5% of the Lovell Stewart expenses.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on August 9, 2023

/s/  \_\_\_\_\_

# **EXHIBIT 1**

## LOVELL STEWART HALEBIAN JACOBSON LLP

### LOVELL STEWART HALEBIAN JACOBSON LLP FIRM RESUME AND BIOGRAPHIES

Lovell Stewart Halebian Jacobson LLP (“Lovell Stewart”) and its predecessors (collectively, the “Firm”) have been privileged to have been appointed to serve as class counsel and prosecute complex actions since 1980. See [www.lshllp.com](http://www.lshllp.com) (Firm website).

Lovell Stewart is the premier class action law firm prosecuting claims involving commodity manipulation and price fixing, and exchange related antitrust claims. To the best of Lovell Stewart’s knowledge, the Firm is the **first** and **only** plaintiffs’ law firm to do any of the following: (a) argue to the United States Supreme Court successfully to uphold the private right of action under the Commodity Exchange Act, 7 U.S.C. §1, *et seq.* (“CEA”); (b) try a CEA manipulation claim successfully; (c) argue successfully for class certification of such claim in Courts of Appeals; and (d) argue for and successfully establish the viability of CEA manipulation allegations from the time that the claim itself arguably did not exist until its well-accepted status today. See *infra*.

The Firm believes that the best indicator of an attorney’s experience serving as class counsel is the net recovery to the client that the attorney produces. The Firm believes that lesser indicators of such attorney experience include the following: (1) the amounts of the class action settlements the attorney produces relative to other such settlements under the same statute; (2) the difficulty or complexity of the cases handled; and (3) whether the attorney’s work on behalf of the class has contributed significantly to the development of the law.

**The Net Recovery to The Client.** Reportedly, the amount of recovery in financial class actions varies, but averages approximately 5-10 percent of class member losses.

The Firm, as court-appointed lead or co-lead counsel for the class, has succeeded in obtaining (so far) **seven** different class action settlements that recovered, after deduction for all costs and attorneys’ fees, **100¢** on each dollar of losses<sup>1</sup> of each claiming class member:

- *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465(S.D.N.Y. 1998);
- *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393 (S.D.N.Y. 1999);
- *Blatt v. Merrill Lynch Fenner & Smith Inc.*, 94 Civ. 2348 (JAG) (D.N.J.);
- *In re Soybeans Futures Litig.*, 89 Civ. 7009 (CRN) (N.D. Ill.);
- *In re BP Propane Indirect Purchaser Antitrust Litig.*, 06-cv-3541 (JBZ) (N.D. Ill.);
- *Kaplan v. E.F. Hutton Group, Inc., et al.*, Civ. No. 88-00889 (N.Y. Sup. Ct.); and
- *Krome v. Merrill Lynch and Co., Inc.*, 85-cv-765 (DNE) (S.D.N.Y.).

Another such class action recovery was in *In re: Platinum and Palladium Commodities Litigation*, Futures Action, 10-cv-3617 (WHP) (S.D.N.Y.), where claiming class members received a recovery of 185% on each dollar of their “net artificiality paid.”

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<sup>1</sup> “Losses” means single, actual damages, exclusive of trebling and also exclusive of any prejudgment interest.

**Gross Recoveries Relative to Other Settlements Under The Same Statute.** Three of the above-mentioned settlements represented, at the time the settlement was made, the **largest** class action settlement in the history of the law under which the claim was brought. These were, respectively, the federal antitrust laws,<sup>2</sup> the CEA,<sup>3</sup> and the Investment Company Act, 15 U.S.C. §80a-1, *et seq.*<sup>4</sup> Also, one of the Firm’s senior partners was a court-appointed member of the Executive Committee in the price fixing case that obtained what was then the second largest class action settlement in the history of the federal antitrust laws.<sup>5</sup>

The Firm, as court-appointed sole lead or co-lead counsel for classes alleging commodity futures manipulation, has produced what were, at the time the settlement was made, the largest,<sup>6</sup> the second largest,<sup>7</sup> the third largest,<sup>8</sup> and the fourth largest<sup>9</sup> class action recoveries in the history of the CEA. The Firm was co-lead counsel in what is currently the largest settlement in any commodity futures manipulation class action under the CEA.<sup>10</sup>

Further, the Firm has been privileged to serve as court-appointed class counsel in antitrust cases in which billions of dollars have been recovered<sup>11</sup> and has also acted as an executive member in antitrust or non-CEA manipulation class actions in which significant settlements have been achieved. *Compare In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.) (settlements in excess of \$1.1 billion) with *In re IPO Securities Litig.*, 21

<sup>2</sup> See *NASDAQ*, 187 F.R.D. at 471 (“this all-cash settlement [for \$1,027,000,000], achieved through ‘four years of hard-fought litigation,’ apparently is the largest recovery (class action or otherwise) in the hundred-year history of the state and federal antitrust laws.”).

<sup>3</sup> *Sumitomo*, 74 F. Supp. 2d at 395 (“The recovery is the largest class action recovery in the 75 plus year history of the Commodity Exchange Act”).

<sup>4</sup> *Blatt*, 94 Civ. 2348 (JAG) (D.N.J.) (“by far the largest settlement” of class action claims under the Investment Company Act, *Securities Class Action Alert* letter dated August 17, 2000).

<sup>5</sup> *In re Brand Name Prescription Drugs Antitrust Litig.*, No. 94 C 897 (N.D. Ill.) (\$696,657,000 plus other relief was obtained.).

<sup>6</sup> *Sumitomo*, 74 F. Supp. 2d at 395 (the Firm acted as sole lead counsel).

<sup>7</sup> *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 244 F.R.D. 469 (N.D. Ill., 2007), *aff’d*, 571 F.3d 672 (Posner, J.), *cert. denied*, 130 S. Ct. 1504 (2010) (Final Judgment and Order, filed May 2, 2011 approving \$118,750,000 settlement with the Firm acting as sole lead counsel).

<sup>8</sup> *In re Natural Gas Commodities Litig.*, 231 F.R.D. 171 (S.D.N.Y. 2005), *petition for review denied*, 05-5732-cv (2d Cir. Aug. 1, 2006) (in other orders in this case, \$100,800,000 in settlements were approved).

<sup>9</sup> *In re Amaranth Natural Gas Commodities Litig.*, 07 Civ. 6377 (S.D.N.Y.) (\$77,100,000 settlement as co-lead counsel).

<sup>10</sup> *In re LIBOR-Based Financial Instruments Antitrust Litig.*, 11-md-2262 (S.D.N.Y.) (\$187,000,000 in settlements as co-lead counsel).

<sup>11</sup> *E.g.*, *NASDAQ*, fn. 2 *supra*; *In re Brand Name Prescription Drugs Antitrust Litig.*, fn. 5 *supra*; *Sullivan, et al. v. DB Investments, Inc., et al.*, 04 Civ. 2819 (SRC) (D.N.J.) (\$546,500,000 in approved settlements, and a pending settlement for \$105,000,000); *In re Auction Houses Antitrust Litig.*, 00 Civ. 0648 (LAK) (S.D.N.Y.) (\$512,000,000 in settlements); *In re Dynamic Random Access Memory (“DRAM”) Antitrust Litig.*, MDL No. 1486 (N.D. Cal.) (\$313,000,000 in settlements); *Precision Associates, Inc. v. Panalpina World Transport*, 08 Civ. 0042 (JG) (VVP) (E.D.N.Y.) (approximately \$490 million in settlements).

MC 92 (S.D.N.Y.) (\$586,000,000 in settlements).

The Firm has been told that it is the only “plaintiffs’ law firm” to successfully bring to trial antitrust claims in the “Mother Court,” the United States District Court for the Southern District of New York. *See* “Degree of Complexity” below.

Finally, the Firm has particularly deep experience with price fixing and manipulation claims involving exchange traded instruments. The Firm obtained, as court-appointed co-lead counsel, what was then the largest class action recovery in the history of the antitrust laws. *NASDAQ*, 187 F.R.D. at 471.

**Degree of Difficulty or Complexity.** The Firm believes that a very important indicator of an attorney’s experience is the difficulty or complexity of the cases that the attorney has prosecuted. The degree of difficulty or complexity is somewhat subjective. But the Firm is particularly proud not just of its prosecution but, in some instances, trials of various cases that have been recognized by the courts as difficult and complex.

These include difficult federal antitrust cases that have involved both an antitrust claim and a claim under another statute. For one example, after the Department of Justice decided not to bring price fixing claims under the federal antitrust laws, and after the federal agency regulating commodity futures (the Commodity Futures Trading Commission (“CFTC”)) lost a trial seeking to prove attempted manipulation, the Firm tried and won all damages requested in a three-week jury trial on claims for price fixing and manipulation. *Strobl v. New York Mercantile Exch.*, 582 F. Supp. 770 (S.D.N.Y. 1984). The Firm sustained the verdict against motions for *j.n.o.v.* and new trial, and all appeals. *Id. aff’d*, 768 F.2d 22 (2d Cir. 1985), *cert. denied sub nom.*, *Simplot v. Strobl*, 474 U.S. 1006 (1985).

At the successful conclusion of the *Strobl* trial, then-Chief Judge Lloyd F. MacMahon stated to the Firm’s senior partner, Mr. Lovell, and defendants’ counsel, the late Peter Fleming Esq.: “You both tried a very difficult case very well.” *Strobl*, Trial Tr., November 17, 1983, at 1253:4-5.

The Firm successfully conducted another very difficult antitrust trial in the Southern District of New York. Before the last trial session, this trial was interrupted by class action settlements in related actions which produced (in the Firm’s opinion), substantial prompt injunctive relief in the United States’ diamond market as well as substantial monetary relief.<sup>12</sup>

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<sup>12</sup> In *Leider v. Ralfe*, No. 01 Civ. 3137 (S.D.N.Y.), the Firm filed the first class action on behalf of consumers alleging price fixing and monopolization by DeBeers in violation of the antitrust laws. The Firm was named sole class counsel for the certified class. *Leider*, 2003 WL 22339305 (S.D.N.Y. 2003) (certifying for class treatment plaintiffs’ claims for injunctive relief under the Wilson Tariff Act and Sections 1 and 2 of the Sherman Act). Shortly before the last day of the trial of the final injunction inquest, the defendants settled companion class actions and obtained an adjournment of the completion of the *Leider* class action trial. They then settled *Leider* as well and the case was transferred to the United States District Court for the District of New Jersey, No. 06-cv-00908 (SRC).

The Firm has also received favorable comments from other District Court Judges about the Firm's performance in overcoming the difficulties and complexities of cases. For example, the Firm is proud of the comments it received from one of the great District Court Judges, the Honorable Milton Pollack. Judge Pollack appointed the Firm as sole lead counsel and later took the trouble to comment on its work in a complex class action as follows:

The **unprecedented effort** of Counsel exhibited in this case led to their successful settlement efforts and its vast results. Settlement posed a saga in and of itself and required enormous time, **skill and persistence**. Much of that phase of the case came within the direct knowledge and appreciation of the Court itself. Suffice it to say, the Plaintiffs' counsel did not have an easy path and their services in this regard are best measured in the enormous recoveries that were achieved **under trying circumstances in the face of natural, virtually overwhelming, resistance**. The negotiation of each settlement that was made was at arm's length and exhibited **skill and perseverance on the part of lead counsel** and an evident attempt to gain for the Class the optimum settlement figures that could be reached.

*Sumitomo*, 74 F. Supp. 2d at 396 (emphasis added).

The Firm believes that the “effort” and “skill and perseverance” that Judge Pollack found that the Firm exhibited in *Sumitomo*, are also what have helped the Firm to obtain 100¢ on the dollar settlements for its clients, successfully try antitrust cases, and otherwise produce favorable results for its clients in very difficult and complex antitrust and other cases.

The Firm has been privileged to repeatedly be appointed to serve as lead counsel or co-lead counsel in class actions involving claims arising under the CEA, federal and/or state antitrust laws and other statutes. For example:

- *Mish Int'l Monetary Inc. v. Vega Cap. London, Ltd., et al.*, No. 20-cv-4577 (N.D.Ill.) (the Firm is prosecuting this case alleging manipulation in violation of the CEA and restraint of trade in violation of the Sherman Act.)
- *Sullivan v. Barclays PLC et al.*, No. 13-cv-2811 (PKC) (S.D.N.Y.) (the Firm was appointed co-lead counsel in this case alleging manipulation in violation of the CEA and restraint of trade in violation of the Sherman Act concerning certain Euribor-based derivatives and financial products. The Firm obtained settlements in excess of \$651 million and involving substantial cooperation).
- *In re LIBOR-Based Financial Instruments Antitrust Litig.*, 11-md-2262 (S.D.N.Y.) (the Firm was appointed co-lead counsel for exchange trader

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This settlement produced prompt substantial injunctive relief for the United States diamond markets as well as a substantial financial settlement, which was contested on appeal even as the injunctive relief remained in effect. The Third Circuit ultimately approved the settlement. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273 (3d Cir. Dec. 20, 2011), *cert. denied*, 132 S. Ct. 1876, *petition for rehearing denied*, 132 S. Ct. 2451 (2012).

plaintiffs in this case involving claims for manipulation in violation of the CEA and restraints of trade in violation of the Sherman Act. The Firm obtained settlements of \$187 million).

- *Dennis et al v. JPMorgan Chase & Co. et al*, 1:16-cv-06496-LAK-GWG (S.D.N.Y.) (the Firm served as co-lead counsel where it obtained settlements of \$185,875,000 for the class on claims alleging claims under the Sherman Antitrust Act and the Commodity Exchange Act).
- *In re Term Commodities Cotton Futures Litig.*, 12 Civ. 5126, ECF No. 14, (ALC) (S.D.N.Y.) (the Firm serves as sole lead class counsel in this case alleging manipulation in violation of the CEA concerning what has been reported by the financial press as the “largest ever cotton squeeze.”).
- *Ploss, et al. v. Kraft Foods Group, Inc., et al.*, 15-cv-2937 (N.D. Ill.) (the Firm is co-lead counsel in this case alleging manipulation of wheat futures contracts in violation of the CEA).
- *In re Platinum and Palladium Commodities Litig.*, 10 Civ. 3617, ECF No. 18 (WHP) (S.D.N.Y.) (the Firm was appointed sole lead counsel where it obtained settlements in excess of \$70 million for the class on claims alleging manipulation in violation of the CEA and price fixing in violation of the Sherman Act. Claiming class members have received 185% on each dollar of their “net artificiality paid”).
- *In re Dairy Farmers of America, Inc., Cheese Antitrust Litig.*, 09 Civ. 3690, ECF No. 413 (RMD) (N.D. Ill.) (the Firm was appointed class counsel on a contested motion, and later was appointed as sole lead counsel, where it obtained a settlement of \$46 million for the class on claims alleging manipulation in violation of the CEA and price fixing in violation of the Sherman Act. Claiming class members received approximately 21% their “allowed claim” amount under Section 1 of the plan of allocation where 92.5% of the net settlement proceeds were allocated.).
- *Precision Associates, Inc. v. Panalpina World Transport*, 08 Civ. 0042 (JG) (VVP) (E.D.N.Y.) (the Firm served as co-lead counsel and has obtained settlements of approximately \$490,000,000 on claims alleging conspiracies to fix prices in violation of the Sherman Act).
- *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, 09-cv-0118 (S.D.N.Y.) (the Firm served as co-lead counsel and has obtained settlements from defendants in the aggregate amount of \$265,000,000 on claims alleging that Bernard Madoff manipulated reports of financial results in respect of Fairfield Greenwich securities).
- *In re: Facebook, Inc., IPO Securities and Derivatives Litig.*, 12-md-2389 (S.D.N.Y.) (the Firm served as co-lead counsel in the negligence class action against the NASDAQ defendants, where, in a question of first impression, the Firm successfully argued the defendants were not entitled to self-regulatory organization (“SRO”) immunity for automated trading systems failures. The actions settled for \$26,500,000).
- *In re Potash Antitrust Litigation*, 08-cv-6910, (RC) (N.D. Ill.) (the Firm served as co-lead counsel for the indirect purchasers and obtained settlements in excess of \$20 million for the class on claims for conspiracy to fix prices).



- *In re Optiver Commodities Litig.*, 08 Civ. 6842 (S.D.N.Y.) (the Firm serves as co-lead counsel and obtained a settlement of \$16.75 million for the class on claims alleging manipulation in violation of the CEA).
- *In re Crude Oil Commodity Futures Litig.*, 11-cv-3600, ECF No. 42 (Feb. 14, 2012) (S.D.N.Y.) (the Firm was appointed co-lead counsel on a contested motion and obtained a proposed settlement of \$16.5 million for the class on claims alleging manipulation in violation of the CEA and monopolization in violation of the Sherman Act).

**Development of The Law.** The Firm's senior partner, Christopher Lovell, argued in the United States Supreme Court and eight Circuit Courts of Appeal. Also, the Firm briefed, and named partner Gary Jacobson successfully argued, the first appeal in the United States reversing a dismissal of price fixing claims under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). See *Starr v. Sony BMG Music Entm't*, 592 F.3d 314 (2d Cir. 2010), *cert. denied*, 131 S. Ct. 901 (2011).

When the Firm began, there was considerable precedent holding that antitrust claims were preempted or otherwise not actionable in the commodity futures<sup>13</sup> and securities<sup>14</sup> contexts, and also holding that there was no private right of action under the CEA for manipulation.<sup>15</sup> But the Firm was privileged to do the following:

- (1) In 1981, the Firm authored a successful U.S. Supreme Court brief and made a successful argument in the Supreme Court in the original case which implied a private right of action under the CEA for manipulation, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982).
- (2) In 1982, the Firm prepared a statement and a former partner testified before the Congressional Subcommittee concerning what became the express private right of action under Section 22 of the CEA. 7 U.S.C. § 25.<sup>16</sup> Today, CEA manipulation claims are still brought under this section.
- (3) After prevailing on remand on the federal antitrust claims in the *Strobl* trial, the Firm then successfully briefed and argued on appeal that the federal antitrust claims were not preempted by the CEA. *Strobl*, 768 F.2d at 28 *supra*.

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<sup>13</sup> Compare e.g., *Schaefer v. First Nat. Bank of Lincolnwood*, 509 F.2d 1287 (C.A. Ill. 1975) with *Liang v. Hunt*, 477 F. Supp. 891 (N.D. Ill. 1979) (denying any right of action under the CEA or antitrust laws for soybeans class).

<sup>14</sup> *Gordon v. New York Stock Exchange, Inc.*, 422 U.S. 659 (1975).

<sup>15</sup> *National Super Spuds, Inc. v. New York Mercantile Exch.*, 470 F.Supp. 1256, (S.D.N.Y. 1979) *rev'd sub nom Leist v. Simplot*, 638 F.2d 283 (2d Cir. 1980) (Friendly, J.), *aff'd Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982).

<sup>16</sup> See Statement of Leonard Toboroff, *Before The Sub-committee On Oversight And Investigations of The Committee On Energy And Commerce*, 97th Cong., 2d Sess. 584-603 (Jun. 7, 1982).

- (4) In 1997-98, the Firm and its co-lead counsel produced the *NASDAQ* antitrust settlements in the securities market context. This occurred after both the plaintiffs and the defendants had argued to the Department of Justice and other federal agencies about whether these antitrust claims were preempted.

As a result, today, unlike when the Firm started, claims for price fixing under the federal antitrust laws and manipulation under the CEA are well recognized for losses suffered on exchange traded futures contracts.

In addition to *Strobl* and *Starr*, other notable antitrust appeals that the Firm has argued include a case in which Lovell Stewart was appointed Chair of the Executive Committee on price fixing claims in another exchange market case. *In re IPO Antitrust Litig.*, 287 F. Supp. 2d 497 (S.D.N.Y. Nov. 3, 2003), *reversed*, *Billing v. Credit Suisse First Boston Ltd.*, 426 F.3d 130 (2d Cir. 2005) (“epic Wall Street conspiracy”), *rev’d*, 551 U.S. 264, 127 S. Ct. 2383 (2007) (federal antitrust claims preempted). In this complex case, the Firm made the plaintiffs’ unsuccessful argument in the District Court, successful argument to the Court of Appeals, and the unsuccessful argument to the U.S. Supreme Court.

An important part of the law in manipulation and antitrust class actions is that concerning the certification of the class under Rule 23. The Firm co-authored the brief on the class motion in *NASDAQ*. The Court issued an oft-cited decision certifying a very substantial class of seventeen hundred different class securities. *NASDAQ*, 172 F.R.D. 119 (S.D.N.Y. 1997). The Firm has also successfully briefed and argued the **first** petition for review under Fed.R.Civ.P. 23(f) of decisions certifying classes on commodity futures manipulation claims. *In re Sumitomo Copper Litig.*, 182 F.R.D. 85 (S.D.N.Y. 1998); *In re Sumitomo Copper Litig.*, 194 F.R.D. 480 (S.D.N.Y. 2000), *appeal denied*, 262 F.3d 134 (2d Cir. 2001). *See also*:

- *In re Term Commodities Cotton Futures Litig.*, 12 Civ. 5126 (ALC) (S.D.N.Y.), Dkt. No. 646 (23(f) petition denied).
- *Ploss, et al. v. Kraft Foods Group, Inc., et al.*, 15-cv-2937 (N.D. Ill.) Dkt. No. 345 (23(f) petition denied).
- *PIMCO*, 244 F.R.D. 469 (N.D. Ill. 2007), *aff’d* 571 F.3d 672 (7th Cir. July 7, 2009) (Posner J.) *petition for rehearing and rehearing en banc denied* (7th Cir. July 31, 2009) *petition for certiorari denied* 130 S. Ct. 1504 (2010).
- *In re Amaranth Natural Gas Commodities Litig.*, 269 F.R.D. 366 (S.D.N.Y. 2010), *petition for leave to appeal denied sub nom. Amaranth Advisors, LLC, et al. v. Roberto E. Calle Gracey, et al.*, No. 10-4110-mv (2d Cir. Dec. 30, 2010).
- *In re Natural Gas Commodities Litig.*, 231 F.R.D. 171 (S.D.N.Y. 2005), *petition for leave to appeal denied sub nom. Cornerstone Propane Partners*,

*L.P., et al. v. Reliant Energy Services, Inc., et al.*, No. 05-5732-cv (2d Cir. Aug. 1, 2006).

The Firm's senior partner, Christopher Lovell, has successfully tried and argued on appeal three manipulation cases that resulted in significant decisional law: (1) *Strobl, supra*; (2) *In the Matter of Harold Collins, et al.*, CFTC No. 77-15 (C.F.T.C Feb 3, 1984), 1986 WL 66165 (C.F.T.C. Apr. 4, 1986), *clarification granted*, 1986 WL 289309 (C.F.T.C. Nov. 26, 1986), *reversed sub nom., Stoller v. Commodity Futures Trading Comm'n*, 834 F.2d 262 (2d Cir. 1987); and (3) *Black v. Finantra*, 418 F. 3d 203 (2d Cir. 2005) (reinstating jury verdict finding trade manipulation in securities market).

*Bloomberg Markets'* magazine has reported about Christopher Lovell as follows:

To classify Pacific Investment Management Co. [formerly managed by CEO and founder Bill Gross] as a large mutual fund family does it little justice. Its \$747 billion in bond assets almost matches the gross domestic product of Australia.

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Pimco has found itself up against a formidable opponent in [Christopher] Lovell. What [Bill] Gross is to the world of Bonds, [Christopher] Lovell is to commodities manipulation and price-fixing lawsuits.

Seth Lubove and Elizabeth Stanton, *Pimco Power in Treasuries Prompts Suit*, BLOOMBERG MARKETS, February 20, 2008 (April 2008).

Beyond antitrust and CEA manipulation law, the Firm has been privileged to contribute to the law pertinent to manipulation in other ways. This includes by successfully trying or prosecuting many securities manipulation cases. The Firm successfully tried and obtained a jury verdict for securities manipulation in *Black v. Finantra Capital, Inc., et al.*, 01 Civ. 6819 (S.D.N.Y.) (JSR). Although the District Court vacated the verdict, the Second Circuit Court of Appeals reinstated it, *Black v. Finantra*, 418 F. 3d 203 (2d Cir. 2005), leading to a settlement before the final judgment was entered.

For another example, in *In re IPO Securities Litig.*, 21 MC 92 (S.D.N.Y.), the Firm served as *de facto* co-lead counsel in the consolidated 309 class actions alleging fraud and manipulation under the federal securities laws resulting in a settlement of \$586,000,000. *See In re IPO Securities Litig.*, 671 F.Supp.2d 467, 2009 WL 3397238 at \*4, n.35 (S.D.N.Y. October 5, 2009).

Relatedly, the Firm has also been privileged to solve problems and contribute to the development of the law in contexts outside antitrust and manipulation claims. For one example, in *Fiala, et al. v. Metropolitan Life Insurance Company, et al.*, Index No. 601181/00 (Sup. Ct., N.Y. County), the Firm was appointed as Chairman of co-lead counsel in a class action alleging violations of New York Insurance Law. This resulted in the first certified class and the first settlement under New York's demutualization statute. *See Fiala v. Metropolitan Life Insurance Co.*, 776 N.Y.S.2d 29 (1st Dep't 2004); *Fiala v. Metropolitan Life Insurance*

*Co.*, Slip Op., 2006 WL 4682149 (Sup. Ct., N.Y. County, May 2, 2006) (certifying the class).

For another example, the Firm successfully argued *Grandon v. Merrill Lynch & Co. Inc.*, 147 F.3d 184, 192-3 (2d Cir. 1998), which was the first case to impose a duty on brokers to disclose excessive mark-ups on their sales of bonds.

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Individual biographies of the Firm's attorneys who worked on this Action are set forth below.

***Christopher Lovell—Partner***

Chris graduated from New York University School of Law in 1976, receiving the Vanderbilt Award, and worked at a Wall Street law firm successfully defending antitrust and CEA claims in private and government actions between 1977 and 1980, including a successful defense at trial of charges of manipulation in violation of the Commodity Exchange Act. *In re Harold Collins, et al.*, CFTC No. 77-15, 1984 WL 48079 (CFTC Feb. 3, 1984).

Chris founded the Firm in 1980 and has been privileged to be selected to try more than sixty (60) cases and serve as lead or co-lead class counsel in more than fifty actions.

Chris was the first plaintiffs' lawyer to try successfully antitrust price fixing and manipulation claims in the U.S. District Court for the Southern District of New York. Chris prepared the briefs for the Firm's successful argument in the U.S. Supreme Court that a private right of action for manipulation should be implied under the Commodity Exchange Act. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982).

Chris is an Advisory Board Member of the Center on Civil Justice at New York University Law School.

***Victor E. Stewart—Partner***

Victor is Chairman of the Firm's securities law department. Victor was named Valedictorian of St. Marks School Class of 1968, is a 1972 graduate of Yale College (B.A. English), a 1975 graduate of Harvard Business School (M.B.A.) with a concentration in finance and commodity business, a 1979 graduate of the University of Virginia Law School (J.D.), and served on *The Virginia Journal of International Law* (1977-1979), Articles Editor (1978-1979).

Victor has more than thirty years' experience in the securities field, including securities litigation, public and private securities offerings both as issuers' and underwriters' counsel, arbitrage, mortgage securitization and financial markets analysis.

Victor second chaired the successful trial of antitrust and CEA manipulation claims in

*Strobl v. New York Mercantile Exchange*, 582 F. Supp. 770 (S.D.N.Y. 1984), *aff'd*, 768 F.2d 22 (2d Cir. 1985), *cert. denied*, *Simplot v. Strobl*, 474 U.S. 1006, 106 S. Ct. 527 (1985); has subsequently litigated complex class actions, including acting as the Firm's principal attorney in *In re Initial Public Offering Antitrust Litigation* and *In re Initial Public Offering Securities Litigation*, 2009 WL 3397238 (S.D.N.Y. October 5, 2009) (\$586 million in settlements); *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, 09-cv-0118 (S.D.N.Y.) (\$265 million in settlements); *In re Facebook, Inc., IPO Securities and Derivative Litig.*, MDL 12- 2389 (S.D.N.Y.); and performed substantial work on *In re Sumitomo Copper Litigation*, 96 Civ. 4584 (MP) (S.D.N.Y.); *In re NASDAQ Market-Makers Antitrust Litigation*, MDL No. 123 (S.D.N.Y.); and *Eugenia J. Fiala, et al. v. Metropolitan Life Insurance Company, et al.*, Index No. 00/601181 (Sup. Ct., N.Y. County).

***Jody R. Krisiloff—Partner***

Jody is a 1976 graduate of Mount Holyoke College, B.A., *summa cum laude*, and a 1979 graduate of Columbia University School of Law, J.D. Jody has more than thirty-five years of experience with commercial litigation in state and federal courts. Prior to specializing in complex litigation and class actions, Jody represented a variety of domestic and international clients in corporate matters. She also litigated and tried one of the first cases involving interpretation of Business Corporation Law §§1118 and 1104-a concerning the buyout of a minority shareholder's interest in four closely-held corporations, *Raskin v. Walter Karl, Inc.*, 129 A.D.2d 642 (2d Dept. 1987).

Jody has worked on class actions in securities, commodity futures, and antitrust cases including serving as the Firm's principal attorney in *In re Microsoft Litig.*, MDL No. 1332 (D.Md.); *Leider v. Ralfe* (DeBeers Diamond Jewelry Antitrust), 01 Civ. 3137 (HB) (S.D.N.Y.); *Eugenia J. Fiala, et al. v. Metropolitan Life Insurance Company, et al.*, Index No. 00/601181 (Sup. Ct., N.Y. County); *In re Avista Securities Litig.*, 02-CV-328 (FVS) (E.D. Wa.).

Jody is now the Firm's principal attorney with Christopher Lovell in *In re LIBOR-Based Financial Instruments Antitrust Litig.*, 11-md-2262 (NRB) (S.D.N.Y.) as well as in several other foreign currency benchmark class actions pending in federal court. Jody also litigated several price fixing and commodity manipulation class actions that have resulted in favorable settlements for plaintiffs including *Precision Assoc., Inc. v. Panalpina World Transport (Holding) Ltd. (Freight Forwarders Antitrust Litig.)*, 08 Civ. 0042 (JG) (E.D.N.Y.), *Anwar, et al. v. Fairfield Greenwich Limited, et al.*, 09-cv-0118 (S.D.N.Y.), and *In re Platinum and Palladium Commodities Antitrust Litig.*, 10 Civ. 3617 (WHP) (S.D.N.Y.).

Outside the Firm, Jody was involved in representing concerned parents petitioning for the creation of the Matrimonial Law Commission, commissioned by former Chief Judge Judith S. Kaye in 2004. Jody testified before that Commission about the need for reform in matrimonial law proceedings in the New York State courts.

***James Parry Eyster – Partner***

James Parry (“Jason”) Eyster, a partner at Lovell Stewart, primarily focuses on antitrust class actions and commodities manipulation. Prior to joining the Firm, Jason served as a professor at several law schools, including Wayne State University Law School, Western Michigan University Law School, and the Peking University School of Transnational Law. His scholarship, which often concerns legal persuasion, includes numerous articles in both academic and practical law journals. In addition, he served as a long-time editor of both the *Journal of Asian Business* and the annual *Immigration and Nationality Law Handbook*. Jason is a graduate of Princeton University and Fordham Law School, where he founded and was Editor-in-Chief of the *Fordham International Law Journal*. He is admitted to practice in New York and Michigan.

***Craig M. Essenmacher—Partner***

Craig focuses on antitrust and commodities manipulation and has been involved in the fields of complex litigation and class actions for over ten years.

Craig is a graduate of Michigan State University, Bachelor of Science in 1990. He also graduated from Michigan State University with a Doctor of Philosophy in Chemistry in 1995. During his graduate studies in Chemistry, Craig published three peer reviewed papers in respected scientific journals that include The Proceedings of the National Academy of Sciences, U.S.A. and The Journal of the American Chemical Society. Craig graduated from Detroit College of Law at Michigan State University with a J.D. with a Summa Cum Laude distinction in 1997.

Craig has been the principal attorney for the Firm in representing businesses and consumers of thin-film transistor liquid crystal display (TFT-LCD) products who were harmed by an alleged price fixing conspiracy among TFT-LCD manufacturers, *In re: TFT-LCD (Flat Panel) Antitrust Litigation*, 07-md-1827 (N.D. Cal.) (cash recovery of \$1.1 billion). Craig represented, as the co-lead counsel firm, a class of indirect purchasers in a price fixing scheme involving Potash containing products *In re: Potash Antitrust Litigation*, 08-cv-6910 (N.D. Ill.), an antitrust class action that resulted in a \$20-plus million settlement recovery for the class. Craig represented an indirect purchaser class, as the co-lead counsel firm, for auto filter price fixing antitrust, *In re: Aftermarket Filters Antitrust Litigation*, 08-cv-4883 (N.D. Ill.), resulting in a multi-million dollar settlement recovery for the class. Craig was involved in a settlement for indirect purchasers in a price fixing action for surcharges charged by major airlines for cargo shipping, *In Re: Air Cargo Shipping Services Antitrust Litigation*, 06-MD-1775 (E.D.N.Y.), resulting in an \$80 million recovery for the class and \$17,000,000 for indirect purchasers.

Craig is an expert in discovery and is involved in numerous discovery issues in pending antitrust and commodity manipulation class actions with the Firm. In addition to writing and advocacy work, Craig liaises with experts and consultants in the processing, preparation, and analysis of large amounts of transactional and pricing data, preparation of regression analyses, and other aspects of preparing class certification and merits expert

reports.

Craig has been a principal attorney for the Firm in several price fixing and commodity manipulation class actions that have resulted in favorable settlements for plaintiffs. Craig is a principal attorney for the Firm in prosecuting *Burke et al. v. Visa Inc. et al.* (D.D.C. Civ.No. 11-1882), *Mish Int'l Monetary Inc. v. Vega Cap. London, Ltd., et al.*, No. 20-cv-4577 (N.D.Ill.), and *Midwest Renewable Energy, LLC v. Archer Daniels Midland Co.* 20-cv-02212 (C.D. Ill.).

Craig served as a council member for the Michigan State Bar Association section of Antitrust, Franchising and Trade Regulation from 2010-2012.

***Benjamin M. Jaccarino—Partner***

Ben is a graduate of Wheaton College, Bachelor of Arts in 2006. He graduated from Suffolk University with a J.D. in 2009. While at Suffolk, Ben received an Oral Advocate award. Ben is admitted to practice in New York, and before the United States District Courts for the Southern and Eastern Districts of New York.

Ben has been with the Firm since 2009 and primarily focuses on commodities manipulation and antitrust class actions. Ben has been involved in a number of commodity manipulation class actions that have resulted in favorable settlements for plaintiffs.

Ben has represented, on behalf of the co-lead counsel firm, businesses and consumers of freight forwarding services who were harmed by an alleged price fixing conspiracy among numerous freight forwarders, *Precision Associates, Inc. et al., v. Panalpina World Transport (Holding) LTD. et al.*, 08-cv-0042 (E.D.N.Y.) (approximately \$490,000,000 in settlements). Ben has played an active role in *Midwest Renewable Energy, LLC v. Archer Daniels Midland Co.* 20-cv-02212 (C.D. Ill.); *Ploss, et al. v. Kraft Foods Group, Inc. et al.*, 15-cv-02937 (N.D. Ill.); *Mish Int'l Monetary Inc. v. Vega Cap. London, Ltd., et al.*, No. 20-cv-4577 (N.D.Ill.); *In re Term Commodities Cotton Futures Litig.*, 12-cv-05126 (ALC) (S.D.N.Y.); *In re Aluminum Warehousing Antitrust Litig.*, 13-md-2481, (S.D.N.Y.); and *In re Zinc Antitrust Litig.*, No. 14-cv-3728 (KBF) (S.D.N.Y.).

***Travis Carter—Associate***

Prior to rejoining the Firm in 2017, Travis was a prosecutor in New Jersey for over five years. In that capacity, he represented the state in every phase of litigation in the prosecution of felony crimes in superior court. This included being lead counsel or co-counsel on over a dozen jury trials charging serious crimes, including homicide, robbery, aggravated assault, illegal use of firearms, narcotics distribution, and resisting arrest. Juries returned guilty verdicts in a number of these cases and the successful outcomes appeared in multiple news outlets, including the New Jersey Star-Ledger. Travis also engaged in extensive written and oral motion practice and managed all facets of cases, including grand jury presentations, indictments, plea negotiations,

discovery, arraignments, status conferences, bail hearings, pretrial conferences, sentencing, appeals and post-conviction matters.

Travis graduated with a Juris Doctor from Boston College Law School in 2011, where he won the National Immigration Law Moot Court Competition. He graduated with a Bachelor of Arts in Journalism from the New York University College of Arts and Science in 2006, where he had his writing published in newspapers across the country.

Travis previously worked at the Firm as a law clerk, paralegal and legal assistant. Travis is admitted to practice law in New York, New Jersey, and Connecticut. He primarily focuses on antitrust class action cases.

***Merrick Scott Rayle—Of Counsel***

Merrick's practice with the Firm is concentrated on the prosecution of commodity futures, antitrust, and securities manipulation class actions. His experience with the Firm includes cases prosecuting energy company defendants for manipulating the price of natural gas futures contracts traded on the New York Mercantile Exchange; prosecuting defendants for manipulating the price of the June 2005 ten-year Treasury note futures contract; prosecuting a complex, multinational conspiracy among the leading electronics manufacturers to fix the prices for LCD panels in the United States; prosecuting multiple real estate brokerage firms for refusing to compete on the basis of price of residential real estate commission rates in the Commonwealth of Kentucky; prosecuting potash suppliers in Canada, the United States, Russia, and Belarus for a conspiracy to restrict the supply and raising or fixing the prices for potash sold in the United States; prosecuting major record labels for conspiring to fix the prices and terms under which their music would be sold over the Internet; prosecution of a nationwide conspiracy against the producers of domestic shell eggs and egg products and their trade associations for conspiring to manipulate the supply of, and thereby fix the prices for, domestically-sold shell eggs and egg products; prosecuting the theft of intellectual property and proprietary information and violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 against the controlling shareholders of the first company to provide high-speed Internet access via cable modem; and prosecuting a conspiracy to fix prices for Cathode Ray Tubes and to allocate markets and customers for the sales of Cathode Ray Tubes in the United States.

From 1978-1987, Merrick was a Partner in the Chicago Office of Sonnenschein Carlin Nath & Rosenthal, since combined with Dentons. He has over forty years' experience in complex litigation, trials, and appeals, trying over twenty-five cases in the state and federal court systems. He has handled class action cases in the federal court system in California, New York, Illinois, Iowa, Kentucky, Washington, the District of Columbia, and Pennsylvania.

Merrick served as a judicial law clerk to the Honorable Roy L. Stephenson of the United States Court of Appeals for the Eighth Circuit for two years. Merrick received his law degree from the Indiana University Robert H. McKinney School of Law where he was a member of the Indiana Law Review. He received his Bachelor of Arts degree from Butler



University, and graduated from Culver Military Academy.

***Tobias G. Fenton – Associate***

Toby focuses his practice on commodities manipulation and antitrust class actions. In 1999, Toby received a B.A., *cum laude*, from Connecticut College. Toby attended the Boston University School of Law, where he graduated *magna cum laude* in 2003. At BUSL, Toby was honored with the school's highest academic honor each semester. Toby was a member of the school's *Law Review* and during his final year was one of just three students whose work was selected from over a hundred submissions for publication therein prior to graduation.

Toby was admitted to practice in the State of New York in 2004 and the State of Maine (where he has voluntarily suspended his registration) in 2013. After graduating law school, Toby practiced for six years in the New York City corporate/securities departments of Proskauer Rose LLP and Baker & McKenzie LLP, two of Vault's top 30 firms nationally. Toby then practiced corporate and business law at a small firm in his hometown of Bar Harbor, Maine, before joining Lovell Stewart in 2016.

Toby has been involved in numerous commodities and interest rate manipulation cases while at the firm. His active cases include *In re LIBOR-Based Financial Instruments Antitrust Litig.*, 11-md- 2262 (NRB) (S.D.N.Y.), *In re Term Commodities Cotton Futures Litig.*, 12-cv-05126 (ALC) (S.D.N.Y.), and *Mish Int'l Monetary Inc. v. Vega Cap. London, Ltd., et al.*, No. 20-cv-4577 (N.D.Ill.).

***Howard Hill – Derivatives Analyst.***

Howard Hill holds a mathematics degree from Yale College and worked in numerous banks in derivatives, securitization, valuing derivatives, and structuring and managing new issues of derivatives securities.

Howard serves as the Firm's in-house analyst and expert for all aspects of capital markets and derivatives cases, with an emphasis on complex cases that involve manipulation and price fixing of derivatives.

Howard was a member of the Risk Management Committees at two G-SIFI's – the select group of financial institutions designated by the Basel Committee on Banking Supervision as "Globally Significant Financial Institutions," any single one of which could trigger a global financial catastrophe if it failed. During those years, Howard was also a sole head of a department of fixed income derivative traders and salespeople, bankers, credit analysts, system developers and researchers. He was also head of fixed income research and analysis groups at other significant institutions (Primary Dealers).

Howard has deep expertise in interest rate derivatives risk management systems and interest rate derivatives traders' terminology, and has assisted the Firm by analyzing banking records and traders' communications. Reports included risk reports, position reports, and profit and loss statements. Communications included recorded phone conversations, Bloomberg "chat" sessions and conventional emails, which also included trade confirmations.

**Former Employees Who Worked On This Matter*****Gary S. Jacobson—Former Partner***

Gary was the Chairman of the Firm’s antitrust department. Gary is a 1972 graduate of Yale College (A.B. with Honors), where he served as Chairman of the Yale Record. Gary is also a 1976 graduate of the University of Virginia Law School (J.D.), where he served as a member of the board of editors of the Virginia Law Review (1974-76).

Until his retirement, Gary had been litigating antitrust cases since the *Uranium Antitrust Litigation* (N.D. Ill.) case in 1979; made the successful oral argument in the Second Circuit Court of Appeals in *Starr v. Sony BMG Music Entertainment*, 592 F.3d 314 (2d Cir. 2010), resulting in the first appellate reversal of an order dismissing an antitrust class action complaint under the U.S. Supreme Court’s *Bell Atlantic Corp. v. Twombly* decision; made the successful oral argument in the Southern District of New York in opposition to the motion to dismiss in the *Sumitomo Copper Litigation*, 995 F. Supp. 451 (S.D.N.Y. 1998), a commodity manipulation class action; made the successful oral argument in the Second Circuit Court of Appeals in *Grandon v. Merrill Lynch*, 147 F.3d 184 (2d Cir. 1998), resulting in the appellate reversal of an order dismissing a securities fraud class action complaint and holding for the first time that the “shingle theory” applied to municipal bond transactions.

Gary actively litigated many of the Firm’s price fixing or commodities manipulation class actions, including playing a principal role in *Stoumbos v. Visa Inc., et al.*, 1:11-cv-01882 (RJL) (D.D.C.) (*ATM Fees Antitrust*); *In re LIBOR-Based Financial Instruments Antitrust Litig.*, MDL No. 2262 (NRB) (S.D.N.Y.); *Precision Assoc., Inc. v. Panalpina World Transport (Holding) Ltd. (Freight Forwarders Antitrust Litig.)*, 08 Civ. 0042 (JG) (VVP) (E.D.N.Y.); *In re Dynamic Random Access Memory (“DRAM”) Antitrust Litig.*, MDL No. 1486 (PJH) (N.D. Cal.); *Leider v. Ralfe (DeBeers Diamond Jewelry Antitrust)*, 01 Civ. 3137 (HB) (S.D.N.Y.); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, MDL No. 1361 (D. Me.); *In re Microsoft Litig.*, MDL No. 1332 (D. Md.); *In re Dairy Farmers of America Cheese Antitrust Litig.*, 09-cv-3690 (N.D. Ill.); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 07 cv 1827- SI (N.D. Cal.); *In re Initial Public Offering Antitrust Litig.*, (*Credit Suisse First Boston Ltd. v. Billing*), No. 05-1157 (U.S. Sup. Ct.); *In re Platinum and Palladium Commodities Litig.*, 10 Civ. 3617 (WHP) (S.D.N.Y.); *Kohen v. Pacific Investment Management Co., LLC*, 05 C 4681 (N.D. Ill.); and *In re Natural Gas Commodity Litig.*, 03 Civ. 6186 (VM) (S.D.N.Y.).

During his career, Gary tried more than twenty five cases in federal and state courts, including acting as lead or sole trial counsel in cases involving claims of unfair competition, RICO, Lanham Act, patent infringement, misappropriation of trade secrets, negotiable instruments, sales and warranties, breach of fiduciary duty, fraudulent conveyance, and personal injury.

***Misa Shimada – Former Partner***

Misa worked at the Firm from 1998-1999. Prior to returning to the firm in December 2016, Misa practiced in Tokyo for 16 years. In Tokyo, Misa initially worked at White & Case LLP and held two in-house positions thereafter as the head of the legal department for subsidiaries of foreign corporations.

Misa graduated from the University of Hawaii at Manoa with a BBA in International Business in 1989 and Syracuse University College of Law in 1994.

***Fred T. Isquith—Former Partner***

Fred is a graduate of Cornell University, with a Bachelor of Science. He also graduated from Syracuse University's Maxwell School with a Masters in Public Administration in 2009. He graduated from Syracuse University's College of Law with a J.D. in 2009. There, he was an editor on the Journal of International Law and Commerce, served on the executive board of the Moot Court Honors Society, where he received a certificate for excellence in the service of Society, and was an elected representative to the College of Law's Judicial Board.

While with the Firm, Fred was admitted to practice in New York, the District of Columbia, and before the United States District Courts for the Southern and Eastern Districts of New York. He was also an active member of the New York City Bar Association's Antitrust and Trade Regulation Committee.

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***James Payne***

James Payne graduated from Washington College of Law (JD) in 2002 and the University of Amsterdam, NL (LLM) in 2006. Mr. Payne is admitted in New York and Alabama. Mr. Payne formerly worked full time for the Firm, and then worked part time on document review in antitrust and commodity cases. He assisted the Firm from the initial stages of electronic discovery through preparation for depositions. Additionally, in this case, Mr. Payne translated and reviewed Swiss German language documents.

# **EXHIBIT 2**

## Breakdown of Lovell Stewart's Work and Hours

<b>MOTION</b>	<b>ATTORNEY AND LEVEL</b>	<b>HOURS</b>	<b>RATE</b>
<b>Research and Drafting Amended Complaints</b>	Chris Lovell (Partner)	193.4	\$1,210
	Victor Stewart (Partner)	24.1	\$1,020
	Gary Jacobson (Partner)	17.6	\$1,020
	Jason Eyster (Partner)	458	\$920
	Ben Jaccarino (Partner)	150.1	\$675
	Travis Carter (Associate)	85	\$600
	Fred Isquith (Partner)	15.8	\$535
	Howard Hill (Derivatives Analyst)	307.75	\$350
	<b>TOTAL</b>	<b>1,251.75</b>	
<b>Research and Briefing for First Motion to Dismiss</b>	Chris Lovell (Partner)	20.7	\$1,210
	Jody Krisiloff (Partner)	102.5	\$1,035
	Gary Jacobson (Partner)	25	\$1,020
	Jason Eyster (Partner)	129.5	\$920
	Ben Jaccarino (Partner)	10	\$675
	<b>TOTAL</b>	<b>287.70</b>	
<b>Research and Briefing for Second Motion to Dismiss</b>	Chris Lovell (Partner)	22.15	\$1,210
	Victor Stewart (Partner)	47.1	\$1,020
	Gary Jacobson (Partner)	114	\$1,020
	Jason Eyster (Partner)	120	\$920
	Merrick Rayle (Of Counsel)	218.3	\$850
	Misa Shimada (Of Counsel)	232.9	\$825
	Ben Jaccarino (Partner)	40.5	\$675
	<b>TOTAL</b>	<b>794.95</b>	
<b>Research and Briefing for Third Motion to Dismiss</b>	Chris Lovell (Partner)	27.65	\$1,210
	Jason Eyster (Partner)	103.5	\$1,020
	<b>TOTAL</b>	<b>131.15</b>	
<b>Litigation Strategy &amp; Analysis</b>	Chris Lovell (Partner)	40.9	\$1,210
	Jody Krisiloff (Partner)	65.1	\$1,035
	Victor Stewart (Partner)	46.35	\$1,020
	Jason Eyster (Partner)	55.5	\$920
	Misa Shimada (Of Counsel)	33	\$825
	Ben Jaccarino (Partner)	26.65	\$675
	Travis Carter (Associate)	70.5	\$600
	Katie Hill (Paralegal)	136.5	\$215
	<b>TOTAL</b>	<b>474.50</b>	

<b>Case Management</b>	Keith Andrews (Paralegal)	<b>12.2</b>	<b>\$300</b>
	<b>TOTAL</b>	<b>12.2</b>	
<b>Expert Work</b>	Chris Lovell (Partner)	<b>20.9</b>	<b>\$1,210</b>
	Victor Stewart (Partner)	<b>168.30</b>	<b>\$1,020</b>
	Craig Essenmacher (Partner)	<b>67.5</b>	<b>\$900</b>
	Howard Hill (Derivatives Analyst)	<b>154.10</b>	<b>\$350</b>
	<b>TOTAL</b>	<b>423.00</b>	
<b>Document Review</b>	Tobias Fenton (Associate)	<b>265.7</b>	<b>\$400</b>
	Katie Hill (Paralegal)	<b>323.5</b>	<b>\$215</b>
	James Payne (Document Review Attorney)	<b>818.5</b>	<b>\$185</b>
	<b>TOTAL</b>	<b>1,407.70</b>	
<b>Court Appearances &amp; Preparation</b>	Chris Lovell (Partner)	<b>54.65</b>	<b>\$1,210</b>
	Jody Krisiloff (Partner)	<b>58.6</b>	<b>\$1,035</b>
	Gary Jacobson (Partner)	<b>45.25</b>	<b>\$1,020</b>
	Victor Stewart (Partner)	<b>6.33</b>	<b>\$1,020</b>
	Jason Eyster (Partner)	<b>29</b>	<b>\$920</b>
	Ben Jaccarino (Partner)	<b>33.2</b>	<b>\$675</b>
	Fred Isquith (Partner)	<b>21.2</b>	<b>\$535</b>
	<b>TOTAL</b>	<b>248.25</b>	
<b>Settlement Negotiations, Mediation and Notice Administration</b>	Chris Lovell (Partner)	<b>133.75</b>	<b>\$1,210</b>
	Jody Krisiloff (Partner)	<b>17.10</b>	<b>\$1,035</b>
	Victor Stewart (Partner)	<b>72.40</b>	<b>\$1,020</b>
	Gary Jacobson (Partner)	<b>23.75</b>	<b>\$1,020</b>
	Jason Eyster (Partner)	<b>84</b>	<b>\$920</b>
	Ben Jaccarino (Partner)	<b>50.15</b>	<b>\$675</b>
	Travis Carter (Associate)	<b>57.4</b>	<b>\$600</b>
	<b>TOTAL</b>	<b>438.55</b>	

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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**DECLARATION OF TODD A. SEAVER,  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Todd A. Seaver, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a Partner in the law firm of Berman Tabacco (“Berman Tabacco”). I respectfully submit this declaration in support of Class Counsel’s<sup>1</sup> Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”) in connection with services rendered in the above-captioned action (“Action”).

2. The statements herein are true to the best of my personal knowledge, information and belief based on the books and records of Berman Tabacco and information provided by its attorneys and staff. Berman Tabacco’s time and expense records are prepared and maintained in the ordinary course of business.

3. At all times relevant hereto, Berman Tabacco served as counsel for California State Teachers’ Retirement System (“CalSTRS”), and additional counsel for Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”). This Court appointed Lowey Dannenberg, P.C. (“Lowey”) as Class Counsel for the Settlement Class in connection with each of the six Settlements in the above-captioned action. *See* ECF Nos. 159, 426, 428-29, 440, 457 (orders preliminarily approving each Settlement).

4. I am one of the attorneys who oversaw my firm’s involvement in the Action. Berman Tabacco’s time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review,

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<sup>1</sup> Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Settlement Agreements with: JPMorgan Chase & Co. (ECF No. 151-1); NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (ECF No. 384-1); Deutsche Bank AG and DB Group Services (UK) Ltd. (ECF No. 384-2); Credit Suisse Group AG and Credit Suisse AG (ECF No. 391-1); NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (ECF No. 432-1); and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (collectively, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, together with TP ICAP and Gottex, the “Settling Brokers”) (ECF No. 454-1).



certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform with directions from Class Counsel and/or my firm's practice. Accordingly, the time reflected in Berman Tabacco's fee compensable lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and achieve the Settlements before the Court.

5. The services Berman Tabacco performed on behalf of the putative class in connection with the prosecution of the litigation include but are not limited to the following:

- Advise and counsel CalSTRS regarding all material aspects of the litigation, in conjunction with Class Counsel;
- Legal research and drafting in connection with amended complaints, oppositions to motions to dismiss, filings concerning supplemental authority, and prosecution of appeal;
- Providing input on all strategic matters in conjunction with Class Counsel, including key pleadings, class certification, experts and settlement;
- Participating directly in settlement negotiations including all mediations; and
- Participated in negotiation and drafting of settlement documents.

6. Set forth below in ¶ 7 is a summary reflecting the amount of time Berman Tabacco's attorneys and professional support staff worked on the Action from the inception of the case to June 30, 2023, the timekeeper's current billing rates, and the corresponding lodestar calculations of that work based on the current hourly billing rates. For personnel no longer employed by Berman Tabacco, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. Timekeepers that billed less than 10 hours in this Action have been excluded. The time and lodestar incurred preparing the Fee and Expense Application have also been excluded. The schedule was prepared based upon daily time records maintained by Berman Tabacco's attorneys and professional support staff in the ordinary course of business. Each timekeeper listed below was a full-time employee of the firm.

7. Berman Tabacco's total fee compensable time for which it seeks an award of attorneys' fees is summarized below.

<b>Timekeeper Name</b>	<b>Position<sup>2</sup></b>	<b>Hourly Rate</b>	<b>Total Hours from inception through 6/30/2023</b>	<b>Total Lodestar from inception through 6/30/2023</b>
Egan, Patrick	Partner	\$1,045.00	105.10	\$109,829.50
Groopman, Steve	Partner	\$755.00	39.50	\$ 29,822.50
Hammar skjold, Carl	Partner	\$755.00	61.20	\$ 46,206.00
Lavallee, Nicole	Partner	\$1,150.00	53.40	\$ 61,410.00
Seaver, Todd	Partner	\$1,045.00	238.10	\$248,814.50
Stern, Leslie	Partner	\$1,120.00	25.20	\$ 28,224.00
Tabacco, Joseph	Partner	\$1,170.00	85.30	\$ 99,801.00
Cleary, Colleen	Associate	\$510.00	90.50	\$ 46,155.00
Moy, Jessica	Associate	\$500.00	68.70	\$ 34,350.00
O'Berry, Anne	Of Counsel	\$830.00	21.10	\$ 17,513.00
<b>Professional Staff</b>				
Beaulieu, Karen	Financial Analysts	\$490.00	48.50	\$23,765.00
Lopez, Jenniffer	Financial Analysts	\$325.00	37.00	\$12,025.00
<b>TOTAL</b>			<b>873.60</b>	<b>\$757,915.50</b>

8. The total time for which Berman Tabacco has spent working on the Action to date is 873.60 hours. The total lodestar value of these professional services is \$757,915.50. For the Court's reference, we attach as Exhibit A a resume describing Berman Tabacco's qualifications

<sup>2</sup> The hourly rates for the shareholders, associate attorneys and professional support staff in my firm included above are the same rates which have been accepted and approved in other complex class action litigation. *See, e.g., Utah Ret. Sys. v. Healthcare Services Group, Inc.*, No. 2:19-cv-01227-ER (E.D. Pa. Jan. 12, 2022); *Oklahoma Police Pension & Ret. Sys. v. Sterling Bancorp, Inc.*, No. 5:20-cv-10490-JEL-EAS (E.D. Mich. Sep. 23, 2021); *In re Alphabet Inc. Shareholder Deriv. Litig.*, No. 19CV341522 (Cal. Super. Ct. Santa Clara Cty. Feb. 5, 2021); *In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593, at \*4-5 (S.D.N.Y. June 16, 2020); *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-02420-YGR, 2018 WL 3064391, at \*1 (N.D. Cal. May 16, 2018); *In re BP p.l.c. Sec. Litig.*, No. 4:10-md-02185, ECF No. 1512 (S.D. Tex. Feb. 13, 2017); *In re Zynga Inc. Sec. Litig.*, No. 12-cv-04007-JSC, ECF No. 234 (N.D. Cal. Mar. 18, 2016); *In re Fannie Mae 2008 Sec. Litig.*, No. 1:08-cv-07831-PAC, ECF No. 552 (S.D.N.Y. Mar. 3, 2015); *Rieckborn v. Velti PLC*, No. 13-CV-03889-WHO, 2015 WL 468329, at \*22 (N.D. Cal. Feb. 3, 2015).

and brief biographies of its current attorneys who provided services in this Action. Also attached as Exhibit B is a chart further listing the timekeepers involved in the various litigation activities and a summary of the hours spent on each respective activity.

9. The Firm's total lodestar does not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

10. As detailed and categorized in the below schedule, Berman Tabacco has paid a total of \$7,983.05 in expenses from inception to present for which it is currently requesting reimbursement.

<b>Expense Categories</b>	<b>Cumulative Expenses</b>
Travel - Airfare, Lodging, Meals, Taxi	\$1,780.82
Computer Research, Databases & Docket	\$3,875.45
Conferences, Meetings, Telephone, & Telecopier	\$159.62
Postage, Mailing, FedEx, UPS, Fares & Messengers	\$24.66
In-House Copying	\$1,117.50
Service and Filing Fees	\$1,025.00
<b>TOTAL</b>	<b>\$7,983.05</b>

11. The above schedule was prepared using information from Berman Tabacco's books and records, including the Firm's expense records. These books and records are prepared from expense reports, receipts, check and bank records and other source materials.

12. The expenses include \$3,875.45 related to computer research in connection with preparing the complaints and responding to motions to dismiss. With regard to expenses for airfare, lodging, meal and taxi, \$1,722.49 of the \$1,780.82 total expense was incurred in August 2018 in connection with the in-person mediation held in San Francisco, California, including meal arrangements for the team of out-of-town attorneys over the two-day period encompassing the mediation. The expenses for service and filing fees are comprised of court fees associated with the pro hac vice applications of four Berman Tabacco attorneys' admission to the Court for purposes of this matter. With regard to the in-house copying and printing expenses, those charges were capped at \$0.15 per page.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on August 8, 2023.



Todd A. Seaver

# **EXHIBIT A**

## THE FIRM

Berman Tabacco is a national law firm with 33 attorneys located in offices in Boston and San Francisco. Since its founding in 1982, the firm has devoted its practice to complex litigation, primarily representing plaintiffs seeking redress under U.S. federal and state securities, antitrust and consumer laws.

Over the past almost four decades, Berman Tabacco's attorneys have prosecuted hundreds of class actions, recovering billions of dollars on behalf of the firm's clients and the classes they represented. In addition to financial recoveries, the firm has achieved significant changes in corporate governance and business practices of defendant companies. Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2022)*.<sup>1</sup> According to ISS Securities Class Action Services' "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.<sup>2</sup> SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012). The firm currently holds leadership positions in securities, antitrust and consumer cases around the country.

Berman Tabacco is rated AV Preeminent® by *Martindale-Hubbell*®. *Benchmark Litigation* ranked the firm as a *Top Ten Plaintiffs' Firm* for its work "on behalf of individuals and institutions who have suffered financial harm due to violations of securities or antitrust laws" for the seventh consecutive year (2017-2023). *Benchmark Litigation* also ranked the firm as *Highly Recommended* in 2023—the twelfth consecutive time the firm has received that distinction.<sup>3</sup> *The Legal 500* also ranked the firm as *recommended* in securities litigation in its 2017-2023 U.S. editions and as *recommended* in antitrust litigation in its 2019-2023 U.S. editions, noting in 2019 that the firm is known for its "soup-to-nuts excellence, from legal analysis through to trial preparation and trial," and that clients had noted that the firm makes a "very comprehensive effort, with no stone left unturned." In 2020, *The Legal 500* reported client praise for Berman including that the firm has "[a]n excellent team from top to bottom. It provides superb responsiveness and is able to dig in hard at a moment's notice." And further that, the team is "always prepared and [has] deep knowledge of the issue. It is a pleasure to observe a team that so well coordinated." Additionally, *Chambers USA* recognized the firm in its *Securities Litigation – Mainly Plaintiff* category (2021-2023) in both its *USA Nationwide* and *California* editions. The firm was previously recognized by *Chambers USA* in the same category in 2017 and 2018 in its *USA Nationwide* edition. Berman Tabacco was also recognized in both securities and antitrust litigation by *U.S. News & World Report—Best Lawyers* in the thirteenth Edition of the *Best Law Firms* rankings (2023 ed.) and was previously recognized in antitrust (2019-2022) and securities (2020-2022) litigation.

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<sup>1</sup> *Top 100 U.S. Class Action Settlements of All Time as of December 31, 2022*, pp. 15, 21 (ISS SCAS 2023), <https://www.bermantabacco.com/wp-content/uploads/2023/01/SCAS-Top-100-US-Settlements-of-All-Time-as-of-2022-12-31.pdf>.

<sup>2</sup> ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015*, at p. 4 (May 2016), <https://www.bermantabacco.com/wp-content/uploads/2018/05/scastop502015.pdf>.

<sup>3</sup> See <https://www.benchmarklitigation.com/Firm/Berman-Tabacco-California/Profile/109234#review>.

Berman Tabacco's lawyers are frequently singled out for favorable comments by our clients, presiding judges and opposing counsel.

## SECURITIES PRACTICE

Berman Tabacco has almost 40 years of experience in securities litigation and has represented public pension funds and other institutional investors in this area since 1998. As reported by Cornerstone Research, the firm has successfully prosecuted some of the most significant shareholder class action lawsuits.<sup>4</sup> Indeed, the firm appears as among the firms with the most settlements on the list of the top 100 largest securities class actions in SCAS' published report, *Top 100 U.S. Class Action Settlements of All Time (as of 12/31/2022)*.<sup>5</sup> According to ISS Securities Class Action Services "Top 50 for 2015" report, Berman Tabacco was one of only six firms that recovered more than half-a-billion dollars for investors in 2015.<sup>6</sup> SCAS similarly ranked the firm among the few that obtained over half-a-billion in settlements in 2004 and 2009, and ranked the firm 3rd in terms of settlement averages for class actions in 2009, 2010 and 4th in 2004 (SCAS ceased rankings according to settlement sizes in 2012).

Specifically, the firm has been appointed lead or co-lead counsel in more than 100 actions, recovering billions of dollars on behalf of defrauded investors and the classes they represent under the Private Securities Litigation Reform Act of 1995 ("PSLRA"). The firm has an extremely rigorous case-evaluation process and highly experienced litigation attorneys. Its dismissal rate for cases brought under the PSLRA is less than half the overall dismissal rate for such cases according to one authoritative study.<sup>7</sup>

Berman Tabacco serves as monitoring, evaluation and/or litigation counsel to nearly 100 institutional investors, including statewide public employee retirement systems in more than 16 states, 18 public funds with more than \$50 billion in assets, six of the 10 largest public pension plans in the country and 10 of the

<sup>4</sup> Cornerstone Research, *Securities Class Action Filings: 2011 Year in Review* (2012), at p. 23, available at <http://securities.stanford.edu/research-reports/1996-2011/Cornerstone-Research-Securities-Class-Action-Filings-2011-YIR.pdf>.

<sup>5</sup> *Top 100 U.S. Class Action Settlements of All Time as of December 31, 2022*, pp. 15, 21 (ISS SCAS 2023), <https://www.bermantabacco.com/wp-content/uploads/2023/01/SCAS-Top-100-US-Settlements-of-All-Time-as-of-2022-12-31.pdf>.

<sup>6</sup> ISS's report "lists the top 50 plaintiffs' law firms ranked by the total dollar value of the final class action settlements occurring in 2015 in which the law firm served as lead or co-lead counsel." ISS Securities Class Action Services, *Top 50 for 2015*, at p. 4 (May 2016), <https://www.bermantabacco.com/wp-content/uploads/2018/05/scastop502015.pdf>.

<sup>7</sup> Firm data reflects dismissal rates through present. Overall dismissal rates come from *Securities Class Action Filings: 2021 Year in Review*, pp. 18, 31 (Cornerstone Research 2022), <https://www.cornerstone.com/wp-content/uploads/2022/02/Securities-Class-Action-Filings-2021-Year-in-Review.pdf>.

largest 20.<sup>8</sup> For many institutional investors, the firm's services include electronically monitoring the client's portfolio for losses due to securities fraud in U.S. securities cases.

The firm provides portfolio monitoring, case evaluation and litigation services to its institutional clients, including the litigation of class and individual claims pursuant to U.S. federal and state securities laws, as well as derivative cases pursuant to state law. The firm also offers institutional investors legal services in other areas, including (a) representing institutional investors in general commercial litigation; (b) representing institutional investors in their capacity as defendants in constructive fraudulent transfer cases; (c) negotiating resolution of disputes with money managers and custodians; and (d) pursuing shareholder rights, such as books and records demands and merger and acquisition cases.

## RESULTS

### SECURITIES SETTLEMENTS

Examples of the firm's settlements include:

*Carlson v. Xerox Corp.*, No. 00-cv-1621 (D. Conn.). Representing the Louisiana State Employees' Retirement System as co-lead counsel, Berman Tabacco negotiated a \$750 million settlement to resolve claims of securities fraud against Xerox, certain top officers and its auditor KPMG LLP. When it received final court approval in January 2009, the recovery was the 10th largest securities class action settlement of all time. The judge praised plaintiffs' counsel for obtaining "a very large settlement" despite vigorous opposition in a case complicated by an alleged fraud that "involved multiple accounting standards that touched on numerous aspects of a multinational corporation's business, implicated operating units around the world, and spanned five annual reporting periods. ... [and] the rudiments of the accounting principles at issue in the case were complex, as were numerous other aspects of the case. ... The class received high-quality legal representation and obtained a very large settlement in the face of vigorous opposition by highly experienced and skilled defense counsel."

*In re IndyMac Mortgage-Backed Litigation*, No. 09-cv-4583 (S.D.N.Y.). Representing the Wyoming State Treasurer's Office and the Wyoming Retirement System as lead plaintiffs, Berman Tabacco achieved settlements totaling \$346 million in a case regarding the securitization and sale of mortgage-backed securities ("MBS") by IndyMac Bank and related entities. In February 2015, the court approved a \$340 million settlement with six underwriters of IndyMac MBS offerings, adding to a previous \$6 million partial settlement and making the total recovery one of the largest MBS class action settlements to date. This settlement is extraordinary, not only because of its size but also because \$340 million of the settlement amount was paid entirely by underwriters who had due diligence defenses. In most other MBS cases, by contrast, plaintiffs were able to recover the settlement fund monies from the issuing entities, who are held to

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<sup>8</sup> Based on a January 2020 query of the Standard & Poor's *Money Market Directories*, [www.mmdwebaccess.com](http://www.mmdwebaccess.com), whereby public pension funds were ranked according to defined benefit assets under management. Actual valuation dates vary.



a strict liability standard for which there is no due diligence defense. (The issuer in this action, IndyMac Bank, is no longer in existence.)

*In re Bristol-Myers Squibb Securities Litigation*, No. 02-cv-2251 (S.D.N.Y.). Berman Tabacco represented the Fresno County Employees' Retirement Association and Louisiana State Employees' Retirement System as co-lead plaintiffs and negotiated a settlement of \$300 million in July 2004. At that time, the settlement was the largest by a drug company in a U.S. securities fraud case.

*In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963/08 Civ. 2793 (S.D.N.Y.). Berman Tabacco acted as co-lead counsel for court-appointed lead plaintiff the State of Michigan Retirement Systems in this case arising from investment losses suffered in the Bear Stearns Companies' 2008 collapse. The firm negotiated \$294.9 million in settlements, comprised of \$275 million from Bear Stearns and \$19.9 million from auditor Deloitte & Touche LLP. The settlement received final approval November 9, 2012. At the time, the settlement for \$294.9 million represented one of the 40 largest securities class action settlements under the PSLRA. This is particularly significant in light of the fact that no government entity had pursued actions or claims against Bear Stearns or its former officers and directors related to the same conduct complained of in the firm's action.

*In re El Paso Securities Litigation*, No. H-02-2717 (S.D. Tex.). Representing the Oklahoma Firefighters Pension and Retirement System as co-lead plaintiff, Berman Tabacco helped negotiate a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. The court granted final approval of the settlement in March 2007.

*California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). As sole counsel representing the California Public Employees' Retirement System (CalPERS), the firm obtained a combined \$255 million settlement with the credit rating agencies Moody's and Standard & Poor's to settle CalPERS' claim that "Aaa" ratings on three structured investment vehicles were negligent misrepresentations under California law. In addition to achieving a substantial recovery for investment losses, this case was groundbreaking in that (a) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages, and (b) it resulted in a published appellate court opinion finding that rating agencies can, in certain circumstances, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

*In re Centennial Technologies Securities Litigation*, No. 97-cv-10304 (D. Mass.). Berman Tabacco served as sole lead counsel in a class action involving a massive accounting scandal that shot down the company's high-flying stock. Berman Tabacco negotiated a settlement that permitted a turnaround of the company and provided a substantial recovery for class members. The firm negotiated changes in corporate practice, including strengthening internal financial controls and obtaining 37% of the company's stock for the class. The firm also recovered \$20 million from Coopers & Lybrand, Centennial's auditor at the time. In addition, the firm recovered \$2.1 million from defendants Jay Alix & Associates and Lawrence J. Ramaekers for a total recovery of more than \$35 million for the class. The firm subsequently obtained a \$207 million judgment against former Centennial CEO Emanuel Pinez.

*In re Digital Lightwave Securities Litigation*, No. 98-152-cv-T-24C (M.D. Fla.). As co-lead counsel, Berman Tabacco negotiated a settlement that included changing company management and strengthening the company's internal financial controls. The class received 1.8 million shares of freely tradable common stock

that traded at just below \$4 per share when the court approved the settlement. At the time the shares were distributed to the members of the class, the stock traded at approximately \$100 per share and class members received more than 200% of their losses after the payment of attorneys' fees and expenses. The total value of the settlement, at the time of distribution, was almost \$200 million.

*In re Lernout & Hauspie Securities Litigation*, No. 00-11589 (D. Mass.), and *Quaak v. Dexia, S.A.*, No. 03-11566 (D. Mass.). In December 2004, as co-lead counsel, Berman Tabacco negotiated what was then the third-largest settlement ever paid by accounting firms in a securities class action – a \$115 million agreement with the U.S. and Belgian affiliates of KPMG International. The case stemmed from KPMG's work for Lernout & Hauspie Speech Products, a software company driven into bankruptcy by a massive fraud. In March 2005, the firm reached an additional settlement worth \$5.27 million with certain of Lernout & Hauspie's former top officers and directors. In the related *Quaak* case, the firm negotiated a \$60 million settlement with Dexia Bank Belgium to settle claims stemming from the bank's alleged role in the fraudulent scheme at Lernout & Hauspie. The court granted final approval of the Dexia settlement in June 2007, bringing the total settlement value to more than \$180 million.

*In re BP PLC Securities Litigation*, No. 10-md-2185 (S.D. Tex.). The firm was co-lead counsel representing co-lead plaintiff Ohio Public Employees Retirement System. Lead plaintiffs reached a \$175 million settlement to resolve claims brought on behalf of a class of investors who purchased BP's American Depositary Shares ("ADS") between April 26, 2010 and May 28, 2010. The action alleged that BP and two of its former officers made false and misleading statements regarding the severity of the Gulf of Mexico oil spill. More specifically, plaintiffs alleged that BP misrepresented that its best estimate of the oil spill flow rate was from 1,000 to 5,000 barrels of oil per day, when internal BP estimates showed substantially higher potential flow rates. On February 13, 2017, the court granted final approval of the settlement, ending more than six years of hard fought litigation that included extensive fact and expert discovery, multiple rounds of briefing on defendants' motions to dismiss, two rounds of briefing on class certification, a successful defense of BP's appeal of the district court's class certification decision and briefing on cross-motions for summary judgment. This settlement reportedly represents one of only four mega securities class action settlements (settlements of \$100 million or more) in 2017. See *Securities Class Action Settlements—2017 Review and Analysis*, p. 4 (Cornerstone Research 2018), <https://www.cornerstone.com/Publications/Reports/Securities-Class-Action-Settlements-2017-Review-and-Analysis>. It was also listed as the highest valued settlement during the first half of 2017 by ISS Securities Class Action Services. See ISS Securities Class Action Services, *Top 100 U.S. Class Action Settlements of All Time as of Dec. 31, 2017* (2018), p. 2, available at <https://www.bermantabacco.com/wp-content/uploads/2018/03/SCAS-Top-100-Settlements-of-All-Time-2017-12-31.pdf>.

*In re Fannie Mae 2008 Securities Litigation*, No. 08-cv-7831 (S.D.N.Y.). As co-lead counsel representing the Massachusetts Pension Reserves Investment Management Board, a co-lead plaintiff for the common stock class, Berman Tabacco helped negotiate a \$170 million settlement with Fannie Mae. To achieve the settlement, which was approved in March 2015, plaintiffs had to overcome the challenges posed by the federal government's placement of Fannie Mae into conservatorship and by the Second Circuit's upholding of dismissal of similar claims against Freddie Mac, Fannie Mae's sibling Government-Sponsored Enterprise.

*In re Symbol Technologies, Inc. Securities Litigation*, No. 2:02-cv-01383 (E.D.N.Y.). Berman Tabacco represented the Louisiana Municipal Police Employees' Retirement System as co-lead plaintiff, obtaining a \$139 million partial settlement in June 2004. Subsequently, Symbol's former auditor, Deloitte & Touche

LLP, agreed to pay \$24 million, bringing the total settlement to \$163 million. The court granted final approval in September 2006.

*In re Prison Realty Securities Litigation*, No. 3:99-cv-0452 (M.D. Tenn.) (*In re Old CCA Securities Litigation*, No. 3:99-cv-0458). The firm represented the former shareholders of Corrections Corporation of America, which merged with another company to form Prison Realty Trust, Inc. The action charged that the registration statement issued in connection with the merger contained untrue statements. Overcoming arguments that the class's claims of securities fraud were released in prior litigation involving the merger, the firm successfully defeated the motions to dismiss. It subsequently negotiated a global settlement of approximately \$120 million in cash and stock for this case and other related litigation.

*Oracle Cases*, Coordination Proceeding, Special Title (Rule 1550(b)) No. 4180 (Cal. Super. Ct. San Mateo Cty.). In this coordinated derivative action, Oracle Corporation shareholders alleged that the company's Chief Executive Officer, Lawrence J. Ellison, profited from illegal insider trading. Acting as co-lead counsel, the firm reached a settlement, pursuant to which Mr. Ellison would personally make charitable donations of \$100 million over five years in Oracle's name to an institution or charity approved by the company and pay \$22 million in attorneys' fees and expenses associated with the prosecution of the case. The innovative agreement, approved by a judge in December 2005, benefited Oracle through increased goodwill and brand recognition, while minimizing concerns that would have been raised by a payment from Mr. Ellison to the company, given his significant ownership stake. The lawsuit resulted in important changes to Oracle's internal trading policies that decrease the chances that an insider will be able to trade in possession of material, non-public information.

*In re International Rectifier Securities Litigation*, No. 07-cv-2544 (C.D. Cal.). As co-lead counsel representing the Massachusetts Laborers' Pension Fund, the firm negotiated a \$90 million settlement with International Rectifier Corporation and certain top officers and directors. The case alleged that the company engaged in numerous accounting improprieties to inflate its financial results. The court granted final approval of the settlement in February 2010. At the settlement approval hearing, the Honorable John F. Walter, the presiding judge, praised counsel, stating: "I think the work by the lawyers – all the lawyers in this case – was excellent. ... In this case, the papers were excellent. So it makes our job easier and, quite frankly, more interesting when I have lawyers with the skill of the lawyers that are present in the courtroom today who have worked on this case ... the motion practice in this case was, quite frankly, very intellectually challenging and well done. ... I've presided over this consolidated action since its commencement and have nothing but the highest respect for the professionalism of the attorneys involved in this case. ... The fact that plaintiffs' counsel were able to successfully prosecute this action against such formidable opponents is an impressive feat."

*In re State Street Bank & Trust Co. ERISA Litigation*, No. 07-cv-8488 (S.D.N.Y.). The firm acted as co-lead counsel in this consolidated class action case, which alleged that defendant State Street Bank and Trust Company and its affiliate, State Street Global Advisors, Inc., (collectively, "State Street") breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by failing to prudently manage the assets of ERISA plans invested in State Street fixed income funds during 2007. After well over a year of litigation, during which Berman Tabacco and its co-counsel reviewed approximately 13 million pages of documents and took more than 30 depositions, the parties negotiated an all-cash \$89.75 million settlement, which received final approval in 2010.

*In re Philip Services Corp. Securities Litigation*, No. 98-cv-0835 (S.D.N.Y.). As co-lead counsel, Berman Tabacco negotiated settlements totaling \$79.75 million with the bankrupt company's former auditors, top officers, directors and underwriters. The case alleged that Philip Services and its top officers and directors made false and misleading statements regarding the company's publicly reported revenues, earnings, assets and liabilities. The district court initially dismissed the claims on grounds of *forum non conveniens*, but the firm successfully obtained a reversal by the United States Court of Appeals for the Second Circuit. The court granted final approval of the settlements in March 2007.

*In re Reliant Securities Litigation*, No. 02-cv-1810 (S.D. Tex.). As lead counsel representing the Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$75 million cash settlement from the company and Deloitte & Touche LLP. The settlement received final approval in January 2006.

*In re KLA-Tencor Corp. Securities Litigation*, No. 06-cv-04065 (N.D. Cal.). Representing co-lead plaintiff Louisiana Municipal Police Employees' Retirement System, Berman Tabacco negotiated a \$65 million agreement to settle claims that KLA-Tencor illegally backdated stock option grants, issued false and misleading statements regarding grants to key executives and inflated the company's financial results by understating expenses associated with the backdated options. The court granted final approval of the settlement in 2008. At the conclusion of the case, Judge Charles R. Breyer praised plaintiffs' counsel for "working very hard" in exchange for an "extraordinarily reasonable" fee, stating: "I appreciate the fact that you've done an outstanding job, and you've been entirely reasonable in what you've done. Congratulations for working very hard on this."

*City of Brockton Retirement System v. Avon Products Inc.*, No. 11-cv-04665 (S.D.N.Y.). As a member of the executive committee representing named plaintiffs City of Brockton Retirement System and Louisiana Municipal Police Employees' Retirement System, the firm negotiated a \$62 million settlement. The action alleged that Avon Products, Inc. violated federal securities laws by failing to disclose to investors the size and scope of the Company's violations of the Foreign Corrupt Practices Act of 1977 ("FCPA"). In response to Avon's piecemeal disclosures over the course of more than a year, which ultimately revealed the true extent of the FCPA violations, the company's stock lost nearly 20% of its pre-disclosure value. This case was one of the very few successful securities cases premised on FCPA violations.

*Ehrenreich v. Witter*, No. 95-cv-6637 (S.D. Fla.). The firm was co-lead counsel in this case involving Sensormatic Electronics Corp., which resulted in a settlement of \$53.5 million. When it was approved in 1998, the settlement was one of the largest class action settlements in the state of Florida.

*In re Thomas & Betts Securities Litigation*, No. 2:00-cv-2127 (W.D. Tenn.). The firm served as co-lead counsel in this class action, which settled for more than \$51 million in 2004. Plaintiffs had accused the company and other defendants of issuing false and misleading financial statements for 1996, 1997, 1998, 1999 and the first two quarters of 2000.

*In re Enterasys Networks, Inc. Securities Litigation*, No. C-02-071-M (D.N.H.). Berman Tabacco acted as sole lead counsel in a case against Enterasys Networks, Inc., in which the Los Angeles County Employees Retirement Association was lead plaintiff. The company settled in October 2003 for \$17 million in cash, stock valued at \$33 million and major corporate governance improvements that opened the computer networking company to greater public scrutiny. Changes included requiring the company to back a proposal to eliminate its staggered board of directors, allowing certain large shareholders to propose candidates to

the board and expanding the company's annual proxy disclosures. The settlement received final court approval in December 2003.

*Giarraputo v. UNUMProvident Corp.*, No. 2:99-cv-00301 (D. Me.). As a member of the executive committee representing plaintiffs, Berman Tabacco secured a \$45 million settlement in a lawsuit stemming from the 1999 merger that created UNUMProvident. Shareholders of both predecessor companies accused the insurer of misleading the public about its business condition before the merger. The settlement received final approval in June 2002.

*In re General Electric Co. Securities Litigation*, No. 09 Civ. 1951 (S.D.N.Y.). The firm served as Lead Counsel on behalf of the State Universities Retirement System of Illinois in a lawsuit against General Electric Co. and certain of its officers. A settlement in the amount of \$40 million was reached with all the parties. The court approved the settlement on September 6, 2013.

*In re UCAR International, Inc. Securities Litigation*, No. 98-cv-0600 (D. Conn.). The firm represented the Florida State Board of Administration as the lead plaintiff in a securities claim arising from an accounting restatement. The case settled for \$40 million cash and the requirement that UCAR appoint an independent director to its board of directors. The settlement was approved in 2000.

*In re American Home Mortgage Securities Litigation*, No. 07-MD-1898 (E.D.N.Y.). As co-lead counsel representing the Oklahoma Police Pension & Retirement System, the firm negotiated a \$37.25 million settlement – including \$4.75 million from auditors Deloitte & Touche and \$8.5 million from underwriters – despite the difficulties American Home's bankruptcy posed to asset recovery. The plaintiffs contended that American Home had failed to write down the value of certain loans in its portfolio, which declined substantially in value as the credit markets unraveled. The settlement received final approval in 2010 and was distributed in 2011.

*In re Avant, Securities Litigation*, No. 96-cv-20132 (N.D. Cal.). Avant!, a software company, was charged with securities fraud in connection with its alleged theft of a competitor's software code, which Avant! incorporated into its flagship software product. Serving as lead counsel, the firm recovered \$35 million for the class. The recovery resulted in eligible class claimants receiving almost 50% of their losses after attorneys' fees and expenses.

*In re SmartForce PLC d/b/a SkillSoft Securities Litigation*, No. 02-cv-544 (D.N.H.). Representing the Teachers' Retirement System of Louisiana as co-lead plaintiff, Berman Tabacco negotiated a \$30.5 million partial settlement with SkillSoft. Subsequently, the firm also negotiated an \$8 million cash settlement with Ernst & Young Chartered Accountants and Ernst & Young LLP, SkillSoft's auditors at the time. The settlements received final approval in September 2004 and November 2005, respectively.

*In re Sykes Enterprises, Inc. Securities Litigation*, No. 8:00-cv-212-T-26F (M.D. Fla.). The firm represented the Florida State Board of Administration as co-lead plaintiff. Sykes Enterprises was accused of using improper means to match the company's earnings with Wall Street's expectations. The firm negotiated a \$30 million settlement.

*In re Valence Securities Litigation*, No. 95-cv-20459 (N.D. Cal.). Berman Tabacco served as co-lead counsel in this action against a Silicon Valley-based company for overstating its performance and the

development of an allegedly revolutionary battery technology. After the Ninth Circuit reversed the district court's decision to grant summary judgment in favor of defendants, the case settled for \$30 million in Valence common stock.

*In re Sybase II, Securities Litigation*, No. 98-cv-0252-CAL (N.D. Cal.). Sybase was charged with inflating its quarterly financial results by improperly recognizing revenue at its wholly owned subsidiary in Japan. Acting as co-lead counsel, the firm obtained a \$28.5 million settlement.

*In re Force Protection Inc. Securities Litigation*, No. 08-cv-845 (D.S.C.). As co-lead counsel representing the Laborers' Annuity and Benefit System of Chicago, the firm negotiated a \$24 million settlement in a securities class action against armored vehicle manufacturer Force Protection, Inc. The settlement addressed the claims of shareholders who accused the company and its top officers of making false and misleading statements regarding financial results, failing to maintain effective internal controls over financial reporting and failing to comply with government contracting standards.

*In re Zynga Inc. Securities Litigation*, No. 12-cv-04007 (N.D. Cal.). As co-lead counsel, the firm negotiated a \$23 million recovery to settle claims against the company and certain of its officers. The case alleged that the company and its highest-level officers falsely touted accelerated bookings and aggressive growth through 2012, while concealing crucial information that Zynga was experiencing significant declines in bookings for its games and upcoming Facebook platform changes that would negatively impact Zynga's bookings. Then, while Zynga's stock was trading at near a class-period high, defendants obtained an early release from the IPO lock-up on their shares to enable them and a few other insiders to reap over \$593 million in proceeds in a secondary offering of personally held shares. The secondary offering was timed just three months before Zynga announced its dismal Q2 2012 earnings at the end of the class period, which caused Zynga's stock to plummet. The court granted final approval of the settlement in February 2016.

*In re ICG Communications Inc. Securities Litigation*, No. 00-cv-1864 (D. Colo.). As co-lead counsel representing the Strategic Marketing Analysis Fund, the firm negotiated an \$18 million settlement with ICG Communications Inc. The case alleged that ICG executives misled investors and misrepresented growth, revenues and network capabilities. The court granted final approval of the settlement in January 2007.

*In re Critical Path, Inc. Securities Litigation*, No. 01-cv-0551 (N.D. Cal.). The firm negotiated a \$17.5 million recovery to settle claims of accounting improprieties at a California software development company. Representing the Florida State Board of Administration, the firm was able to obtain this recovery despite difficulties arising from the fact that Critical Path teetered on the edge of bankruptcy. The settlement was approved in June 2002.

*Koch v. Healthcare Services Group, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.). As lead counsel representing the Utah Retirement Systems in a class action brought on behalf of investors in Healthcare Services Group, Inc., one of the largest providers of housekeeping and laundry services to hospitals and other healthcare service organization, the firm negotiated a \$16.8 million settlement. The Court granted final approval of the settlement on January 12, 2022.

*In re Sunrise Senior Living, Inc. Securities Litigation*, No. 07-cv-00102 (D.D.C.). A federal judge granted final approval of a \$13.5 million settlement between Oklahoma Firefighters Pension and Retirement System, represented by Berman Tabacco, and Sunrise Senior Living Inc.

*Hallet v. Li & Fung, Ltd.*, No. 95-cv-08917 (S.D.N.Y.). Cyrk Inc. was charged with misrepresenting its financial results and failing to disclose that its largest customer was ending its relationship with the company. In 1998, Berman Tabacco successfully recovered more than \$13 million for defrauded investors.

*In re Warnaco Group, Inc. Securities Litigation*, No. 00-cv-6266 (S.D.N.Y.). Representing the Fresno County Employees' Retirement Association as co-lead plaintiff, the firm negotiated a \$12.85 million settlement with several current and former top officers of the company.

*Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc., et al.*, No. 2:20-cv-10490 (E.D. Mich.). As lead counsel representing sole Lead Plaintiff Oklahoma Police Pension and Retirement System in this securities fraud class action lawsuit against Sterling Bancorp, Inc., certain of its current and former officers and directors, and the underwriters for the Company's initial public offering, the firm negotiated a settlement of all claims in exchange for \$12.5 million, which was approved by the court on September 23, 2021.

*Gelfer v. Pegasystems, Inc.*, No. 98-cv-12527 (D. Mass.). As co-lead counsel, Berman Tabacco negotiated a settlement valued at \$12.5 million, \$4.5 million in cash and \$7.5 million in shares of the company's stock or cash, at the company's option.

*Sand Point Partners, L.P. v. Pediatrix Medical Group, Inc.*, No. 99-cv-6181 (S.D. Fla.). Berman Tabacco represented the Florida State Board of Administration, which was appointed co-lead plaintiff along with several other public pension funds. The complaint accused Pediatrix of Medicaid billing fraud, claiming that the company illegally increased revenue and profit margins by improperly coding treatment rendered. The case settled for \$12 million on the eve of trial in 2002.

*In re Molten Metal Technology Inc. Securities Litigation*, No. 1:97-cv-10325 (D. Mass.), and *Axler v. Scientific Ecology Group, Inc.*, No. 1:98-cv-10161 (D. Mass.). As co-lead counsel, Berman Tabacco played a key role in settling the actions after Molten Metal and several affiliates filed a petition for bankruptcy reorganization in Massachusetts. The individual defendants and the insurance carriers in Molten Metal agreed to settle for \$11.91 million. After the bankruptcy, a trustee objected to the use of insurance proceeds for the settlement. The parties agreed to pay the trustee \$1.325 million of the Molten Metal settlement. The parties also agreed to settle claims against Scientific Ecology Group for \$1.25 million, giving Molten Metal's investors \$11.835 million.

*In re CHS Electronics, Inc. Securities Litigation*, No. 99-8186-CIV (S.D. Fla.). The firm helped obtain an \$11.5 million settlement for co-lead plaintiff Warburg, Dillon, Read, LLC (now UBS Warburg).

*In re Summit Technology Securities Litigation*, No. 96-cv-11589 (D. Mass.). Berman Tabacco, as co-lead counsel, negotiated a \$10 million settlement for the benefit of the class.

*In re Exide Corp. Securities Litigation*, No. 98-cv-60061 (E.D. Mich.). Exide was charged with having altered its inventory accounting system to artificially inflate profits by reselling used, outdated or unsuitable batteries as new ones. As co-lead counsel for the class, Berman Tabacco recovered more than \$10 million in cash for class members.

*In re Fidelity/Micron Securities Litigation*, No. 95-cv-12676 (D. Mass.). The firm recovered \$10 million in cash for Micron investors after a Fidelity Fund manager touted Micron while secretly selling the stock.

*In re Par Pharmaceutical Securities Litigation*, No. 06-cv-03226 (D.N.J.). As counsel for court-appointed plaintiff, the Louisiana Municipal Police Employees' Retirement System, Berman Tabacco obtained an \$8.1 million settlement from the company and its former CEO and CFO, which the court approved in January 2013. The case alleged that the company had misled investors about its accounting practices, including overstatement of revenues.

*In re Interspeed, Inc. Securities Litigation*, No. 00-cv-12090-EFH (D. Mass.). Berman Tabacco served as co-lead counsel and negotiated a \$7.5 million settlement on behalf of the class. The settlement was reached in an early stage of the proceedings, largely as a result of the financial condition of Interspeed and the need to salvage a recovery from its available assets and insurance.

*In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.). Berman Tabacco served as co-lead counsel for court-appointed lead plaintiff Plymouth County Retirement Association and negotiated a \$7 million settlement on behalf of the class. The court granted final approval of the settlement on March 2, 2022.

*In re Abercrombie & Fitch Co. Securities Litigation*, No. M21-83 (S.D.N.Y.). As a member of the executive committee in this case, the firm recovered more than \$6 million on behalf of investors. The case alleged that the clothing company misled investors with respect to declining sales, which affected the company's financial condition. The court granted final approval of the settlement in January 2007.

*In re Digital Domain Media Group, Inc. Securities Litigation*, No. 12-14333-CIV (S.D. Fla.). As co-lead counsel, Berman Tabacco obtained a \$5.5 million settlement on behalf investors of Digital Domain Media Group, Inc. ("DDMG") that was approved by both bankruptcy court and the Southern District of Florida. The lead plaintiffs alleged that DDMG, a digital production company that was forced to file for bankruptcy in September 2012, less than 10 months after its initial public offering ("IPO"), misled investors in documents filed with the U.S. Securities and Exchange Commission as part of the IPO and in other statements made throughout the class period. Among other things, the lawsuit alleged that the defendants misled the public about DDMG's ability to raise capital and fund its operations, falsely reassuring investors about the company's ability to meet operating expenses while it "burned" cash at a rate that threatened its viability. In fact, according to a September 18, 2012 article in the Palm Beach Post, DDMG had difficulties meeting payroll as far back as 2010. According to the same article, then-Chairman and CEO John C. Textor "himself predicted a 'train wreck' in an email to an investor in early 2010."

*In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.). As counsel to court-appointed bondholder representatives, the County of Fresno, California and the Fresno County Employees' Retirement Association, Berman Tabacco helped a team of lawyers representing the lead plaintiff, the New York State Common Retirement Fund, obtain settlements worth more than \$6.13 billion.

*Daccache, et al. v. Raymond James Financial, Inc., et al.*, No. 16-cv-21575 (S.D. Fla.); *Shaw et al. v. Raymond James Financial, Inc., et al.*, No. 5:16-cv-00129-GWC (D. Vt. May 17, 2016). Berman Tabacco served on the Plaintiffs' Steering Committee in this RICO class action brought on behalf of investors in limited partnerships associated with the Jay Peak ski resort in Vermont. Plaintiffs, foreign nationals whose investments were made through the federal "EB-5 Immigrant Investor Program," alleged that over \$200



million in investor funds were misappropriated and/or otherwise misused in an elaborate, Ponzi-like scheme. Defendants' scheme was revealed in April 2016, when the SEC announced multiple securities fraud charges and an asset freeze against Jay Peak and related business entities, the resort's Florida-based owner and the resort's principal officer. Plaintiffs alleged that those individuals and entities, as well as certain financial institutions and their employees, devised and executed a complex money laundering scheme wherein investor funds were improperly transferred from escrow accounts to investment accounts that were controlled by Jay Peak's owner and used for purposes other than those specified in the limited partnership documents. Among other things, plaintiffs alleged the improper commingling of investor funds and the misappropriation of more than \$50 million in investor funds by Jay Peak's owner for his personal use. Plaintiffs sought recovery under Florida's RICO Act and also asserted claims for common law fraud, breach of fiduciary duty, negligence, civil conspiracy, and breach of contract. On April 13, 2017, Defendant Raymond James & Associates, Inc. agreed to a \$150 million settlement, which was approved on June 30, 2017.

## ANTITRUST PRACTICE

Berman Tabacco has a national reputation for our work prosecuting antitrust class actions involving price-fixing, market allocation agreements, patent misuse, monopolization and group boycotts among other types of anticompetitive conduct. Representing clients ranging from Fortune 500 companies and public pension funds to individual consumers, the experienced senior attorneys in our Antitrust Practice Group have engineered substantial settlements and changed business practices of defendant companies, recovering more than \$1 billion for our clients overall.

Berman Tabacco has played a major role in the prosecution of numerous landmark antitrust cases. For example, the firm was lead counsel in the Toys "R" Us litigation, which developed the antitrust laws with respect to "hub and spoke" conspiracies and resulted in a \$56 million settlement. Berman Tabacco brought the first action centered on so-called "reverse payments" between a brand name drug maker and a generic drug maker, resulting in an \$80 million settlement from the drug makers, which had been accused of keeping a generic version of their blood pressure medication off the market.

The firm's victories for victims of antitrust violations have come at the trial court level and also through landmark appellate court victories, which have contributed to shaping private enforcement of antitrust law. For example, in the Cardizem CD case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a *per se* unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

In the firm's case against diamond giant De Beers, the Third Circuit, sitting *en banc*, vacated an earlier panel decision and upheld the certification of a nationwide settlement class, removing the last obstacle to final approval of an historic \$295 million settlement. The Third Circuit's important decision provides a roadmap for obtaining settlement class certification in complex, nationwide class actions involving laws of numerous states.

In 2016, the firm won reversal of a grant of summary judgment for defendant automakers in a group boycott-conspiracy case involving the export of new motor vehicles from Canada to the U.S. The California Court of Appeal found that plaintiffs had presented evidence of “patently anticompetitive conduct” with evidence gathered in the pre-trial phase, which was powerful enough to go to a jury. The ruling is a rare example of an appellate court analyzing and reversing a trial court’s evidentiary rulings to find evidence of a conspiracy.

Today the firm currently represents clients in significant antitrust class actions around the country, including actively representing major public pension funds in prosecuting price-fixing in the financial derivatives and commodities markets in the Euribor and Yen LIBOR actions and the Foreign Currency Exchange Rate action.

While the majority of antitrust cases settle, our attorneys have experience taking antitrust class actions to trial. Because we represent only plaintiffs in antitrust matters, we do not have the conflicts of interest of other national law firms that represent both plaintiffs and defendants. Our experience also allows us to counsel medium and larger-sized corporations considering whether to participate as a class member or opt-out and pursue an individual strategy.

## RESULTS

### ANTITRUST SETTLEMENTS

Over the past nearly three decades, Berman Tabacco has actively prosecuted scores of complex antitrust cases that led to substantial settlements for its clients. These include:

*In re NASDAQ Market-Makers Antitrust Litigation*, No. 94-cv-3996 (S.D.N.Y.). The firm played a significant role in one of the largest antitrust settlements on record in a case that involved alleged price-fixing by more than 30 NASDAQ Market-Makers on about 6,000 NASDAQ-listed stocks over a four-year period. The settlement was valued at nearly \$1 billion.

*In re Foreign Currency Conversion Fee Antitrust Litigation*, MDL No. 1409 (S.D.N.Y.). Berman Tabacco, as head of discovery against defendant Citigroup Inc., played a key role in reaching a \$336 million settlement. The agreement settled claims that the defendants, which include the VISA, MasterCard and Diners Club networks and other leading bank members of the VISA and MasterCard networks, violated federal and state antitrust laws in connection with fees charged to U.S. cardholders for transactions effected in foreign currencies.

*In re DRAM Antitrust Litigation*, No. M:02-cv-01486 (N.D. Cal.). As liaison counsel, the firm actively participated in this multidistrict litigation, which ultimately resulted in significant settlements with some of the world’s leading manufacturers of Dynamic Random Access Memory (DRAM) chips. The defendant chip-makers allegedly conspired to fix prices of the DRAM memory chips sold in the United States during the class period. The negotiated settlements totaled nearly \$326 million.

*Sullivan v. DB Investments, Inc.*, No. 04-02819 (D.N.J.). Berman Tabacco represented a class of diamond resellers, such as diamond jewelry stores, in this case alleging that the De Beers group of companies unlawfully monopolized the worldwide supply of diamonds in a scheme to overcharge resellers and

consumers. In May 2008, a federal judge approved the settlement, which included a cash payment to class members of \$295 million, an agreement by De Beers to submit to the jurisdiction of the United States court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the worldwide supply of diamonds in the future. This case is significant not only because of the large cash recovery but also because previous efforts to obtain jurisdiction over De Beers in both private and government actions had failed. On August 27, 2010, the United States Court of Appeals for the Third Circuit agreed to hear arguments over whether to uphold the district court's certification of the settlement class. By agreeing to schedule an *en banc* appeal before the full court, the Third Circuit vacated a July 13, 2010 ruling by a three-judge panel of the appeals court that, in a 2-to-1 decision, had ordered a remand of the case back to the district court, which may have required substantial adjustments to the original settlement. On February 23, 2011, the Third Circuit, sitting *en banc*, again heard oral argument from the parties. On December 20, 2011, the *en banc* Third Circuit handed down its decision affirming the district court in all respects.

*In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.). As co-lead class counsel for Direct Purchaser Plaintiffs ("DPPs") in this multidistrict antitrust litigation, the firm achieved settlements totaling \$139.3 million. The litigation arose from an alleged worldwide conspiracy to fix prices of lithium-ion rechargeable batteries ("LiBs"). LiBs are components of LiB camcorders, digital cameras and laptop computers. The alleged conspiracy involved some of the largest companies in the world—Sony, Samsung SDI, Panasonic, Sanyo, LG Chem, Toshiba, Hitachi Maxell and NEC Corp. The lawsuit alleges that defendants participated in a conspiracy to fix the prices of LiBs, which affected the prices paid for the batteries and certain products in which the batteries are used. Plaintiffs successfully defeated multiple motions to dismiss involving complex issues of antitrust standing and the pleading of conspiracy allegations. Berman Tabacco and the team negotiated multiple settlements totaling \$139.3 million. The court granted final approval on May 16, 2018.

*In re Sorbates Direct Purchaser Antitrust Litigation*, No. C 98-4886 CAL (N.D. Cal.). The firm served as lead counsel alleging that six manufacturers of Sorbates, a food preservative, violated antitrust laws through participation in a worldwide conspiracy to fix prices and allocations to customers in the United States. The firm negotiated a partial settlement of \$82 million with four of the defendants in 2000. Following intensive pretrial litigation, the firm achieved a further \$14.5 million settlement with the two remaining defendants, Japanese manufacturers, in 2002. The total settlement achieved for the class was \$96.5 million.

*In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). The firm acted as co-lead counsel and chief trial counsel. Representing both a national class and the State of Florida, the firm helped secure settlements from defendants Bausch & Lomb and the American Optometric Association before trial and from Johnson & Johnson after five weeks of trial. The settlements were valued at more than \$92 million and also included significant injunctive relief to make disposable contact lenses available at more discount outlets and more competitive prices.

*In re Cardizem CD Antitrust Litigation*, No. 99-01278 (E.D. Mich.). In another case involving generic drug competition, Berman Tabacco, as co-lead counsel, helped secure an \$80 million settlement from French-German drug maker Aventis Pharmaceuticals and the Andrx Corporation of Florida. The payment to consumers, state agencies and insurance companies settled claims that the companies conspired to prevent the marketing of a less expensive generic version of the blood pressure medication Cardizem CD. The state attorneys general of New York and Michigan joined the case in support of the class. The firm achieved a significant appellate victory in a first of its kind ruling that the brand name drugmaker's payment

of \$40 million per year for the generic company to delay bringing its generic version of blood-pressure medication Cardizem CD to market constituted an agreement not to compete that is a *per se* violation of the antitrust laws.

*In re Toys "R" Us Antitrust Litigation*, MDL No. 1211 (E.D.N.Y.). Berman Tabacco negotiated a \$56 million settlement to answer claims that the retailer violated laws by colluding to cut off or limit supplies of popular toys to stores that sold the products at lower prices. The case developed the antitrust laws with respect to a "hub and spoke" conspiracy, where a downstream power seller coerces upstream manufacturers to the detriment of consumers. One component of the settlement required Toys "R" Us to donate \$36 million worth of toys to needy children throughout the United States over a three-year period.

*In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, MDL No. 05-1671 (C.D. Cal.). Berman Tabacco, as co-lead counsel, negotiated a \$48 million settlement with Union Oil Company and Unocal. The agreement settled claims that the defendants manipulated the California gas market for summertime reformulated gasoline and increased prices for consumers. The noteworthy settlement delivered to consumers a combination of clean air benefits and funding for alternative fuel research.

*In re Abbott Laboratories Norvir Antitrust Litigation*, Nos. 04-1511, 04-4203 (N.D. Cal.). Berman Tabacco acted as co-lead counsel in a case on behalf of indirect purchasers alleging that the defendant pharmaceutical company engaged in an illegal leveraged monopoly in the sale of its AIDS boosting drug known as Norvir (or Ritanovir). Plaintiffs were successful through summary judgment, including the invalidation of two key patents based on prior art, but were reversed on appeal in the Ninth Circuit as to the leveraged monopoly theory. The case settled for \$10 million, which was distributed net of fees and costs on a *cy pres* basis to 10 different AIDS research and charity organizations throughout the United States.

*Automotive Refinishing Paint Antitrust*, J.C.C.P. No. 4199 (Cal. Super. Ct.). In this class action, indirect purchaser-plaintiffs brought suit in California State Court against five manufacturers of automotive refinishing coatings and chemicals alleging that they violated California law by unlawfully conspiring to fix paint prices. Settlements were reached with all defendants totaling \$9.4 million, 55% of which was allocated among an End-User Class consisting of consumers and distributed on a *cy pres*, or charitable, basis to thirty-nine court-approved organizations throughout California, and the remaining 45% of which was distributed directly to a Refinishing Class consisting principally of auto-body shops located throughout California.

## CONSUMER PRACTICE

With almost 40 years of class action litigation experience, Berman Tabacco is committed to bringing justice to the victims of fraudulent and abusive practices. Over the years, the firm has prosecuted and obtained recoveries for consumers against various business such as banks, computer electronics and software companies, brokers and product manufacturers.

Most recently, Berman Tabacco is seeking to apply its extensive complex class action experience to fight against unlawful and predatory lending practices. Berman Tabacco currently serves as lead counsel in several class actions brought on behalf of individuals arguing that their need for short-term cash has been exploited by illegal online payday lending schemes. The cases allege that payday lenders issued loans in

the name of sham companies established by Native American tribes, including American Web Loan, Plain Green and Great Plains Lending, in a brazen attempt to dodge usury laws and charge unlawful triple-digit interest rates.

In addition to recovering monies for consumers, the firm has obtained ground-breaking decisions for the benefit of consumers, including in cases against Wells Fargo, Morgan Stanley and Kwikset.

## RESULTS

### CONSUMER SETTLEMENTS

Examples of the firm's settlements include:

*In re Think Finance, LLC, et al.*, No. 17-33964-hdh11 (Bankr. N.D. Tex.). Berman Tabacco played a pivotal role in securing a partial settlement worth approximately \$56 million to date on behalf of consumers who took out unlawful, high-interest loans issued in the name of Native American-affiliated online lenders, Plain Green and Great Plains Lending. Plaintiffs allege that non-tribal entities and individuals, including a Texas-based payday lender called Think Finance, improperly attempted to use tribal sovereign immunity as a shield for their unlawful, triple-digit lending enterprise. The partial settlement represents a significant achievement given that the bulk of the recovery was secured through Chapter 11 bankruptcy proceedings that Think Finance initiated while litigation was pending against it, a step that typically leads to a substantially limited, if any, recovery for plaintiffs. Berman Tabacco continues to pursue claims against the non-settling defendants involved in the unlawful lending enterprise.

*McLaughlin v. Wells Fargo Bank, N.A., d/b/a Wells Fargo Home Mortgage*, No. 3:15-CV-02904 (N.D. Cal.). Berman Tabacco served as local counsel for a class of borrowers with mortgages held and serviced by Wells Fargo in an action alleging that the bank's payoff statements violated the Truth in Lending Act ("TILA") as they failed to disclose insurance claim funds. Plaintiffs achieved a precedent-setting opinion holding that TILA requires the bank to include insurance claim funds in its mortgage payoff statements. *See McLaughlin v Wells Fargo Bank NA*, No. 3:15-cv-02904-WHA, 2015 WL 10889993 (N.D. Cal. Oct. 29, 2015). The case settled for 88% of the total maximum statutory damages available under TILA. The settlement also requires Wells Fargo to disclose insurance claim funds on all of its payoff statements going forward.

*Trabakoolas v. Watts Water Technologies, Inc.*, No. 4:12-Cv-01172-Ygr (N.D. Cal.). Berman Tabacco served on the plaintiffs' steering committee and served as liaison counsel for this successful product liability design defect class action involving toilet nut connectors. Plaintiffs alleged a toilet connector manufactured by Watts Water Technologies, Inc., which had been installed in approximately 25 percent of homes and commercial properties built in the U.S. since the year 2000, suffered from a design defect. This defect could result in water flowing into the home, potentially causing catastrophic water damage. The settlement provided a fund of \$23 million to reimburse class members who experienced property damage and to pay for replacement of toilet nut connectors for those with allegedly defective parts.

*Roskind v. Morgan Stanley Dean Witter & Co.*, 80 Cal. App. 4th 345 (Cal. App. 1st Dist. 2000). Berman Tabacco obtained a landmark ruling from the California Court of Appeal, holding that federal law does not preempt investors from bringing unfair business practices claims under the Business & Professions Code of

California. Defendant brought this matter to the U.S. Supreme Court but the firm was successful in upholding this ruling. See *Roskind v. Morgan Stanley Dean Witter & Co.*, 2000 Cal. Lexis 6583 (Aug. 16, 2000) (petition for review denied); *Morgan Stanley Dean Witter & Co. v. Roskind*, 531 U.S. 1119 (2001) (writ of certiorari denied).

*Carlin v. DairyAmerica, Inc.*, No. 1:09-cv-00430 (E.D. Cal.). Berman Tabacco, as member of the Interim Executive Committee and as liaison counsel, obtained a \$40 million on behalf of a class of dairy farmers who sold raw milk according to prices set by the federal government. Plaintiffs claimed that DairyAmerica, the nation's largest marketer of non-fat dry milk and a California-based milk processing firm, California Dairies, conspired to inflate their own profits at the expense of dairy farmers by misreporting critical data used by the government to set raw milk prices.

*Kwikset Corp. v. Superior Court of Orange County; James Benson, Real Parties in Interest*, No. S171845 (Cal.). Berman Tabacco represented three union clients as *amicus curiae* before the California Supreme Court in this consumer action alleging that Kwikset falsely labeled products as "Made in the USA." The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to consumers and became one of the leading opinions regarding standing under California's Unfair Competition Law.

## LEADERSHIP ROLES

The firm currently acts as lead or co-lead counsel in high-profile securities, antitrust and consumer class actions and also represents investors in individual actions, ERISA cases and derivative cases.

The following is a representative list of active class action cases in which the firm serves as lead or co-lead counsel or as executive committee member.

- > *In re Inotiv, Inc. Securities Litigation*, No. 4:22-CV-045-PPS-JEM (N.D. Ind.). Lead counsel for court-appointed lead plaintiff Oklahoma Police Pension and Retirement System.
- > *Hayden, et al. v. Portola Pharmaceuticals, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.). Lead counsel for court-appointed lead plaintiff Alameda County Employees' Retirement Association.
- > *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 18-cv-04993-NRB (S.D.N.Y.). Lead counsel for court-appointed lead plaintiff Utah Retirement Systems.
- > *In re Apple Processor Litigation*, No. 18-cv-00147-EJD (N.D. Cal.). Co-lead counsel for a proposed nationwide class of purchasers of Apple devices, such as iPhones, iPads and Apple TVs.
- > *Teamsters Local 443 Health Services & Ins. Plan, et al. v. Chou (AmerisourceBergen Corp.)*, No. 2019-0816 (Del. Ch.). Counsel for San Antonio Fire & Police Pension Fund in derivative action involving AmerisourceBergen Corporation, which commenced by the issuance of a books and records demand, *San Antonio Fire & Police Pension Fund v. AmerisourceBergen Corp.*, C.A. No. 2018-0551 (Del. Ch.).
- > *In re UnitedHealth Section 220 Litigation*, C.A. No. 0681-TMR (Del. Ch.). Co-lead counsel representing plaintiff Amalgamated Bank.

- > *Oliver, et al. v. American Express Co., et al.*, No. 1:19-cv-00566-NGG-SMG (S.D.N.Y.). Co-Chairs of Plaintiffs' Executive Committee of interim class counsel in antitrust class action.
- > *Norfolk County Retirement System v. Smith (Sinclair Broadcast Group Derivative Action)*, No. 18-cv-03952 (D. Md.). Plaintiffs' Counsel representing Norfolk County Retirement System in this shareholder derivative action.
- > *Sullivan v. Barclays PLC*, No. 13-cv-2811 (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System.
- > *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.). Counsel for plaintiffs and represents California State Teachers' Retirement System and Oklahoma Police Pension and Retirement System.
- > *In re European Government Bonds Antitrust Litigation*, No. 19-cv-2601 (S.D.N.Y.). Interim Co-Lead Counsel and Counsel for plaintiff San Bernardino County Employees' Retirement Association.
- > *In re California Gasoline Spot Market Antitrust*, No. 3:20-cv-03131-JSC (N.D. Cal.). Chair of Plaintiffs' Executive Committee and counsel for plaintiffs.

## TRIAL EXPERIENCE

The firm has significant experience taking class actions to trial. Over the years, Berman Tabacco's attorneys have tried cases against pharmaceutical companies in courtrooms in New York and Boston, a railroad conglomerate in Delaware, one of the nation's largest trustee banks in Philadelphia, a major food retailer in St. Louis and the top officers of a failed New England bank.

The firm has been involved in more trials than most of the firms in the plaintiffs' class action bar. Our partners' trial experience includes:

- > *In re PHC, Inc. Shareholder Litigation*, No. 1:11-cv-11049-PBS (D. Mass.). After two-week trial in 2017 in this breach of fiduciary class action, jury verdict for plaintiffs but no damage award. Following post-trial briefing, court exercised its equitable power and ordered \$3 million award by defendant.
- > *Conway v. Licata*, No. 13-12193 (D. Mass.). 2015 jury verdict for defendants (firm's client) after two-week trial on the vast majority of counts, awarding the plaintiffs a mere fraction of the damages sought. Jury also returned a verdict for defendants on one of their counterclaims.
- > *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.). This case settled for \$50 million after the jury was empaneled.
- > *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.). Firm attorneys conducted three weeks of a jury trial against final defendant, PwC, before a settlement was reached for \$8.25 million. The total settlement amount was \$23.25 million.
- > *In re Disposable Contact Lens Antitrust Litigation*, MDL No. 1030 (M.D. Fla.). Settled for \$60 million with defendant Johnson & Johnson after five weeks of trial.

- > *Gutman v. Howard Savings Bank*, No. 2:90-cv-02397 (D.N.J.). Jury verdict for plaintiffs after three weeks of trial in individual action. The firm also obtained a landmark opinion allowing investors to pursue common law fraud claims arising out of their decision to retain securities as opposed to purchasing new shares. See *Gutman v. Howard Savings Bank*, 748 F. Supp. 254 (D.N.J. 1990).
- > *Hurley v. Federal Deposit Insurance Corp.*, No. 88-cv-940 (D. Mass.). Bench verdict for plaintiffs.
- > *Levine v. Fenster*, No. 2-cv-895131 (D.N.J.). Plaintiffs' verdict of \$3 million following four-week trial.
- > *In re Equitec Securities Litigation*, No. 90-cv-2064 (N.D. Cal.). Parties reached a \$35 million settlement at the close of evidence following five-month trial.
- > *In re ICN/Viratek Securities Litigation*, No. 87-cv-4296 (S.D.N.Y.). Hung jury with 8-1 vote in favor of plaintiffs; the case eventually settled for over \$14.5 million.
- > *In re Biogen Securities Litigation*, No. 94-cv-12177 (D. Mass.). Verdict for defendants.
- > *Upp v. Mellon*, No. 91-5219 (E.D. Pa.). In this bench trial, tried through verdict in 1992, the court found for a class of trust beneficiaries in a suit against the trustee bank and ordered disgorgement of fees. The Third Circuit later reversed based on lack of jurisdiction.



## OUR ATTORNEYS

### Partners

#### DANIEL E. BARENBAUM



A partner in the firm's San Francisco office and member of the firm's Executive Committee, Daniel Barenbaum focuses his practice on securities litigation. Mr. Barenbaum was one of the lead attorneys representing the California Public Employees' Retirement System in the landmark case brought against the major credit rating agencies (Standard & Poor's and Moody's) in connection with the marketing of one of the largest, most complex structured-finance securities ever devised. The case settled for a total of \$255 million. He also represented co-lead plaintiff for the common stock class

Massachusetts Pension Reserves Investment Management Board in a case that settled for \$170 million against Fannie Mae; the complaint centered on misrepresentations regarding the amount of subprime and Alt-A on the company's books and the lack of adequate risk controls used and disclosed to manage those types of loans. Further, Mr. Barenbaum regularly represents institutional investor clients in matters involving multi-party issues/disputes and complex discovery (for documents, individual depositions, and institutional "person most knowledgeable" depositions of key executives), including matters where they stand to collect millions of dollars as potential beneficiaries of certain government agencies' investigations or civil actions.

Mr. Barenbaum is one of the lead partners for the team representing the sole Lead Plaintiff Alameda County Employees' Retirement Association in *Hayden v. Portola Pharmaceuticals Inc., et al.*, No. 3:20-cv-00367-VC (N.D. Cal.)—securities litigation brought on behalf of investors in Portola Pharmaceuticals, Inc., a biopharmaceutical company that develops and commercializes treatments for thrombosis and other hematologic diseases. Portola's primary product is Andexxa, a reversal drug for apixaban- and rivaroxaban-treated patients with life-threatening or uncontrolled bleeding. The action alleges that, between January 8, 2019 and February 26, 2020, defendants issued materially false and misleading statements related to the sales of Andexxa. Lead Plaintiff's complaint alleges violations of Sections 10(a) and 20(a) of the Securities Exchange Act of 1934, and Sections 11, 12(a)(2), and 15 of the Securities Act of 1933. The company is alleged to have made material misrepresentations and related omissions about (1) its compliance with GAAP, specifically as to recognizing revenue under ASC-606 and under-reserving for returns given that Portola's product Andexxa had a short-shelf-life and the company therefore offered a generous return policy on all expired product; and (2) customer demand and utilization of Andexxa for those that purchased it (e.g., hospital and hospital-system pharmacies), both as to depth (regularity of usage) and breadth (types of bleeds prescribed for). On January 20, 2022, the Court denied Defendants' motion to dismiss Lead Plaintiff's Third Amended Consolidated Class Action Complaint. In June 2022, after fully briefing the motion for class certification, the parties reached a settlement in the amount of \$17.5 million, which was approved by the court on March 6, 2023.

Mr. Barenbaum also regularly represents institutional investor clients in matters involving multi-party issues/disputes and complex discovery (for documents, individual depositions, and institutional "person

most knowledgeable” depositions of key executives), including matters where they stand to collect millions of dollars as potential beneficiaries of certain government agencies’ investigations or civil actions.

Mr. Barenbaum has been an integral member of the firm’s litigation teams, such as for *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), where the firm acted as co-lead counsel representing the Massachusetts Laborers’ Pension Fund for an alleged accounting fraud that originated at the company’s foreign subsidiary. Mr. Barenbaum was also a key member of the team that developed the firm’s individual-case strategy necessitated by the Supreme Court’s decision in *Morrison v. National Australia Bank, Ltd.*, 561 U.S. 247, 130 S. Ct. 2869 (2010), in *In re BP, p.l.c. Securities Litigation*, No. 10-md-2185 (S.D. Tex.). Mr. Barenbaum previously worked to prepare for trial *In re MetLife Demutualization Litigation*, No. 00-Civ-2258 (E.D.N.Y.) – a case before the Hon. Jack Weinstein that settled after the jury was empaneled.

Mr. Barenbaum was formerly an associate and partner at Lief, Cabraser, Heimann & Bernstein, LLP where he was a member of the securities practice group and actively litigated, among other cases, two state-court individual securities actions involving large-scale accounting fraud. The first was against McKesson HBOC, where the firm represented two Merrill Lynch mutual funds and that alleged state law claims; the case settled days before trial was to commence. The second involved Peregrine, where the firm represented individual directors whose company had been acquired by Peregrine and whose options and shares had been converted to Peregrine shares. Mr. Barenbaum worked on all facets of litigation in those cases, from dispositive motions to discovery to appeals to oral argument.

At Lief Cabraser, Mr. Barenbaum was a supervising partner on the firm’s Vioxx injury cases, where the firm had a leadership role in the large multidistrict litigation. In that role, Mr. Barenbaum oversaw service pursuant to the Hague Convention of hundreds of Vioxx complaints against foreign (U.K) defendants and also acted as the primary point of contact for all foreign co-counsel. Prior to that, Mr. Barenbaum was the lead associate on the Sulzer Hip Implant injury cases, where he oversaw the service of hundreds of Sulzer complaints against foreign defendants in several countries (including Switzerland).

Mr. Barenbaum has been ranked by *Benchmark Litigation* as a *California State Litigation Star* (2020-2023), *San Francisco Local Litigation Star* (2020-2023), and *Noted Star* (2020-2021) in *Plaintiff Work and Securities*. In 2020, *The Legal 500* reported a client’s praise for Mr. Barenbaum stating that he “is top-notch with superb attention to detail when drafting papers, arguing motions and negotiating.” He has also been selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine (2020-2023).

Mr. Barenbaum is the author of *Delineating Covered Class Actions Under SLUSA, Securities Litigation Report* (December-January 2005); co-author of *The Currency of Capitalism With a Social Conscience*, *Financier Worldwide Magazine* (June 2018); *Snap Judgment—S&P Dow Jones and FTSE Russell Indices Ensure That Investors Retain Voting Rights*, *Financier Worldwide Magazine* (October 2017); and *Class Certification of Medical Monitoring Claims in Mass Tort Product Liability Litigation* (Leader Publications, 1999); and Contributing Author to *California Class Actions Practice and Procedures* (Elizabeth J. Cabraser, Editor-in-Chief, 2003). Having successfully obtained his Series 7 and 66 licenses, he was previously registered with the U.S. Securities and Exchange Commission as both a broker-dealer representative and an investment advisor.

Mr. Barenbaum earned his J.D. and M.B.A. degrees from Emory University in 2000, where he received the business school award for *Most Outstanding Academic Accomplishment*. He obtained his B.A. in English from Tufts University in 1994. Mr. Barenbaum was Notes and Comments Editor for 1999-2000 for the Emory Bankruptcy Developments Journal.

Mr. Barenbaum is a member in good standing of the state bar of California, as well as the Northern, Central, Southern and Eastern Districts of California. He is also admitted to the Ninth Circuit of the U.S. Court of Appeals and has been admitted *pro hac vice* in federal and state courts around the country.

## NORMAN BERMAN



In 1982, Norman Berman co-founded Berman Tabacco & Pease LLP, a predecessor to Berman Tabacco. He focuses his practice principally on complex securities and antitrust litigation. He also oversees and coordinates the firm's mergers and acquisitions litigation practice.

During the course of his career, Mr. Berman has litigated numerous cases to successful resolution, recovering many millions of dollars on behalf of defrauded investors. He was among the lead attorneys in the *In re Philip Services Corp. Securities Litigation*; *In re Force Protection Inc. Securities Litigation* and the *ICG Communications, Inc.* class actions. In the case against Philip Services, Mr. Berman assisted in recovering a \$79.75 million settlement in this alleged fraud at a Canadian company, which gave rise to issues of foreign discovery. Until recently, that settlement includes the largest recovery ever obtained from a Canadian auditor. In the class action against Force Protection, he assisted in securing a \$24 million settlement. In ICG Communications, he helped to successfully secure an \$18 million settlement. Co-lead plaintiffs in the case alleged that ICG executives misled investors and misrepresented ICG's growth, revenues and network capabilities throughout the class period.

Mr. Berman was also part of the team that achieved a \$750 million recovery in *Carlson v. Xerox Corp.*, in which the firm represented the Louisiana State Employees' Retirement System as co-lead counsel. Mr. Berman coordinated and conducted discovery, including a massive document review, in that international fraud class action. At the time, the recovery was the 10th largest securities class action settlement in history.

Mr. Berman has acted as trial counsel in a number of successful cases, including *Hurley v. Federal Deposit Insurance Corp.*, where the court entered an \$18 million judgment against the failed First Service Bank for Savings, and *ICN Securities Litigation*, which settled after trial for more than \$14.5 million in 1996. The trial team's work in *ICN* prompted positive judicial comment. Mr. Berman also acted as a senior member of the trial team in the case of *In re Biogen Securities Litigation* and as a member of the trial team in *In re Zila Inc. Securities Litigation*, which settled during trial preparation, *Poughkeepsie Savings Bank v. Morash* and other matters.

Prior to co-founding Berman DeValerio & Pease, LLP in 1982, Mr. Berman was associated with the Boston-based general practice firms Barron & Stadfeld, P.C. and Harold Brown & Associates.

Mr. Berman is *AV Preeminent*<sup>®</sup> rated by *Martindale-Hubbell*<sup>®</sup>, has been designated a *Local Litigation Star in Securities* by *Benchmark Litigation* in 2013-2015 and 2017-2023 and has been named a *Super Lawyer* by *Massachusetts Super Lawyers Magazine* in 2004-2006 and every year since 2009. He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023).

Mr. Berman is co-author of a chapter on expert testimony in a handbook on Massachusetts Evidence published by Massachusetts Continuing Legal Education.

Mr. Berman graduated from Boston University in 1970 and from Suffolk University Law School in 1974. While in law school, he was a member of the Public Defenders Group and, following law school, was an intern with the Massachusetts Defenders Committee.

Mr. Berman is a member in good standing in the state and federal courts of the Commonwealth of Massachusetts and the state of Connecticut and is also admitted to practice before the U.S. Supreme Court, as well as the U.S. District Courts for the District of Arizona, the Northern District of California, the District of Colorado and the Eastern District of Wisconsin.

## STEVEN J. BUTTACAVOLI



A partner in the firm's Boston office, Steven J. Buttacavoli focuses his practice on securities and RICO class action litigation.

At Berman Tabacco, Mr. Buttacavoli was among the partners who represented lead plaintiff Utah Retirement Systems in securities class action litigation, *Koch v. Healthcare Services Group, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.). The case settled for \$16.8 million, which was approved by the court on January 12, 2022. He is also among the partners representing the lead plaintiff Oklahoma Police Pension and Retirement System in *In re Inotiv, Inc. Securities Litigation*, No. 4:22-CV-045-PPS-JEM (N.D. Ind.), a securities fraud class action lawsuit against Inotiv, Inc. and certain of its executive officers on behalf of all persons who acquired publicly traded Inotiv securities between September 21, 2021 and June 13, 2022, inclusive. Plaintiffs allege that defendants materially false and misleading statements and/or material omissions concerning the Company's business, operations, and regulatory compliance policies, specifically related to its acquisition of Envigo RMS, LLC ("Envigo") and the existence of widespread and flagrant violations of federal animal welfare regulations at an Envigo dog breeding facility located in Cumberland, Virginia that led the U.S. Department of Justice to take action to rescue more than 4,000 animals and shutter the facility.

Mr. Buttacavoli was one of the lead attorneys who managed day-to-day litigation activities on behalf of the Ohio Public Employees Retirement System, co-lead plaintiff in *In re BP p.l.c. Securities Litigation*.

Mr. Buttacavoli assisted in drafting the amended complaint, drafting the opposition to defendants' motion to dismiss, drafting plaintiffs' motion for class certification, drafting summary judgment and *Daubert* briefs, and led fact and expert discovery efforts in this matter. The court granted final approval to a \$175 million settlement in BP class action in February 2017. Mr. Buttacavoli represented four Ohio pension funds in connection with the litigation and settlement of *Ohio Public Employees Retirement System, et al. v. BP plc*, No. 12-cv-1837 (S.D. Tex.), a separate, individual action filed against BP in connection with the funds'

purchase of BP ordinary shares on the London Stock Exchange. He also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the General Electric Co., drafted the consolidated amended complaint in a class action against the company, drafted lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court and conducted discovery in that matter, which settled for \$40 million in 2013. Mr. Buttacavoli also helped coordinate lead plaintiff's investigation and analysis of securities fraud claims against the former top executives of BankUnited, drafted the consolidated amended complaint and opposition to defendants' motions to dismiss and drafted materials prepared in connection with the mediation and settlement of *In re BankUnited Securities Litigation*. Mr. Buttacavoli also advises whistleblowers in connection with the reporting of potential securities violations to the U.S. Securities and Exchange Commission and has advised numerous clients regarding potential claims involving custodian banks' foreign currency exchange pricing practices. He represented whistleblowers in connection with the drafting and submission of an application for an SEC whistleblower award that resulted in an award of over \$50 million, which was the second-largest SEC whistleblower award at the time.

In addition to his securities litigation practice, Mr. Buttacavoli is a lead member of the Berman Tabacco team that pioneered the prosecution of nationwide federal RICO class actions against the operators and financial backers of allegedly unlawful online lending schemes that attempt to circumvent federal and state law through sham relationships with Native American tribes. These efforts resulted in significant settlements for the benefit of the victims of those schemes, including *Solomon, et al. v. American Web Loan, Inc., et al.*, No. 17-cv-145 (E.D. Va.) (which settled for a total value of over \$186 million, including \$86 million in cash, cancelation of over \$100 million in outstanding debt, and other non-monetary and injunctive relief) and *Gingras, et al. v. Victory Park Capital Advisors, LLC, et al.*, No. 17-cv-00233 (D. Vt.), *Gingras, et al. v. Rosette, et al.*, No. 15-cv-101 (D. Vt.), and *Granger, et al. v. Great Plains Lending, LLC, et al.*, No. 1:18-cv-00112 (M.D.N.C.) (which led to over \$47 million in settlements).

Prior to joining Berman Tabacco in 2009, Mr. Buttacavoli worked as an associate at major corporate law firms in Boston, where he defended securities class actions and U.S. Securities and Exchange Commission enforcement actions, conducted internal investigations, responded to criminal investigations by the United States Attorney's Office, and advised clients in connection with litigation risk analysis and mitigation strategies.

Mr. Buttacavoli was ranked as a *Super Lawyer* by *Massachusetts Super Lawyers Magazine* in 2021-2022.

Mr. Buttacavoli earned an A.B. in International Relations from the College of William & Mary and a Master of Public Policy degree from Georgetown University. In 2001, he earned his J.D., *magna cum laude*, from the Georgetown University Law Center, where he was a member of the Order of the Coif. Mr. Buttacavoli was also a Senior Articles and Notes Editor for the *American Criminal Law Review*.

Mr. Buttacavoli is a member in good standing in the state and federal courts of the Commonwealth of Massachusetts and the United States Courts of Appeals for the First, Second, Third, Fourth, and Eleventh Circuits.

## KATHLEEN M. DONOVAN-MAHER



Kathleen M. Donovan-Maher is a member of the firm's Executive Committee and manages the Boston office. She became a partner at Berman Tabacco in 1999 and, in addition to managing the firm, she focuses her work in the firm's securities and whistleblower practices.

During her career, Ms. Donovan-Maher has successfully helped to prosecute numerous class actions. She led the day-to-day prosecution of the litigation against General Electric Co., which settled for \$40 million in 2013.

Ms. Donovan-Maher also served as discovery captain in the *NASDAQ Market Makers Antitrust Litigation*, which settled for \$1.027 billion and was a member of the trial team in the *ICN/Viratek Securities Litigation*, which settled for \$14.5 million after the jury deadlocked at the conclusion of the 1996 trial. Other cases in which Ms. Donovan-Maher has played a chief role include, but are not limited to, *In re BankUnited Securities Litigation*, *In re American Home Mortgage*, *Wyatt v. El Paso Corp.*, *In re Enterasys Networks, Inc. Securities Litigation* and *In re SmartForce/SkillSoft Securities Litigation*. In all cases, Ms. Donovan-Maher's efforts helped achieve significant financial recoveries for such public retirement systems as the State Universities Retirement System of Illinois, Oklahoma Police Pension & Retirement System, the Los Angeles County Employees Retirement Association and the Teachers' Retirement System of Louisiana.

In addition to a monetary award, the *Enterasys Networks* settlement also included corporate governance improvements, requiring the company to back a proposal to eliminate its staggered board of directors, allow certain large shareholders to propose candidates to the board and expand the company's annual proxy disclosures.

In *In re Centennial Technologies Litigation*, Ms. Donovan-Maher secured a \$207 million judgment against defendant Emanuel Pinez, Centennial's founder and former CEO and Chairman of the Board of Directors who was the primary architect of one of the largest financial frauds in Massachusetts history at the time.

*Martindale-Hubbell*<sup>®</sup> has rated her AV Preeminent<sup>®</sup> and selected her for the *Martindale-Hubbell*<sup>®</sup> 2013 *Bar Register of Preeminent Women Lawyers*<sup>™</sup>. She was also selected as one of *New England's Top-Rated Lawyers* by *Martindale-Hubbell*<sup>®</sup> (2013, 2018-2020), as featured in *The National Law Journal*. *Martindale-Hubbell*<sup>®</sup> also selected her as a *Top-Rated Litigator* (2019) and as one of its *Women Leaders In Law* (2021). She has also been designated by *Benchmark Litigation* as a *Local Litigation Star* (2013-2015, 2021-2023) and was recognized as a *Benchmark Plaintiff Top 150 Women in Litigation*. She has also been designated as a *Super Lawyer* by *Massachusetts Super Lawyers* magazine (2004-2005, 2020-2022). She was also selected as one of the *Top Lawyers* of the year by *Boston Magazine* (2021-2022) and was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023).

Ms. Donovan-Maher is a frequent author on continuing legal education issues for such groups as ALI-ABA and PLI. She is also a member of Phi Delta Phi, Delta Mu Delta National Honor Society in Business Administration, Omicron Delta Epsilon International Honor Society of Economics, the American Bar Association and the Boston Bar Association.

Ms. Donovan-Maher graduated from Suffolk University *magna cum laude* in 1988, receiving a B.S. degree in Business Administration, concentrating in Finance with a minor in Economics. Ms. Donovan-Maher earned an award for maintaining the highest grade point average among students with concentrations in Finance. She graduated from Suffolk University Law School three years later after serving two years on the *Transnational Law Review*.

Ms. Donovan-Maher is a member in good standing in the state and federal courts of the Commonwealth of Massachusetts, and she is admitted to practice law in the U.S. District Court for the District of Massachusetts, the U.S. Supreme Court and the U.S. Courts of Appeals in the First, Second, Third, Fourth and Eleventh Circuits.

## PATRICK T. EGAN



A partner in Boston, Patrick T. Egan focuses his practice on securities litigation. Mr. Egan has litigated numerous cases to successful resolution, recovering hundreds of millions of dollars on behalf of defrauded investors.

Mr. Egan was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He was also a lead attorney representing the Michigan State Retirement Systems in the *In re Bear Stearns Companies* litigation stemming from the 2008 collapse of the company. Plaintiffs successfully recovered \$294.9 million for former Bear Stearns shareholders.

Mr. Egan has worked on a number of important cases, including *Lernout & Hauspie* and the related case, *Quaak v. Dexia, S.A. (In re Lernout & Hauspie Sec. Litig., No. 00c-11589 (D. Mass.))*, and *Quaak v. Dexia, S.A., No. 03-11566 (D. Mass.)*. Those cases stem from a massive accounting fraud scheme at Lernout & Hauspie Speech Products, N.V., a bankrupt Belgian software company. As co-lead counsel, the firm recovered more than \$180 million on behalf of former Lernout & Hauspie shareholders. In addition, Mr. Egan was one of the attorneys at Berman Tabacco representing CalPERS against credit ratings agency Moody's, based on Moody's misrepresentations regarding the creditworthiness of three structured investment vehicles, which settled for \$255 million. *California Public Employees' Ret. Sys. v. Moody's Corp., No. CGC-09-490241 (Cal. Super. Ct. San Francisco County)*. Recently, Mr. Egan served as a lead partner (i) representing the sole Lead Plaintiff Utah Retirement Systems ("URS") in *Koch v. Healthcare Services Group, Inc., et al., No. 2:19-cv-01227-ER (E.D. Pa.)*, a class action that alleged that defendants issued materially false and misleading statements and failed to disclose "earnings management" practices that allowed HCSG to consistently meet or beat earnings per share estimates that, in turn, caused the price of the company's stock to be artificially inflated (case settled for \$16.8 million, which was approved by the court on January 12, 2022); and (ii) representing the sole Lead Plaintiff Oklahoma Police Pension and Retirement System in *Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc., et al., No. 2:20-cv-10490 (E.D. Mich.)*, a class action which alleged that defendants issued materially untrue and misleading statements concerning, *inter alia*, the Sterling's loan underwriting, risk management, compliance and internal controls, including regarding the Company's Advantage Loan Program, the Company's largest lending program (case settled for \$12.5 million, which was approved by the court on September 23, 2021).

Mr. Egan currently serves as one of the partners representing sole Lead Plaintiff Alameda County Employees' Retirement Association in *Hayden v. Portola Pharmaceuticals, Inc., et al.*, No. 3:20-cv-00367-VC (N.D. Cal.), a class action brought on behalf of investors in Portola Pharmaceuticals, Inc. ("Portola"), a biopharmaceutical company that develops and commercializes treatments for thrombosis and other hematologic diseases. The complaint alleges that defendants issued materially false and misleading statements related to the sales of Andexxa, Portola's primary product, a reversal drug for apixaban- and rivaroxaban-treated patients with life-threatening or uncontrolled bleeding. In June 2022, after fully briefing the motion for class certification, the parties reached a settlement in the amount of \$17.5 million, which was approved by the court on March 6, 2023. He also serves as one of the key partners representing the lead plaintiff Oklahoma Police Pension and Retirement System in *In re Inotiv, Inc. Securities Litigation*, No. 4:22-CV-045-PPS-JEM (N.D. Ind.), a securities fraud class action lawsuit against Inotiv, Inc. and certain of its executive officers on behalf of all persons who acquired publicly traded Inotiv securities between September 21, 2021 and June 13, 2022, inclusive. Plaintiffs allege that defendants materially false and misleading statements and/or material omissions concerning the Company's business, operations, and regulatory compliance policies, specifically related to its acquisition of Envigo RMS, LLC ("Envigo") and the existence of widespread and flagrant violations of federal animal welfare regulations at an Envigo dog breeding facility located in Cumberland, Virginia that led the U.S. Department of Justice to take action to rescue more than 4,000 animals and shutter the facility.

In addition, currently, Mr. Egan is one of the lead attorneys for the firm representing: (i) plaintiffs and the \$240 billion pension fund California State Teachers' Retirement System in the ongoing *Euribor (Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and *Yen Libor (Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y)) antitrust cases involving U.S., European, and Japanese banks' manipulation of interest rate benchmarks and agreements to fix bid-ask spread prices on interest rate derivatives (*Euribor* has yielded \$651.5 million, of which \$546.5 million has been approved by the court and \$105 million was preliminarily approved on April 18, 2023, and *Yen Libor* \$329.5 million); and (ii) Orange County Employees' Retirement System in *Dennis v. JP Morgan Chase & Co.*, No. 16-cv-06496-LAK (S.D.N.Y), an action alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors, which recently settled for \$185.875 million, which was approved by the court on November 2, 2022.

Mr. Egan also represents whistleblowers who provide information and assistance to the U.S. Securities and Exchange Commission, U.S. Commodities Futures Trading Commission, U.S. Internal Revenue Service and state regulators in connection with their enforcement of the federal and state laws. Mr. Egan also represents whistleblowers in actions filed under the Federal False Claims Act.

Prior to joining the firm in 1999 and being named partner in 2006, Mr. Egan worked at the U.S. Department of Labor, where he served as an attorney advisor for the Office of Administrative Law Judges. Mr. Egan also serves as an Adjunct Faculty member of the Business Studies department at Assumption University, with a focus on Business Law, Corporate Governance and White-Collar Crime.

Mr. Egan has been ranked by *Benchmark Litigation* as a *Local Litigation Star* (2013-2015, 2021-2023) and as a *Massachusetts State Litigation Star* (2018-2020) in *Competition* and *Securities*. He has also been selected as a *Super Lawyer* by *Massachusetts Super Lawyers* magazine (2022).



Mr. Egan received a B.A. in Political Science *cum laude* from Providence College in 1993. In 1997, he graduated *cum laude* from Suffolk University Law School. While at Suffolk, Mr. Egan served on the editorial board of the *Suffolk University Law Review* and authored a note entitled, *Virtual Community Standards: Should Obscenity Law Recognize the Contemporary Community Standard of Cyberspace*, 30 Suffolk University L. Rev. 117 (1996).

Mr. Egan is a member in good standing in the Commonwealth of Massachusetts, the states of Connecticut and New York, as well as the U.S. District Courts for the District of Massachusetts, the Southern District of New York, Eastern District of New York and the Eastern District of Michigan. He is also admitted to practice before the U.S. Supreme Court and U.S. Courts of Appeals in the First, Second and Fourth Circuits.

## STEVEN L. GROOPMAN



Steven L. Groopman is a partner in the firm's Boston office who focuses his practice on securities, RICO, and ERISA litigation. Mr. Groopman was a key member of the litigation team currently prosecuting federal RICO class actions against the operators and financial backers of allegedly unlawful online lending schemes that attempt to circumvent federal and state law through sham relationships with Native American tribes. *Solomon, et al. v. American Web Loan, Inc., et al.*, No. 17-cv-145 (E.D. Va.), *Gingras, et al. v. Victory Park Capital Advisors, LLC, et al.*, No. 17-cv-00233 (D. Vt.) and *Gingras, et al. v. Rosette, et al.*, No. 15-cv-101 (D. Vt.).

Mr. Groopman joined Berman Tabacco in June 2015 after serving as a law clerk to the Honorable Dickinson R. Debevoise, on the U.S. District Court for the District of New Jersey, and working as an associate at a New York law firm.

Mr. Groopman was recognized by *Benchmark Litigation* in its *40 & Under List in Plaintiff Class Action* (2022) and has been named had been named *Rising Star* by *New England Super Lawyers* magazine (2017-2022).

Mr. Groopman received an A.B. in Political Science *magna cum laude* from Brown University in 2005. In 2009 he graduated from George Washington University Law School.

Mr. Groopman is a member in good standing in the Commonwealth of Massachusetts, the state of New York, as well as the U.S. District Courts for the Southern District of New York, the Eastern District of New York and the District of Massachusetts.

## CARL HAMMARSKJOLD



A partner in the firm's San Francisco office, Carl Hammarskjold focuses his practice on antitrust and securities cases. Mr. Hammarskjold represents the firm's clients and class plaintiffs in several financial market manipulation and antitrust class actions on behalf of investors alleging that major banks colluded to fix the prices of bonds and derivatives. These cases include *In re Mexican Government Bonds Antitrust Litigation*, No. 18-cv-02830 (S.D.N.Y), Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)), Yen Libor (*Sonterra Capital Master Fund, LTD. v. UBS AG, et al.*, No. 15-cv-5844 (S.D.N.Y.)), Australian Dollar (*Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (S.D.N.Y)) (settled for \$185.875 million, which was approved by the court on November 2, 2022), and *In re GSE Bonds Antitrust Litigation*, No. 19-cv-01704 (S.D.N.Y.) (settled with all defendants for \$386.5 million, which was approved by the court on June 16, 2020). He also represents the firm's client and class plaintiffs in a nationwide antitrust class action on behalf of direct purchasers of lithium ion rechargeable batteries that resulted in settlements totaling \$139.3 million. *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-02420-YGR (N.D. Cal.).

Mr. Hammarskjold represented Lead Plaintiff and class plaintiffs in Sterling Bancorp, Inc. Securities Litigation (*Oklahoma Police Pension and Retirement System v. Sterling Bancorp, Inc, et al.*, No. 5:20-Cv-10490-JEL-EAS (E.D. Mich.)), which settled for \$12.5 million, which was approved by the court on September 23, 2021.

During his prior work in the plaintiffs' bar, Mr. Hammarskjold represented class plaintiffs in *Kleen Products, LLC, et al. v. Packaging Corp. of America, et al.*, No. 10-cv-05711 (N.D. Ill.) (containerboard antitrust litigation) and was part of the appellate team whose work resulted in a published Ninth Circuit opinion in *Bozzio v. EMI Group Ltd, et al.*, No. 13-15685 (9th Cir.).

Prior to joining Berman Tabacco in 2018, Mr. Hammarskjold worked for a San Francisco-based plaintiffs' law firm specializing in antitrust class actions and other complex, multidistrict litigation in federal court. He was also a business litigator at a large, national law firm.

Mr. Hammarskjold serves on the Executive Committee of the Antitrust & Business Regulation Section of the San Francisco Bar Association.

Mr. Hammarskjold is rated AV Preeminent® by *Martindale-Hubbell*® and was selected by *Northern California Super Lawyers* magazine as a *Super Lawyer* in 2023, and previously as a *Rising Star* in 2016-2021. He was also recognized in *The Best Lawyers in America*® and *Northern California Best Lawyers for Mass Tort Litigation / Class Actions – Plaintiffs* (2021-2023).

Mr. Hammarskjold earned his J.D., *summa cum laude*, from the University of San Francisco School of Law, where he graduated first in his class and received the Academic Excellence Award for Extraordinary Contribution to the Intellectual Life of the School. During law school, he served as an extern for the Honorable William H. Alsup at the U.S. District Court for the Northern District of California.

Mr. Hammarskjold has a B.A. from Pomona College.

Mr. Hammarskjold is a member in good standing of the state bar of California, the U.S. District Court for the Northern and Central Districts of California, and the Ninth Circuit of the U.S. Court of Appeals.

## NICOLE LAVALLEE



Nicole Lavalley, the managing partner of the firm's San Francisco office and member of the firm's Executive Committee, focuses her practice on prosecuting securities and derivative actions. She is also an integral member of the firm's New Case Investigations Team, which oversees the firm's portfolio monitoring program and investigates potential securities law violations to determine whether a case meets the firm's exacting standards.

Since the enactment of the PSLRA, Ms. Lavalley has prosecuted numerous high-profile securities fraud cases for the firm. For example, she was one of the lead attorneys overseeing the *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-cv-4583 (S.D.N.Y.), which settled for \$346 million – one of the largest private MBS recoveries on record and the largest of any case where the issuer bank was in bankruptcy.

Over the years, Ms. Lavalley has been the lead partner managing the day-to-day prosecution of numerous other cases, where she handled or oversaw case investigation and factual development and briefing (including appeal briefing), conducted depositions, argued key motions (including motions to dismiss, motions for summary judgment and/or discovery motions), and participated in settlement negotiations. Examples that resulted in favorable judicial commentary include: (i) *In re KLA-Tencor Corp. Securities Litigation*, No. C06-04065 (N.D. Cal.), an options-backdating class action, representing co-lead plaintiff the Louisiana Municipal Police Employees' Retirement System, which settled for \$65 million; (ii) *In re International Rectifier Securities Litigation*, No. 07-cv-02544 (C.D. Cal.), on behalf of the co-lead plaintiff Massachusetts Laborers' Pension Fund, alleging manipulation of the company's financial results, which settled for \$90 million in 2009; and (iii) *Oracle Cases*, Coordination Proceeding, Special Title (Rule 1550(b)), No. JCCP 4180 (Cal. Super. Ct. San Mateo Cty.), a derivative case alleging that Lawrence Ellison engaged in illicit insider trading, and which settled weeks before trial when Defendant Larry Ellison agreed to make \$100 million in charitable donations in Oracle's name. Most recently, she oversaw (i) the securities class action captioned *Koch v. Healthcare Services Group, Inc., et al.*, No. 2:19-cv-01227-ER (E.D. Pa.), on behalf of lead plaintiff the Utah Retirement Systems ("URS"), which settled for \$16.8 million, which was approved by the court on January 12, 2022; (ii) *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-CV-07142-HSG (N.D. Cal.), on behalf of lead plaintiff Plymouth County Retirement Association ("PCRA"), which recently settled for \$7 million; and (iii) *Hayden v. Portola Pharmaceuticals, Inc., et al.*, No. 3:20-cv-00367-VC (N.D. Cal.), on behalf of lead plaintiff ACERA, which settled for \$17.5 million, which was approved by the court on March 6, 2023.

Ms. Lavalley also represented numerous institutional clients in opt-out actions, including *State of Oregon v. McKesson HBOC, Inc.*, Master File No. 307619 (Cal. Super. Ct. San Francisco Cty.), an individual opt-out action brought on behalf of the retirement systems for Colorado, Utah, and Minnesota, and opt-out actions on behalf of State of Michigan Retirement System and Fresno County Employees' Retirement Association against Countrywide Financial Corp. (*State Treasurer of The State of Michigan v. Countrywide Financial Corp.*, No. CV-11-00809 (C.D. Cal.) and *Fresno County Employees Retirement Association v. Countrywide*

*Financial Corp.*, No. CV-11-00811 (C.D. Cal.)). She has also worked on several securities-fraud trials over the past 25 years.

Currently, Ms. Lavallee is a lead partner at Berman Tabacco on several class action securities fraud cases. She is overseeing *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 18-cv-04993-NRB (S.D.N.Y.), where the firm is lead counsel representing lead plaintiff the Utah Retirement Systems. Ms. Lavallee and the team successfully reached settlements with Aegean's outside auditors located in Greece for \$29.8 million, which was approved by the court on September 14, 2022, and with the two individual defendants, the former Chief Financial Officer and Aegean's founder, with whom tentative settlements have been reached for an additional \$11,945,999. Ms. Lavallee is also involved in the prosecution of several derivative actions including *Teamsters Local 443 Health Services & Ins. Plan, et al. v. Chou*, No. 2019-0816 (Del. Ch.), involving AmerisourceBergen Corp. asserting that the Company's executives breached their fiduciary duties in connection with the Company's subsidiary's alleged illegal scheme to produce and market unapproved prefilled syringes ("PFS") in violation of federal and state laws. In 2017, Amerisource entered a guilty plea related to the alleged illegal PFS scheme and has paid more than \$875 million in penalties and fines to settle related civil and criminal claims.

Ms. Lavallee has been ranked by *Chambers USA* in California under *Litigation-Securities* (2021-2023) which quoted an opposing counsel as stating that "Nicole is a good adversary, she is smart and puts up a good fight for her clients." She has been ranked by *Benchmark Litigation* as a *California State Litigation Star* (2020-2023), *San Francisco Litigation Star* (2020-2023), and *Noted Star* (2019-2020) in *Plaintiff Work and Securities*. She was also recognized in *The Best Lawyers in America*® for *Litigation-Securities* (2021-2023) and in the *Northern California Best Lawyers for Litigation-Securities* (2021-2023). In 2021, Nicole was ranked as one of the *Top Women Lawyers* in California by the *Daily Journal*. *Northern California Super Lawyers* magazine named her to their lists of the *Top 100* attorneys in California (2021) and the *Top 50 Women* attorneys in California (2021). She has also been named a *Super Lawyer* by *Northern California Super Lawyers* magazine (2017-2023) and was included in *San Francisco Magazine's Top Women Attorneys in Northern California* (2017-2022). Ms. Lavallee has an AV Preeminent® rating from *Martindale-Hubbell*® and was selected for the *Martindale-Hubbell*® *Bar Register of Preeminent Women Lawyers*™. *Martindale-Hubbell*® also selected her as a *Top-Rated Litigator* (2019) and as one of its *Women Leaders In Law* (2021). Ms. Lavallee was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023).

Ms. Lavallee has authored numerous articles and lectured on securities litigation. She was co-chair for the 2016 Cross-Border Litigation Forum, a gathering of the most senior legal practitioners in U.S./Canada cross-border litigation (was also on the Steering Committee for the 2012 and 2014 forums), and she is currently on the Steering Committee for the 2020 Cambridge Forum on Plaintiffs' Class Action Litigation (where she previously served on the Steering Committee for the 2019 forum). Further, Ms. Lavallee is active in the Bar Association of San Francisco ("BASF"), serving on the Steering Committee of the Women's Impact Network: No Glass Ceiling 2.0 and as a Member of BASF's Policy Impact Working Group of the Women's Impact Network.

A native of Canada, Ms. Lavallee is a 1989 graduate of the French Civil Law School at Université de Montréal and obtained her a Common Law degree from Osgoode Hall Law School in Toronto in 1991. She received her undergraduate degree in Health Sciences and in Pure and Applied Sciences from Vanier College in Montreal in 1986.

Ms. Lavallee is a member in good standing of the state bar of California, all federal courts in the Ninth Circuit and the Ninth Circuit of the U.S. Courts of Appeals.

## KRISTIN J. MOODY



Kristin J. Moody is a partner in the firm's San Francisco office, where she focuses her practice on securities litigation. She has successfully litigated numerous class actions that have resulted in substantial settlements for defrauded investors.

Ms. Moody served as one of the lead partners for the team prosecuting *In re Aqua Metals, Inc. Securities Litigation*, No. 4:17-cv-07142-HSG (N.D. Cal.), a securities class action against Aqua Metals, Inc. and certain of its former executives. The case alleged that the defendants engaged in a widespread fraud to mislead investors about, among other things, the implementation and operations of the Company's purportedly proven AquaRefining technology that would supposedly revolutionize the \$22 billion lead acid battery recycling business. The case settled for \$7 million, which was approved by the court on March 2, 2022. Currently, she is one of the partners prosecuting *In re Aegean Marine Petroleum Network, Inc. Securities Litigation*, No. 18-cv-04993-NRB (S.D.N.Y.), a case in which the firm is Lead Counsel representing sole Lead Plaintiff, Utah Retirement Systems in a securities fraud class action lawsuit against Aegean Marine Petroleum Network, Inc. ("Aegean"), a marine fuel logistics company based in Greece that supplies and markets refined marine fuel and lubricants to ships in port and at sea, and several former officers. The team successfully reached settlements with Aegean's outside auditors located in Greece for \$29.8 million, which was approved by the court on September 14, 2022, and with the two individual defendants, the former Chief Financial Officer and Aegean's founder, with whom tentative settlements have been reached for an additional \$11,945,999.

Ms. Moody was lead partner for the team prosecuting *Oklahoma Police Pension & Retirement System v. Sterling Bancorp, Inc, et al.*, No. 5:20-cv-10490-JEL-EAS (E.D. Mich.), a securities fraud class action lawsuit against Sterling Bancorp, Inc., certain of its current and former officers and directors, and the underwriters for the Company's initial public offering (the "IPO"). The case was brought on behalf of investors who purchased or otherwise acquired Sterling common stock from November 17, 2017 through and including March 17, 2020 (the "Class Period"), including shares sold in the IPO. Sterling, headquartered in Southfield, Michigan, is the unitary thrift holding company of Sterling Bank and Trust which specializes in residential mortgages. The case alleges that defendants issued materially untrue and misleading statements concerning, *inter alia*, the Company's loan underwriting, risk management, compliance and internal controls, including regarding the Company's Advantage Loan Program, the Company's largest lending program which the Company completely shut down by the end of the Class Period. The case reached a settlement of \$12.5 million, which was approved by the court on September 23, 2021. Ms. Moody also represented lead plaintiff in *In re Zynga, Inc. Securities Litigation*, where she investigated and drafted the complaint and successful opposition to the motion to dismiss, conducted discovery, and participated in mediation. The case reached a settlement of \$23 million. Ms. Moody also investigated and drafted the consolidated amended complaint in a class action against General Electric Co., certain of its officers and directors, and underwriters of its public offering; drafted lead plaintiff's opposition to defendants' motions to dismiss and subsequent briefing with the court; and conducted discovery in the matter. The case settled for \$40 million. Further, Ms. Moody assisted in the litigation of *In re BP p.l.c. Securities Litigation*, where she helped draft

the amended complaint and the successful opposition to defendants' motion to dismiss. BP and Lead Plaintiffs for the "post-explosion" class reached a settlement in the amount of \$175 million.

Ms. Moody also served as lead partner for the firm in *McLaughlin v. Wells Fargo Bank, N.A.*, No. 3:15-cv-02904-WHA (N.D. Cal.), which achieved a precedent-setting opinion holding that Wells Fargo Bank, NA is required under the Truth in Lending Act ("TILA") to indicate the amount of property insurance proceeds held by the bank on plaintiff customer's payoff statement. The litigation ultimately attained a settlement which provided \$880,000 to the damages class (more than \$2,900 for each damages class member), which is 88% of the total maximum statutory damages that could have been recovered if fully litigated. The settlement also requires Wells Fargo to disclose insurance claim funds on all of its payoff statements going forward, which is a benefit beyond what could have been achieved at trial. Ms. Moody also managed litigation, coordinated and conducted discovery, counseled clients, and participated in mediation in *In re Force Protection Securities Litigation*, which settled for \$24 million. Ms. Moody further coordinated and conducted discovery, counseled the client, and participated in mediation in litigation against International Rectifier Corp. and several of its former officers and directors for an alleged fraud at a foreign subsidiary, which settled for \$90 million. In addition, Ms. Moody participated in the motion to dismiss briefing and mediation in *In re American Home Mortgage Securities Litigation*, which settled for \$37.25 million, despite the difficulties American Home's bankruptcy posed to asset recovery.

Prior to joining Berman Tabacco, Ms. Moody practiced at Holland & Knight, LLP in Boston and Morrison & Foerster, LLP in San Francisco. While at Morrison & Foerster, Ms. Moody represented clients in complex commercial litigation matters with a focus on securities litigation. At Holland & Knight, she represented clients in a range of white-collar criminal matters, government and regulatory investigations, and complex civil litigation, including securities litigation. Ms. Moody has also represented clients in a number of *pro bono* matters, including discrimination and political asylum cases.

Ms. Moody was selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine (2020-2023) and was included in *San Francisco Magazine's Top Women Attorneys in Northern California* (2020-2022). She was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023).

Ms. Moody has published several articles in the areas of accounting fraud, securities class actions, and derivative suits. She has also taught business law courses at Fisher College and previously sat on the Fisher College Advisory Board. Ms. Moody has also served as an Advisory Board member for the non-profit Generation Citizen.

Ms. Moody earned an LL.M. from New York University School of Law in 2003, a J.D., *cum laude*, from Boston College Law School in 1999, and a B.A., *cum laude*, in English and Legal Studies from Bucknell University in 1995. While in law school, she was Notes and Comments Editor of the Boston College International and Comparative Law Review and was active in the Women's Law Center.

Ms. Moody is a member in good standing in the Commonwealth of Massachusetts, the state of California, and is also admitted to practice in the U.S District Court for the Northern, Central, Eastern and Southern Districts of California, the U.S. District Court for the District of Massachusetts, the Eastern District of Michigan, and the U.S. Courts of Appeals for the First, Third, Ninth, and Federal Circuits.

## NATHANIEL L. ORENSTEIN



A partner in the firm's Boston office, Nathaniel L. Orenstein focuses his practice on securities and antitrust litigation. He is currently engaged in a number of matters to ensure that corporate directors' meet their fiduciary obligations to their shareholders. Most recently, Mr. Orenstein successfully prosecuted in *Norfolk County Retirement System v. David D. Smith*, Civ. No. 1:18-cv-03952 (D. Md.) a case concerning a merger between Sinclair Broadcast Group and Tribune Media Company that was blocked by the U.S. Department of Justice ("DOJ") and the U.S. Federal Communications Commission ("FCC") because Sinclair proposed "sham" divestiture

transactions to the FCC and "engaged in misrepresentation and/or lack of candor" with respect to those related party transactions. The settlement provided far-reaching benefits to Sinclair and its shareholders, including substantial corporate governance reforms, comprised of, among other things, the creation of two new board committees, along with nearly \$25 million in financial recovery – including a rare \$5 million personal contribution from Sinclair's controlling shareholder. In approving the settlement, the Court noted that "[i]n this case, plaintiffs' counsel secured an excellent settlement that includes significant corporate governance reforms that would not have resulted from a trial on the merits."

Mr. Orenstein's representative cases also include: *In re Bluegreen Corporation Shareholder Litigation*, No. 502011CA018111 (15th Judicial Cir., Florida) (\$36.5 million settlement and \$80 million in benefit to class secured to date as member of Executive Committee); *In re TPC Group, Inc. Shareholders' Litigation*, No. 7865-VCN (Delaware Chancery) (\$79 million benefit to class while co-lead counsel); *Louisiana Municipal Police Employees' Retirement System v. EnergySolutions, Inc.*, C.A. No. 8350-VCG (Delaware Chancery) (\$36 million benefit to class as co-lead counsel); *In re El Paso Corporation Shareholder Litigation*, No. 6949-CS (Delaware Chancery) (\$110 million benefit to class as member of Executive Committee); *In re American Home Mortgage Securities Litigation*, No. 07-MD-1898 (E.D.N.Y.) (\$37.25 million benefit to class as member of litigation team); *In re Force Protection Inc. Securities Litigation*, No. 2:08-cv-845 CWH (D.S.C.) (\$24 million benefit to class as member of litigation team); and *In Re: Nexium (Esomeprazole) Antitrust Litigation*, No. 12-md-02409-WGY (D. Mass.) (\$24 million benefit to class secured to date as local counsel).

Prior to joining Berman Tabacco, Mr. Orenstein was a staff attorney for the Securities Division of the Office of the Secretary of the Commonwealth of Massachusetts. While there, he performed company examinations as well as investigated and pursued enforcement actions to detect and prevent fraud at hedge funds and related companies. Mr. Orenstein was the lead attorney on many investigations and actions against broker-dealers, investment advisors and others.

Prior to obtaining his J.D. from the New York University School of Law in 2005, Mr. Orenstein served as a member of the mutual fund and insurance brokerage investigation teams for the Office of the New York State Attorney General's Investment Protection Bureau. As a legal intern, he assisted with the Bureau's investigation work including, case planning, discovery and settlement negotiation.

In addition to his work for the Commonwealth and for New York State, Mr. Orenstein was the Associate Director for the Center for Insurance Research, a consumer advocacy organization. In this role, he supported Center attorneys in litigating complex insurance reorganization transactions. He also testified in

regulatory and legislative proceedings on behalf of policyholders concerning market conduct and insurance rate setting.

*Benchmark Litigation* has ranked Mr. Orenstein as a *Massachusetts Future Star* (2021-2023) and *Massachusetts Super Lawyers Magazine* named him a *Super Lawyer* (2020-2022) and a *Rising Star* (2014-2015).

Mr. Orenstein earned a J.D. from New York University School of Law in 2005, and a B.A. in Economics from Bates College in 1997.

Mr. Orenstein is a member in good standing in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit.

## MATTHEW D. PEARSON



A partner in the firm's San Francisco office, Matthew D. Pearson focuses his practice on securities, antitrust and consumer protection litigation. Mr. Pearson is an integral member of the firm's New Case Investigations Team and devotes a substantial amount of his time to evaluating and investigating potential new cases. Mr. Pearson also monitors foreign securities litigation, tracks developments in foreign class action and securities law, and assists clients interested in litigating abroad.

Since joining the firm in 2005, Mr. Pearson has served in key roles on a number of the firm's leading securities and antitrust cases. On the securities side, Mr. Pearson was part of the litigation team in *In re The Bear Stearns Cos. Inc. Securities, Derivative and ERISA Litigation*, Master File No. 08-MDL No. 1963 (S.D.N.Y.), which resulted in settlements totaling \$294.9 million for aggrieved investors.

In his antitrust practice, Mr. Pearson was a prominent member of the firm's team leading the *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-1532 (D. Me.), involving allegations that major automakers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States. Mr. Pearson was involved in all aspects of this nationwide, multi-jurisdictional litigation, including discovery, class certification, extensive expert reports, summary judgment, appeals in multiple courts, and settlement. The federal case ended in 2009. Mr. Pearson currently represents car buyers in a related litigation in California state court, captioned *In re Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303 (San Francisco Superior Court), which recently settled with the last remaining defendant, Ford Canada, for \$82 million, bringing the total settlement in this action to \$137.85 (including three prior settlements of \$55.85 million for class members in the federal and California actions, which have been approved). The Court approved the \$82 million settlement on October 31, 2022.

Mr. Pearson also assisted in the firm's efforts to achieve a historic \$295 million settlement with De Beers, where the firm represented a class of diamond resellers alleging De Beers unlawfully monopolized the worldwide supply of diamonds. The settlement was significant because, in addition to the \$295 million cash payment, the settlement included an agreement by De Beers to submit to the jurisdiction of the U.S. court to enforce the terms of the settlement and a comprehensive injunction limiting De Beers' ability to restrict the



worldwide supply of diamonds in the future. The firm's work in this case – believed to be the first successful prosecution of De Beers under U.S. antitrust laws – serves as a template for corralling foreign monopolists.

Mr. Pearson co-authored an amicus brief submitted to the California Supreme Court on behalf of three unions in the Kwikset case, involving products falsely labeled as “Made in the USA.” The California Supreme Court's ultimate opinion (*Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310 (2011)), was highly favorable to our clients' interests and became one of the leading opinions regarding standing under California's Unfair Competition Law.

Mr. Pearson was selected as a *Super Lawyer* by *Northern California Super Lawyers* magazine (2021-2023).

Mr. Pearson received his law degree in 2004 from the University of California, Davis, School of Law, where he completed the King Hall Public Service Law Program. He completed his undergraduate studies at the University of California, Los Angeles, earning a Bachelor of Arts in Political Science, with an International Relations concentration.

Mr. Pearson is a member in good standing in the state bar of California, and the United States District Courts for the Northern, Central and Southern Districts of California.

## TODD A. SEAVER



A partner in the San Francisco office, Todd A. Seaver litigates both antitrust and investment-related matters, with a primary focus on developing and litigating antitrust cases. He has led the day-to-day management of one of the largest antitrust class actions in history, and has litigated antitrust cases involving varied industries of high-tech, pharmaceuticals, autos, chemicals, consumer electronics, biotech, diamonds and online retailing. He is a leader of the firm's antitrust practice group, marshalling the firm's extensive investigative resources and then litigating the cases.

Currently, Mr. Seaver is co-lead counsel for consumer plaintiffs in an antitrust class action against American Express, *Oliver v. American Express Co.*, No. 1:19-cv-00566-NGG (E.D.N.Y.). The action is at the forefront of the payments industry and is now shaped by the landmark ruling in *Ohio v. American Express Co.*, 138 S. Ct. 2274 (2018), in which the U.S. Supreme Court articulated a new analytical framework for so-called “two-sided” markets.

Mr. Seaver is also presently counsel for plaintiffs and represents California State Teachers' Retirement System (CalSTRS) in the Euribor (*Sullivan v. Barclays PLC, et al.*, No. 13-cv-2811 (S.D.N.Y.)) and Yen Libor (*Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.)), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y)) antitrust cases involving Wall Street banks' manipulation of interest rate benchmarks and bid-ask spread price fixing on interest rate derivatives. He also currently represents Orange County Employees' Retirement System (OCERS) in an ongoing antitrust class action (*Dennis v. JP Morgan Chase & Co.*, No. 16-cv-06496-LAK (S.D.N.Y)) alleging that U.S., European, and Australian banks manipulated the interest rate benchmark used to price derivatives that were denominated in Australian dollars and sold to U.S. investors. He also represented Fresno County Employees' Retirement Association (FCERA) in *In re Foreign Exchange Benchmark Rates Antitrust*

Litigation, No. 13-cv-07789 (S.D.N.Y.), an antitrust class action against Wall Street banks for manipulating a foreign currency exchange rate benchmark and fixing bid-ask spreads on trillions of dollars of foreign currency exchange transactions.

Mr. Seaver led the plaintiffs' efforts in *In re New Motor Vehicles Canadian Export Antitrust Litigation*, No. 03-md-1532 (D. Me.), in which Berman Tabacco was lead counsel. The case alleged that major auto manufacturers unlawfully conspired to stop the export of cheaper new Canadian vehicles into the United States for use or resale. The federal case ended in 2009. Mr. Seaver was one of the lead partners for the firm in California state court, captioned *In re Automobile Antitrust Cases I and II*, JCCP Nos. 4298 and 4303 (San Francisco Superior Court), which recently settled with the last remaining defendant, Ford Canada, for \$82 million, bringing the total settlement in this action to \$137.85 (including three prior settlements of \$55.85 million for class members in the federal and California actions, which have been approved). The Court approved the \$82 million settlement on October 31, 2022.

Mr. Seaver also had a leading role in several cases, including, *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), where the firm was co-lead counsel for direct purchaser plaintiffs. Settlements were reached totaling \$139.3 million for the direct purchaser class (final approval on the last three settlements was granted on May 16, 2018). The lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries were used and which the defendants sold. Mr. Seaver argued and defeated motions to dismiss and deposed fact witnesses and defendants' expert economist and made the oral argument in opposition to defendants' *Daubert* motions to exclude plaintiffs' expert economist's opinions at class certification.

Mr. Seaver led efforts for the firm in an action against Netflix and Wal-Mart, *In re Online DVD Rental Antitrust Litigation*, in which Berman Tabacco was among lead counsel. He was responsible for managing many aspects of discovery, class certification and summary judgment, as well as for achieving partial settlement with defendant Wal-Mart. He successfully argued in Ninth Circuit Court of Appeals for that case on an issue of first impression regarding the Class Action Fairness Act and settlements involving a mix of cash consideration and electronic store gift cards. He was also one of the lead counsel in *In re Optical Disk Drive Antitrust Litigation* and also worked on a number of the firm's high-profile cases including *Cardizem CD*, still the leading generic drug competition case, which settled in 2003 for \$80 million. In the *Cardizem CD* case, Berman Tabacco was co-lead counsel representing health insurer Aetna in an antitrust class action and obtained a pioneering ruling in the federal court of appeals regarding the "reverse payment" by a generic drug manufacturer to the brand name drug manufacturer. In a first of its kind ruling, the appellate court held that the brand name drug manufacturer's payment of \$40 million per year to the generic company for the generic to delay bringing its competing drug to market was a per se unlawful market allocation agreement. Today that victory still shapes the ongoing antitrust battle over competition in the pharmaceutical market.

Mr. Seaver spearheaded the landmark case against the major credit rating agencies (Standard & Poor's and Moody's), *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.). The case, filed on behalf of the nation's largest state pension fund, the California Public Employees' Retirement System (CalPERS), was groundbreaking litigation that held the rating agencies financially responsible for negligent misrepresentations in rating structured investment vehicles. Moody's and Standard & Poor's agreed to pay a total of \$255 million (\$130 million and \$125 million, respectively) to settle CalPERS' claim that "Aaa" ratings on three SIVs were negligent

misrepresentations under California law. This case was groundbreaking in that (i) the settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages; and (ii) it resulted in a published appellate court opinion finding that rating agencies can, contrary to decades of jurisprudence, be liable for negligent misrepresentations under California law for their ratings of privately-placed securities.

Mr. Seaver was previously associated with the law firm Devine, Millimet & Branch, P.A., where he practiced commercial litigation. He was an adjunct Professor of Law with the New England School of Law in 2003, teaching Appellate Advocacy.

Mr. Seaver is a member of the American Bar Association's Antitrust Section and served a two-year term as a Director for the San Francisco Bar Association's Antitrust Committee in 2012-2013.

Mr. Seaver was ranked by *Benchmark Litigation* as a *California Litigation Star* (2022-2023), *Local Litigation Star* (2019-2020, 2022-2023), *California Future Star* (2020-2021), and *Noted Star* (2019-2021) in *Plaintiff Work* and *Securities*. He was also named a *Super Lawyer* by *Northern California Super Lawyers Magazine* (2017-2023), and has been recognized by *Global Competition Review's Who's Who Legal: Competition* (2017-2022). *Who's Who Legal* has also named Mr. Seaver a *Thought Leader* in *Competition* (2019-2020, 2022-2023) and a *Thought Leader: USA* (2023). He was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023). In 2020, *The Legal 500* reported a client's praise for Mr. Seaver stating that he "displays deep knowledge of specialized finance."

Mr. Seaver graduated *magna cum laude* from Boston University in 1994 with a B.A. in International Relations. He earned a M.Sc. from the London School of Economics in 1995 and graduated *cum laude* from the American University Washington College of Law in 1999. While in law school, Mr. Seaver served as a law clerk at the Federal Trade Commission's Bureau of Competition and as a judicial extern for the Honorable Ricardo M. Urbina, U.S. District Court for the District of Columbia.

Mr. Seaver is a member in good standing in the Commonwealth of Massachusetts, the states of California and New Hampshire, as well as the U.S. District Courts for the District of Massachusetts, the District of New Hampshire, and the Northern, Eastern, Central and Southern Districts of California.

## LESLIE R. STERN



A partner in Boston, Leslie R. Stern heads the New Case Investigations Team for institutional clients. The team investigates possible securities law violations, gauging clients' damages and evaluating the merits of cases to determine the best course of legal action.

In her role with the New Case Investigations Team, Ms. Stern oversees a portfolio monitoring program that combines the power of an online loss calculation system with the hands-on work of a dedicated group of attorneys, investigators and financial analysts. Her case development duties include preparing detailed case analyses and recommendations, and advising clients on their legal options.

Ms. Stern is a seasoned litigator with more than a decade of experience on cases such as *Carlson v. Xerox Corp.*, in which Berman Tabacco represented the Louisiana State Employees' Retirement System as co-lead counsel. Upon approval in January 2009, the \$750 million Xerox settlement ranked as the 10th largest securities class action recovery of all time. Ms. Stern also worked extensively on *In re Bristol Myers-Squibb Securities Litigation*, which settled for \$300 million. As part of the litigation team in *Giarraputo v. UNUMProvident Corp.*, No. 2:99cv00301 (D. Me.), Ms. Stern helped secure a \$45 million settlement in a lawsuit stemming from the merger that created UNUMProvident. She also has experience prosecuting derivative actions. She was a member of the litigation team in a derivative suit brought against the directors of Oxford Health Plans Inc. As co-lead counsel in the case, Ms. Stern and the Firm represented individual investors seeking to recover damages sustained by the company because of its directors' breaches of their fiduciary duties, gross mismanagement, corporate waste of assets and breach of duty of loyalty with respect to self-dealing stock transactions. Ms. Stern has also served on several trial teams, including *In re Biogen Sec. Litig.*, No. 94-cv-12177 (D. Mass.), and *In re Zila Inc. Sec. Litig.*, No. 99-cv-00115 (D. Ariz.), which settled during trial preparation. Ms. Stern was also one of the attorneys representing a Firm client in a class action against numerous financial institutions alleging that ten of the world's largest banks conspired to fix the prices of unsecured bonds issued by the government-sponsored agencies familiarly known as Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac"). *City of Birmingham Retirement & Relief System, et al. v. Bank of America, N.A., et al.*, No. 1:19-cv-01704-JSR (S.D.N.Y.). The case settled for \$386.5 million. Currently Ms. Stern is also overseeing several breach of fiduciary duty actions.

Prior to joining Berman Tabacco in 1998 and being named partner in 2003, Ms. Stern practiced general civil litigation.

Ms. Stern is a member of both the National Association of Public Pension Attorneys and the National Association of Women Lawyers.

Ms. Stern was designated a *Local Litigation Star* by *Benchmark Litigation* in 2013-2015 and 2021-2023 and was recognized among the *Benchmark Plaintiff Top 150 Women in Litigation*. She was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023).

She earned a B.S. degree in Finance from American University in 1991 and graduated *cum laude* from Suffolk University Law School in 1995. While at Suffolk, Ms. Stern served on the Suffolk University Law Review's editorial board and authored three publications.

Ms. Stern is a member in good standing in the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts. She has also been admitted to practice in the First and Fourth Circuits of the U.S. Courts of Appeals.

## JOSEPH J. TABACCO, JR.



Joseph J. Tabacco, Jr., the founding member of Berman Tabacco's San Francisco office and member of the firm's Executive Committee, actively litigates antitrust, securities fraud, commercial high tech and intellectual property matters.

Prior to 1981, Mr. Tabacco served as senior trial attorney for the U.S. Department of Justice, Antitrust Division in both the Central District of California and the Southern District of New York. In that capacity, he had major responsibility for several criminal and civil matters, including the antitrust trial of *United States v. IBM*. Since entering private practice in the early 1980s, Mr. Tabacco has served as trial or lead counsel in numerous antitrust and securities cases and has been involved in all aspects of state and federal litigation. In private practice, Mr. Tabacco has also tried a number of securities cases, each of which resolved successfully at various points during or after trial, including *In re MetLife Demutualization Litigation* (settled after jury empaneled), *Gutman v. Howard Savings Bank* (plaintiffs' verdict after six-week trial), *In re Equitec Securities Litigation* (settled after six months of trial) and *In re Ramtek Securities Litigation*.

Mr. Tabacco currently oversees the firm's class action litigation teams in the firm's price-fixing/market manipulation cases alleging that major banks colluded to fix the prices of derivatives and other financial instruments by manipulating numerous financial benchmark rates. This includes representing California State Teachers' Retirement System, one of the country's largest public pension funds, in (i) *Sullivan v. Barclays PLC et al.*, No. 13-cv-2811 (S.D.N.Y.), a class action against numerous Wall Street banks for price-fixing financial instruments tied to the Euro Interbank Offered Rate (the "Euribor"), in which there are partial settlements to date of \$651.5 million, of which \$546.5 million has been approved by the court and \$105 million was preliminarily approved on April 18, 2023; and (ii) *Laydon v. Mizuho Bank, Ltd.*, No. 1:12-cv-03419 (GBD) (S.D.N.Y.), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 1:15-cv-05844 (GBD) (S.D.N.Y.), two related class actions against numerous financial institutions for price-fixing financial instruments tied to the London Interbank Offered Rate ("LIBOR") for the Japanese Yen and the Euroyen Tokyo Interbank Offered Rate ("TIBOR"), which have total approved settlements in the amount of \$329.5 million.

Mr. Tabacco was one of the firm's lead attorneys representing the Wyoming State Treasurer and Wyoming Retirement System in the *In re IndyMac Mortgage-Backed Securities Litigation* in which the firm achieved settlements totaling \$346 million. He also oversaw *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco Cty.), the pioneering case that held credit rating agencies (Standard & Poor's and Moody's) financially responsible for their negligence in rating structured investment vehicles. After settling with both McGraw Hill Companies and Moody's, California Public Employees' Retirement System' total recovery for the case was \$255 million. Over the decades, Mr. Tabacco has prosecuted numerous securities fraud and antitrust cases against both domestic and international companies.

Mr. Tabacco oversaw *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-md-2420-YGR (N.D. Cal.), which achieved settlements in the total amount of \$139.3 million for a class of direct purchasers of lithium-ion rechargeable batteries (final approval on the last three settlements was granted on May 16, 2018). The

lawsuit alleged that defendants, including LG, Panasonic, Sony, Hitachi and Samsung, participated in a conspiracy to fix the prices of lithium ion rechargeable batteries, which affected the prices paid for the batteries and certain products in which the batteries are used and which the defendants sell.

Since 2008, Mr. Tabacco has served as an independent member of the Board of Directors of Overstock.com, a publicly traded company internet retailer. He is Chair of the Board's Nominating & Corporate Governance Committee and also serves as a member of the Board's Audit and Compensation Committees. He has also served as a member of the American Antitrust Institute Advisory Board since 2008. He also frequently lectures and authors articles on securities and antitrust law issues and is a member of the Advisory Board of the Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law and the Advisory Board of the Center for Law, Economics & Finance at the George Washington School of Law. Mr. Tabacco is also a former teaching fellow of the Attorney General's Advocacy Institute in Washington, D.C., and has served on the faculty of ALI-ABA on programs about U.S.-Canadian business litigation and trial of complex securities cases.

For 17 consecutive years, he has been among the top U.S. securities litigators ranked by *Chambers USA* (2007-2023) and is also AV Preeminent® rated by *Martindale-Hubbell*®. Mr. Tabacco was featured by the *Daily Journal* as one of the *Top Antitrust Lawyers in California* in 2020 and 2022, as one of the *Top Plaintiffs Lawyers in California* in 2017, and as one of California's top 30 securities litigators, a group chosen from both the plaintiff and defense bars. He was also recognized by *Global Competition Review's Who's Who Legal: Competition*, most recently in 2022 – a designation he has received for the past 9 years since the creation of the publication's Plaintiffs section. Additionally, for 19 consecutive years, Mr. Tabacco has been named a *Super Lawyer* by *Northern California Super Lawyers Magazine*, which features the top 5% of attorneys in the region (2004-2023). Additionally, Mr. Tabacco was ranked in the *Top 100 list* of attorneys in California in the *Northern California Super Lawyers Magazine* (2019-2022). He was ranked by *Benchmark Litigation* as a *California State Litigation Star* (2019-2023), *San Francisco Local Litigation Star* (2017-2023), *Noted Star in Plaintiff Work* (2020-2021), and *Noted Star in Antitrust, Intellectual Property, and Securities* (2019-2020). *The Best Lawyers in America*® recognized Joe as *Lawyer of the Year in Litigation-Securities* for 2022. He has further been recognized by *The Best Lawyers in America*® for *Litigation-Antitrust* (2018-2023) and for *Litigation-Securities* (2019-2023) and in the *Northern California Best Lawyers* for *Litigation-Antitrust* (2021-2023) and *Litigation-Securities* (2021-2023). He was also selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023). Mr. Tabacco has also been singled out by a top defense attorney for exemplifying "the finest tradition of the trial bar." *Chambers USA* has hailed Mr. Tabacco as "a formidable plaintiff-side litigator, with a wealth of experience handling securities class actions. A market source describes him as 'a master of orchestrating lawsuits and striking settlements,' adding: 'He strikes fear in the heart of defendants.'" *Chambers* further noted a client's praise for Mr. Tabacco: "His legal knowledge and skills are at the highest level. His combined intelligence and experience results in well-reasoned and thoughtful arguments to further our case."

Mr. Tabacco earned a J.D., *with honors*, from George Washington School of Law in 1974, and a B.A. in Government from University of Massachusetts-Amherst in 1971.

Mr. Tabacco is a member in good standing in the states of California and New York, and the Commonwealth of Massachusetts, as well as the U.S. District Courts for all districts in California, the District of Massachusetts, the District of Colorado (currently inactive), Eastern District of Michigan, the Southern

and Eastern Districts of New York, the District of Columbia (currently inactive), the First, Second, Third, Sixth and Ninth Circuits of the U.S. Courts of Appeal and the U.S. Supreme Court.

## *Associates*

### ISLAM ALY



Islam Aly is an associate at the Boston office of Berman Tabacco who focuses his practice on securities litigation. Mr. Aly joined the firm in 2022 after completing a fellowship at a nationally recognized class action litigation firm.

Mr. Aly earned his *Juris Doctor* degree from the UCLA School of Law. During law school, Mr. Aly served as the co-chair for the Muslim Law Students Association. Mr. Aly was also the Chief Managing Editor of the *Journal of Islamic and Near Eastern Law*.

Mr. Aly is passionate about social justice and equality. While in law school, Mr. Aly worked with a civil rights organization headquartered in Southern California where he helped advocate for persons affected by discrimination on the basis of race, nationality, and religious beliefs.

Mr. Aly earned a B.A. in History from the University of Wisconsin in 2018.

Mr. Aly is a member in good standing of District of Columbia bar.

### CHRISTINA GREGG



Christina Gregg is an associate at the Boston office of Berman Tabacco where she litigates complex civil actions seeking financial justice for consumers and investors. Ms. Gregg focuses her practice on securities and complex civil litigation.

Ms. Gregg is a 2021 graduate of Suffolk University Law School. While in law school, Ms. Gregg interned with the Massachusetts Attorney General's Office in the Environmental Protection Division, where she assisted in both regulatory enforcement and consumer protection actions against entities including

ExxonMobil and Bayer AG. She also served as a legal intern for the Honorable David A. Lowy of the Massachusetts Supreme Judicial Court.

In law school, Ms. Gregg served as managing editor of the Suffolk Law Journal of Trial & Appellate Advocacy and president of the Environmental Law Society. She also participated in a number of moot court competitions, including the Irving R. Kaufman Securities Law Moot Court Competition and Hon. Walter H. McLaughlin Appellate Advocacy Competition.

During law school, she served as a student attorney with the Suffolk Law Prosecutor's Program, working in the Juvenile Unit of the Suffolk County District Attorney's Office. She also served as a teaching fellow with the Marshall-Brennan Constitutional Literacy Project in a Boston public school.

Ms. Gregg earned a B.A. in Journalism and Political Science from the University of Massachusetts Amherst in 2014.

Ms. Gregg is a member in good standing of the state bar of Massachusetts and the U.S. District Court for the District of Massachusetts.

## JEFF ROCHA



Jeff Rocha is an associate in Berman Tabacco's San Francisco office, handling matters in the area of securities litigation. Prior to joining the firm in 2019, Mr. Rocha focused his practice on commercial litigation in the areas of corporate and healthcare fraud, unfair business practices, professional liability, consumer protection, and employment and labor law. He enjoys trial experience and has successfully mediated several cases to resolution.

Mr. Rocha also has substantial experience in the prosecution of complex insurance fraud *qui tam* actions. In that capacity, he assisted a legal team responsible for obtaining millions of dollars in civil judgments against individuals and entities involved in widespread criminal conspiracies.

*Northern California Super Lawyers* magazine named Mr. Rocha a *Rising Star* in 2018-2023.

Mr. Rocha attended law school at the University of San Francisco, where he graduated *cum laude* and received a business law certificate with honors. During his studies, he earned a CALI Award of Excellence for the Future in Contracts and served as a judicial extern for three San Francisco judges, including a federal magistrate at the United States District Court for the Northern District of California.

Before studying law, Mr. Rocha earned a B.S. in Business Administration with a concentration in Corporate Finance from California State University, Fresno. After completing his undergraduate studies, Mr. Rocha worked for a national brokerage firm as a series 7 and 63 licensed senior stockbroker.

He is a member in good standing of the state bar of California and the U.S. District Courts for the Northern, Central, and Eastern Districts of California.



## CHRISTINA M. SARRAF



An associate in the firm's San Francisco office, Christina Sarraf focuses her practice on securities litigation. Prior to joining the firm in 2022, she worked as an associate in the San Francisco office of the nation's largest injury firm where she represented consumers in class action litigation in both state and federal court. Ms. Sarraf played an important role in a variety of high-profile privacy, automotive, and other consumer product cases against major tech companies and automobile manufacturers.

Prior to her complex litigation experience, Ms. Sarraf has also advised Silicon Valley startups on corporate compliance and intellectual property protection. Christina earned her J.D. at the University of New Mexico School of Law. While in law school, Ms. Sarraf externed at the Sixth District Court of Appeal for the State of California and clerked at Bay Area Legal Aid in San Francisco and various private firms in New Mexico. Before law school, Ms. Sarraf was a legal assistant and later paralegal at a law firm in her hometown in New Mexico.

Ms. Sarraf was appointed to the Advisory Council to the Women in Leadership, Professional Development Program offered by Regional & Continuing Education at CSU, Chico. She is admitted to practice in the State of California and is pending admission to practice in the U.S. District Court for the Northern, Central, Eastern, and Southern Districts of California.

## ALEX VAHDAT



Alex Vahdat focuses his practice on antitrust and securities litigation. Prior to joining the firm in 2022, Mr. Vahdat worked as an associate in a law firm focusing on commercial and employment litigation. Before that, he worked as an associate at a San Francisco law firm where he represented plaintiffs in consumer class action matters and whistleblowers in qui tam actions.

Mr. Vahdat is a graduate of the University of California, Davis, where he earned his J.D. from the School of Law in 2012 and a B.A. in Political Science in 2007. While in law school, Mr. Vahdat interned at the San Francisco District Attorney's Office and the U.C. Davis School of Law Civil Rights Clinic, where he represented indigent clients alleging civil rights abuses. Mr. Vahdat was an editor for the UC Davis Business Law Journal and participated in moot court competitions. Before law school, Mr. Vahdat worked as a paralegal in a law firm representing plaintiffs in consumer class litigation and claims involving the Truth in Lending Act.

Mr. Vahdat is admitted to practice law in the State of California and the U.S. District Courts for the Northern, Central, Southern, and Eastern Districts of California.

*Of Counsel*

## MICHAEL STOCKER DARK



Of counsel in the firm's San Francisco office, Michael Stocker Dark has litigated securities and antitrust class action cases nationwide for nearly twenty-five years. Mr. Dark joined Berman Tabacco in 2023 after working as a Deputy Inspector General for the County of Los Angeles, where he oversaw operations of the Los Angeles County Sheriff's Department. Prior to that, he was a principal litigator and General Counsel at one of the largest plaintiffs class action firms in the U.S. His work has been repeatedly recognized in Benchmark Litigation and in the National Law Journal's Plaintiffs Hot List.

He has served on the Markets Advisory Council for the Council of Institutional Investors and on the Board of the John L. Weinberg Center of Corporate Governance of the University of Delaware, and now sits as a member of the American Law Institute.

Mr. Dark earned a B.A. in East Asian Languages from the University of California at Berkeley, a Juris Doctor from University of California, Hastings College of the Law, and a Master of Criminology from the University of Sydney in Australia.

## JAY ENG



Jay Eng is Of Counsel to the firm. Mr. Eng has over 14 years of experience in securities litigation, including actions brought under the PSLRA, individual and opt-out cases and mergers and acquisition litigation filed on behalf of public pension funds and retail investors. Mr. Eng has been involved in all aspects of the prosecution of such cases, including case evaluation, strategic planning, trial preparation, court appearances, settlement negotiations and jury trials.

Mr. Eng played a key role in several of the firm's most prominent cases. In *In re IndyMac Mortgage-Backed Securities Litigation*, No. 09-Civ. 04583

(S.D.N.Y.), the firm represented the Wyoming State Treasurer and the Wyoming Retirement System and negotiated settlements totaling \$346 million in connection with claims concerning the misrepresentation of IndyMac mortgage loan underwriting practices. In *In re El Paso Securities Litigation*, H-02-2717 (S.D. Tex.), the firm represented the Oklahoma Firefighters Pension & Retirement System against El Paso stemming from misrepresentations of its natural gas and oil reserves. This case resulted in a settlement totaling \$285 million, including \$12 million from auditors PricewaterhouseCoopers. In *In re Reliant Securities Litigation*, No. 02-cv-1810 (S.D. Tex.), the firm represented the Louisiana Municipal Police Employees' Retirement System against Reliant Energy, and later its subsidiary, Reliant Resources, in connection with accounting improprieties in the energy trading business. The firm negotiated a \$75 million cash settlement from Reliant and its accountant Deloitte & Touche LLP.

Mr. Eng was also on the trial team in *White v. Heartland High-Yield Municipal Bond Fund*, No. 00-C-1388 (E.D. Wis.), which was one of the few cases to go to trial after the passage of the PSLRA. Following three

weeks of trial, the firm obtained an \$8.25 million settlement against Heartland's auditor PricewaterhouseCoopers. Mr. Eng also worked on a number of matters on behalf of the firm's public pension fund clients including: *In re WorldCom, Inc. Securities Litigation*, No. 02-cv-3288 (S.D.N.Y.) (\$6.13 billion settlement) (Fresno County Employees' Retirement Association); *In re Enterasys Networks, Inc. Securities Litigation*, No. C-02-071-M (D.N.H.) (\$50 million settlement) (Los Angeles County Employees Retirement Association); *In re Sunrise Senior Living, Inc. Securities Litigation*, No. 07-cv-00102 (D.D.C.) (\$13.5 million) (Oklahoma Firefighters Pension & Retirement System); and *In re Buca, Inc. Securities Litigation*, No. 05-cv-1762 (D. Minn.) (\$1.6 million settlement) (West Palm Beach Police Pension Fund). Mr. Eng was a member of the litigation team prosecuting *California Public Employees' Retirement System v. Moody's Corp.*, No. CGC-09-490241 (Cal. Super. Ct. San Francisco County), against credit ratings agencies based on allegedly negligent misrepresentations regarding the creditworthiness of three structured investment vehicles. The firm achieved settlements totaling \$255 million from Moody's (defendants Moody's Corp. and Moody's Investors' Services, Inc.) and McGraw Hill Companies, Inc. (S&P). The settlements rank as the largest known recoveries from Moody's and S&P in a private lawsuit for civil damages relating to ratings. Mr. Eng also served as counsel for lead plaintiffs in *In re Digital Domain Media Group, Inc. Securities Litigation*, No. 12-14333-CIV (S.D. Fla.), a securities class action stemming from the rapid collapse of the digital production company Digital Domain Media Group, Inc., which filed for bankruptcy less than one year after going public, which settled for \$5.5 million.

Mr. Eng has served as a trial court law clerk in Florida state and federal courts. He is also a member of the Public Investors Arbitration Bar Association and currently serves on the Board of Editors of the PIABA Bar Journal.

Mr. Eng was recognized as a *Super Lawyer* in the 2022 edition of the *Massachusetts Super Lawyers* magazine and as a *Rising Star* in the 2010 and 2011 editions of *Florida Super Lawyers* magazine and has been awarded a rating of AV Preeminent® by *Martindale-Hubbell*®.

Mr. Eng earned a J.D. from Tulane Law School in 1998, and a B.A. in Economics from Florida State University in 1994.

Mr. Eng is a member in good standing in the Commonwealth of Massachusetts and the state of Florida, as well as the U.S. District Court for the District of Massachusetts, the U.S. District Court for the Southern, Middle and Northern Districts of Florida, the U.S. District Court for the Eastern District of Wisconsin, the U.S. Court of Appeals for the Eighth and Eleventh Circuits, and the United States Supreme Court.

## MARC J. GREENSPON



Marc J. Greenspon became Of Counsel to the firm in 2009 and concentrates his practice in the area of antitrust litigation.

Mr. Greenspon, formerly an associate with the firm from 2003 to 2007, worked on significant antitrust, consumer and securities class actions before starting an independent law practice counseling corporate clients. He maintains his independent law practice, which is not affiliated with the firm.

Mr. Greenspon earned an LL.M. in Securities and Financial Regulation from the Georgetown University Law Center in 2003, a J.D. from Nova Southeastern University in 2002 and a B.A. from the State University of New York at Buffalo in 1999. He co-authored *Securities Arbitration: Bankrupt, Bothered & Bewildered*, 7 Stan. J.L. Bus. & Fin. 131 (2002).

Mr. Greenspon is a member in good standing in the Commonwealth of Massachusetts and the state of Florida, as well as in the U.S. District Courts for the Southern, Middle and Northern Districts of Florida. Mr. Greenspon is a member of the American Bar Association Section of Antitrust Law and the American Bar Association Committee on Derivatives and Futures Law. In 2012, he was recognized as a *Rising Star* by *Florida Super Lawyers* magazine.

## CHRISTOPHER T. HEFFELFINGER



Christopher T. Heffelfinger, Of Counsel in Berman Tabacco's San Francisco office, has devoted most of his professional career to pursuing justice on behalf of those who have been harmed by financial fraud and anticompetitive-unfair trade practices. For over thirty (30) years, Mr. Heffelfinger has worked collaboratively as co-lead and participatory counsel in a variety of cases many industries in both securities and antitrust matters.

Mr. Heffelfinger has run a number of PSLRA cases including *In re Warnaco Group Inc. Securities Litigation*, No. 00-CIV-06266 (S.D.N.Y.), where he represented Fresno County Employees' Retirement Association, which settled for \$12.85 million following reversal of dismissal by the Second Circuit. Mr. Heffelfinger also has extensive experience in securities class actions generally, having prosecuted, for example, *In re Avant! Securities Litigation*, No. 96-cv-20132 (N.D. Cal.) (recovering \$35 million for the class, almost 50% of losses, net of attorneys' fees and expenses). Mr. Heffelfinger participated as counsel in *In re LDK Solar Securities Litigation*, No. C-07-05182-WHA (N.D. Cal.), a case alleging an inventory accounting fraud by this Chinese company regarding its treatment of different grades poly-silicon used in the production of solar panels. He participated in all phases of discovery including deposition practice in Hong Kong, expert work, summary judgment and trial preparation. *LDK Solar* settled for \$13 million. Similarly, Mr. Heffelfinger was requested by lead counsel in *In re Broadcom Corp., Securities Litigation*, No. 01-cv-00275 (C.D. Cal.), to conduct a series of depositions (fact and expert) in a securities case alleging the improper accounting treatment of warrants used by Broadcom to make acquisitions of other companies. *Broadcom* settled for \$150 million.

Mr. Heffelfinger has also served as co-lead or participatory counsel in the following cases: In *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation (Indirect Case)*, No. M:02-cv-01486 (N.D. Cal.), Mr. Heffelfinger was appointed by the Special Master, Ret. U.S. District Court Judge Charles B. Renfrew, to serve as settlement allocation counsel for indirect reseller purchasers in DRAM. The case obtained final approval, with the Special Master acknowledging in his Report and Recommendations to the Court that the efforts by the parties to resolve the allocation issues were an essential link in the sequence of negotiations that culminated in the proposed plan of distribution. Mr. Heffelfinger was also the lead partner for the firm in the prosecution of *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation*, MDL No. 05-1671 (C.D. Cal.) which alleged that defendants manipulated the California gas market for summertime reformulated gasoline and artificially increased prices for consumers. As co-lead counsel, the firm achieved a settlement valued at \$48 million. Chris was also an integral member of the team representing toy

purchaser consumers as co-lead counsel in *In re Toys "R" Us Antitrust Litigation* (USDC-ED NY. 2000), a Federal Multi District Litigation alleging that Toys "R" Us had conspired with certain toy manufacturers to not sell certain popularly promoted toys to deep discount retailers such as Costco, in contravention of the antitrust laws and various state unfair competition/practices statutes. The team achieved a settlement with a combined value of \$56 million.

Mr. Heffelfinger was named a *Super Lawyer* by *Northern California Super Lawyers* magazine every year since 2009 and he has an *AV Preeminent*<sup>®</sup> rating by *Martindale-Hubbell*<sup>®</sup>. He has also been recognized in *The Best Lawyers in America*<sup>®</sup> for *Litigation-Antitrust* (2018-2023) and *Litigation-Securities* (2023), and in *Northern California Best Lawyers* for *Litigation-Antitrust* (2021-2023) and *Litigation-Securities* (2023). He was selected by *Lawdragon* for its *500 Leading Plaintiff Financial Lawyers* guide (2019-2023), as featured in *Lawdragon's The Plaintiff Issue* magazine (2020-2023). He has also been recognized by *Global Competition Review's Who's Who Legal: Competition* (2021-2022).

Mr. Heffelfinger served on active duty as an infantry officer in the U.S. Marine Corps, 1977-80, and again for nine months in 1990-1991 as a Captain with a rifle company in support of Operations Desert Shield/Storm. He has lectured periodically on discovery matters, including electronically stored information, deposition practice and evidentiary foundations in commercial litigation.

Mr. Heffelfinger received his B.A. in Economics from Claremont McKenna College in 1977 and his J.D. from the University of San Francisco School of Law in 1984.

Mr. Heffelfinger is a member in good standing of the state bar of California, the U.S. District Court for the Northern, Eastern, Central and Southern Districts of California, the U.S. District Court for the District of Arizona and the Ninth Circuit U.S. Court of Appeals.

## KRISTIE A. LASALLE



Of Counsel in the firm's Boston Office, Kristie A. LaSalle focuses her practice on antitrust litigation. Ms. LaSalle has spent her career litigating challenging fraud and antitrust class actions—often turning on thorny issues of first impression in regulated industries. Ms. LaSalle joined Berman Tabacco in 2023 after nearly a decade at another plaintiffs' class action firm. There, she recovered hundreds of millions of dollars that class members overpaid for prescription pharmaceuticals as a result of fraudulent and anticompetitive conduct by drug companies. Prior to that, she clerked in the staff attorney's office for the United States Court of Appeals for the Second Circuit.

Ms. LaSalle earned her B.A. in biology at Swarthmore College in 2006 and her J.D. from Brooklyn Law School in 2012.

While in law school, Ms. LaSalle served as a judicial intern to the Honorable Laura Taylor Swain, United States District Judge for the Southern District of New York, and spent a summer in the civil division of the United States Attorney's Office for the Southern District of New York.

## SARAH KHORASANEE MCGRATH



Of counsel in the firm's San Francisco office, Sarah Khorasane McGrath focuses her practice on antitrust litigation. Ms. McGrath joined Berman Tabacco in 2010 after working as a contract attorney for the Department of Justice, Antitrust Division. Prior to that, she was an attorney volunteer with the City and County of San Francisco Office of the Public Defender and the Eviction Defense Center.

Northern California *Super Lawyers Magazine* named Ms. McGrath a *Rising Star* in 2013-2015 and 2017-2019. She was also included in *San Francisco Magazine's Top Women Attorneys in Northern California* in 2013-2015 and 2017-2019.

Ms. McGrath was the 2020 President of the Federal Bar Association, Northern District of California Chapter (FBA) and was previously the FBA's President-Elect in 2019, Treasurer in 2018, Vice President in 2016-2017 and Co-Chair of their Young Lawyers Division for the Northern District of California from 2013-2015.

Ms. McGrath earned a B.A. in Communications from the University of California at San Diego in 2002 and a J.D. from the New England School of Law in 2008. While in law school, Ms. McGrath worked as a judicial extern to the Honorable Eric Taylor, Superior Court of California, County of Los Angeles.

Ms. McGrath is a member in good standing of the state bar of California, the U.S. District Court for the Northern and Central Districts of California and the U.S. Court of Appeals for the Ninth Circuit.

## JUSTIN N. SAIF



An *of counsel* attorney in the firm's Boston office, Justin Saif focuses his practice on complex class action litigation. Mr. Saif has litigated securities, RICO, consumer, and ERISA class actions in federal court, successfully recovering hundreds of millions of dollars for aggrieved consumers, shareholders, and institutional investors.

Mr. Saif has been an integral part of the firm's largest cases for more than a decade, and his commitment to the firm's clients has driven significant firm successes. Mr. Saif represented the Massachusetts Pension Reserves Investment Management Board in *In re Fannie Mae 2008 Securities Litigation*, which alleged that Fannie Mae and two individual defendants made material misrepresentations regarding and failed to disclose (a) that an enormous volume of mortgages on its books were "subprime" and "Alt-A" as defined internally by the company and throughout the industry, and (b) that defendants had inadequate internal controls to manage the significant risks created by the company's purchases of those types of loans. Mr. Saif made crucial contributions to the case, including the drafting of the Second Amended Joint Consolidated Class Action Complaint and the opposition to defendants' motions to dismiss and preparing for and participating in mediation. That case settled for \$170 million.

Mr. Saif played a key role in drafting the consolidated class action complaint and opposition to motion to dismiss in the litigation against The Bear Stearns Companies, Inc. and its auditor, Deloitte & Touche LLP, representing the State of Michigan Retirement Systems. He also oversaw the initial document review team. That case settled for \$294.9 million. Mr. Saif was a key member of the litigation team in *In re Force Protection Securities Litigation*, representing the Laborers' Annuity and Benefit Fund of Chicago. He drafted discovery requests and responses, coordinated electronic document review and analysis, and prepared for mediation. The Force Protection matter settled for \$24 million. Mr. Saif also played a vital part in *In re Par Pharmaceutical Securities Litigation*, representing the Louisiana Municipal Employees Retirement System, including preparing for and participating in a mediation that led to an \$8.1 million settlement.

Prior to joining Berman Tabacco in 2008, Mr. Saif worked as an associate at Foley Hoag LLP in Boston, where he focused on complex civil litigation including securities litigation, U.S. Securities and Exchange Commission enforcement matters, and professional liability matters involving lawyers and accountants.

Mr. Saif earned an A.B. in Psychology from Harvard University in 1999, graduating *cum laude*. In 2004 he earned a J.D. from the University of Chicago. While in law school, he worked at the MacArthur Justice Center, an impact litigation firm and legal clinic focused on reforming the criminal justice system.

Mr. Saif is a member in good standing in the state and federal courts of the Commonwealth of Massachusetts and the U.S. Court of Appeals for the First Circuit. He is a member of the Boston Bar Association.

## *Staff Attorneys*

### MACKLINE BASTIEN



Mackline Bastien joined the firm in 2015 as a staff attorney. Prior to joining Berman Tabacco, Ms. Bastien managed a solo practice in the Boston area where she represented clients in family law, business formation and housing matters. In addition, she represented an individual in a civil dispute as well as a buyer purchasing a business.

Ms. Bastien received her J.D. from Thomas M. Cooley Law School in 2005 and her L.L.M. from Boston University School of Law in 2008. While in law school, Ms. Bastien completed an externship at Hubbard Law Offices, P.C., in Lansing, Michigan where she assisted the general counsel for the Michigan Association of County Drain Commissioner regarding land-use issues and property rights matters. She received her B.S. in Business Administration from Columbia Union College in 2001.

She is a member in good standing in the Commonwealth of Massachusetts.

## BRIAN J. DRAKE



A staff attorney at the firm's Boston office, Brian Drake focuses his practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Mr. Drake also represents whistleblowers who provide information and assistance to the U.S. Securities and Exchange Commission in connection with their enforcement of the federal securities laws.

Prior to Berman Tabacco, Mr. Drake was a staff attorney at a number of prominent law firms in Washington, D.C. and Boston, where he developed a broad range of expertise, primarily in the areas of anti-trust and tax litigation.

Mr. Drake received his J.D. from the George Washington University Law School and his B.S. in Mechanical Engineering from the University of California, San Diego in 1994.

Mr. Drake is a member in good standing of the state bars Virginia and the District of Columbia.

## BERNA M. LEE



A staff attorney in the firm's Boston office, Berna Lee joined the firm in 2015, prior to which, Ms. Lee worked as an associate at a number of New York law firms.

Ms. Lee earned a B.A. in English Literature from Dartmouth College in 1993. She received her J.D., *cum laude*, from the Georgetown University Law Center in 1999, where she served on the *Georgetown Journal of Legal Ethics*, was a member of the Appellate Litigation Clinic and interned for the Honorable Gladys Kessler of the U.S. District Court for the District of Columbia.

Ms. Lee is a member in good standing of the state bars of Rhode Island and New York, as well as the U.S. District Courts of the Southern and Eastern Districts of New York.

## ELLE K. MCKIM



A staff attorney in the firm's Boston office, Ellee K. McKim focuses her practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Prior to joining the firm, Ms. McKim served as an associate attorney at a commercial litigation firm in Boston.

Ms. McKim earned a J.D. from Northeastern University School of Law in 2009. At Northeastern University School of Law, Ms. McKim interned for Judge Joyce London Alexander of the United States District Court for the District of Massachusetts. She also served as lawyering fellow for the law school's social justice program. She earned



an M.A. in Political Science from the University of Chicago in 2005 and a B.A. in Political Science from the University of Missouri in 2001.

Ms. McKim is a member in good standing in the Commonwealth of Massachusetts, the U.S. District Court for the District of Massachusetts and the U.S. Court of Appeals for the First Circuit.

## JOHN REARDEN



John Rearden joined the Boston office of Berman Tabacco as a Staff Attorney in 2019. Prior to joining the firm, Mr. Rearden worked as a discovery attorney for several major law firms in the Boston area. Earlier in his career, Mr. Rearden worked as an associate attorney in Southern Florida where he specialized in commercial litigation and consumer securities fraud.

Mr. Rearden earned a B.A. in History from St. Anselm College in 1994 and his J.D. from Florida Coastal School of Law in 2002. While in law school, Mr. Rearden was named as a Dean's Scholar for academically ranking in the top 10% of all students and also received an Award for Academic Excellence in International Law. Mr. Rearden was also a member of the Florida Coastal Law Review.

Mr. Rearden is a member in good standing in the Commonwealth of Massachusetts and the State of Florida.

## *Project Attorneys*

## KAREN DIDRICKSON

Karen Didrickson joined the San Francisco office of Berman Tabacco as a project attorney in 2019. She has over a decade of experience in complex litigation and discovery matters. Ms. Didrickson has worked on a wide range of cases, including antitrust and securities litigation. Ms. Didrickson also has experience as an ERISA attorney at the global human resources consulting firms Mercer and Willis Towers Watson, and the multinational accounting firm Deloitte. In addition, she was an instructor at Golden Gate University School of Law where she taught a course on employee benefits law, with an emphasis on qualified plans.

Ms. Didrickson earned her B.A. in Political Science from Willamette University in 1982 and her J.D. (1994) and LL.M. (1995 in Taxation) from the Golden Gate University School of Law.

Ms. Didrickson is a member in good standing of the state bar of California.

## LAURA M. FALARDEAU



A project attorney in the firm's Boston office, Laura M. Falardeau focuses her practice on representing investors and consumers in cases involving unfair competition, consumer protection, securities, and complex litigation. Recently, Ms. Falardeau's cases have involved complex market manipulation brought under the antitrust laws and predatory lending claims under RICO.

Ms. Falardeau joined the firm in 2011 after working at several major law firms in Boston, primarily in securities litigation. Earlier in her career, Ms. Falardeau served as an associate attorney at a law firm in the Boston area focusing on

probate and bankruptcy.

Ms. Falardeau earned her B.A. in Economics and History from the University of Massachusetts, Amherst in 2000 and her J.D. from Northeastern University School of Law in 2006. At Northeastern University School of Law, Ms. Falardeau interned for Judge Peter W. Agnes, Jr. of the Massachusetts Superior Court. During law school Ms. Falardeau also represented victims of domestic violence at Greater Boston Legal Services and served as a Hearings Officer at the Boston Public Health Commission.

Ms. Falardeau is a member in good standing in the Commonwealth of Massachusetts.

### *Other Key Personnel*

## JAMES HOUGHTON, SENIOR INVESTIGATOR



James A. Houghton is a Senior Investigator based in our firm's Boston office. A member of the Association of Certified Fraud Examiners, Mr. Houghton works closely with our litigation and investigative teams to conduct complex financial investigations into potential fraud schemes. Mr. Houghton's knowledge and insight has brought a unique handling to the process of uncovering evidence of fraud. Such processes often include obtaining nonpublic information through interviews with former employees at suspect companies and conducting research.

Prior to joining Berman Tabacco, Mr. Houghton was a Special Agent for the Defense Criminal Investigative Service, the Law Enforcement and Investigative arm of the Department of Defense Inspector General's Office. While there, he gained 18 years' experience directing all aspects of defense and financial fraud investigations. His cases frequently involved investigations of companies with receivable-based loans with banks. Mr. Houghton handled complex and sensitive investigations that led to both fraud and Qui Tam lawsuits, often working jointly with the U.S. Attorney General's Office and other federal agencies, including the Federal Bureau of Investigations. As a result of his investigations, Mr. Houghton has testified regularly in federal courts. Mr. Houghton's skill and expertise have led to him receiving the Department of Justice Award for Public Service on two separate occasions. Mr. Houghton further received the 2018 Investigations award from the Intelligence Community Inspectors General.

Mr. Houghton has also been a Special Agent for Naval Criminal Investigative Service and a Financial Analyst for the Federal Bureau of Investigations. He has received Top Secret and Sensitive Compartmented Information Clearance.

Mr. Houghton earned a B.S. in Business Administration and Accounting from Stonehill College. He also attended the Federal Law Enforcement Training Center for White Collar Crime and Financial Fraud Training, as well as their Criminal Investigator Training Program.

## JEANNINE M. SCARSCIOTTI, SENIOR PORTFOLIO ANALYST



Jeannine M. Scarsciotti, the firm's senior portfolio analyst has more than 15 years' experience in providing portfolio monitoring, loss calculation and settlement services to the firm's institutional clients. Ms. Scarsciotti works collaboratively with a team of portfolio analysts to provide clients with comprehensive monitoring services. Her team works closely with the firm's attorneys in refining loss calculations to reflect estimated recoverable damages as opposed to market losses. The portfolio analysts, along with the New Case Investigations Team attorneys, routinely work with damage experts to develop regression analyses and analyze confounding information that will

impact an investor's ultimate recoverable damages. Ms. Scarsciotti also devotes a substantial portion of her time offering guidance to the firm's institutional clients in understanding their eligibility in securities class action settlements and helping clients with any custodian bank matters or data reconciliation issues that may arise.

## OFFICES

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# **EXHIBIT B**

**EXHIBIT B**  
**Breakdown of Berman Tobacco's Work**

<b>MOTION</b>	<b>ATTORNEYS AND POSITION</b>	<b>HOURS</b>	<b>RATE</b>
Research and Drafting Amended Complaints	Patrick Egan (Partner)	12.30	\$1,045
	Carl Hammarskjold (Partner)	0.50	\$755
	<b>TOTAL</b>	12.80	
Research and Briefing for First Motion to Dismiss	Anne O'Berry (Of Counsel)	21.10	\$830
	<b>TOTAL</b>	21.10	
Research and Briefing for Second Motion to Dismiss	Joseph Tabacco Jr. (Partner)	4.70	\$1,170
	Patrick Egan (Partner)	8.20	\$1,045
	Todd Seaver (Partner)	87.90	\$1,045
	Carl Hammarskjold (Partner)	38.70	\$755
	Colleen Cleary (Associate)	90.50	\$510
	Jessica Moy (Associate)	68.70	\$500
<b>TOTAL</b>	298.70		
Research and Briefing for Third Motion to Dismiss	Patrick Egan (Partner)	5.70	\$1,045
	<b>TOTAL</b>	5.70	
Settlement Negotiations, Mediation and Notice Administration	Joseph Tabacco Jr. (Partner)	53.70	\$1,170
	Patrick Egan (Partner)	24.70	\$1,045
	Todd Seaver (Partner)	40.20	\$1,045
	<b>TOTAL</b>	118.60	
Case Investigation	Leslie Stern (Partner)	25.20	\$1,120
	Nicole Lavallee (Partner)	53.40	\$1,150
	Patrick Egan (Partner)	33.70	\$1,045
	Todd Seaver (Partner)	70.50	\$1,045
	Steve Groopman (Partner)	39.50	\$755
	Jennifer Lopez (Financial Analyst)	37.00	\$325
	Karen Beaulieu (Financial Analyst)	48.50	\$490
<b>TOTAL</b>	307.80		
Litigation Strategy & Analysis	Joseph Tabacco Jr. (Partner)	12.80	\$1,170
	Patrick Egan (Partner)	18.40	\$1,045
	Todd Seaver (Partner)	17.10	\$1,045
	Carl Hammarskjold (Partner)	20.20	\$755
<b>TOTAL</b>	68.50		
Case Management	Todd Seaver (Partner)	3.30	\$1,045
	<b>TOTAL</b>	3.30	
Client/ Class Member Communication	Joseph Tabacco Jr. (Partner)	8.90	\$1,170
	Patrick Egan (Partner)	0.40	\$1,045
	Todd Seaver (Partner)	7.70	\$1,045
	<b>TOTAL</b>	17.00	
Appeal	Joseph Tabacco Jr. (Partner)	5.20	\$1,170
	Todd Seaver (Partner)	11.40	\$1,045
	Patrick Egan (Partner)	1.70	\$1,045
	Carl Hammarskjold (Partner)	1.80	\$755
<b>TOTAL</b>	20.10		

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

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FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Docket No. 15-cv-00871  
(SHS)

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

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**DECLARATION OF DAVID E. KOVEL FOR KIRBY McINERNEY LLP  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, David E. Kovel, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a Partner in the law firm of Kirby McInerney LLP (“KM”). I respectfully submit this declaration in support of Class Counsel’s<sup>1</sup> Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”) in connection with services rendered in the above-captioned action (“Action”).

2. The statements herein are true to the best of my personal knowledge, information and belief based on the books and records of KM and information provided by its attorneys and staff. KM’s time and expense records are prepared and maintained in the ordinary course of business.

3. At all times relevant hereto, KM served as additional counsel for California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”). This Court appointed Lowey Dannenberg, P.C. (“Lowey”) as Class Counsel for the Settlement Class in connection with each of the six Settlements in the above-captioned action. *See* ECF Nos. 159, 426, 428-29, 440, 457 (orders preliminarily approving each Settlement).

4. I am one of the attorneys who oversaw my firm’s involvement in the Action. KM’s time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform with

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<sup>1</sup> Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Settlement Agreements with: JPMorgan Chase & Co. (ECF No. 151-1); NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (ECF No. 384-1); Deutsche Bank AG and DB Group Services (UK) Ltd. (ECF No. 384-2); Credit Suisse Group AG and Credit Suisse AG (ECF No. 391-1); NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (ECF No. 432-1); and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (collectively, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, together with TP ICAP and Gottex, the “Settling Brokers”) (ECF No. 454-1).

directions from Class Counsel and/or my firm's practice. Accordingly, the time reflected in KM's fee compensable lodestar calculation for which payment is sought are reasonable in amount.

5. The services KM performed on behalf of the putative class in connection with the prosecution of the litigation include but are not limited to: conducting legal and factual research and drafting allegations for the amended complaint.

6. Set forth below in ¶ 7 is a summary reflecting the amount of time KM's attorneys and professional support staff worked on the Action from the inception of the case to June 30, 2023, the timekeeper's current billing rates, and the corresponding lodestar calculations of that work based on the current hourly billing rates. Further, for personnel no longer employed by KM, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. The time and lodestar incurred preparing the Fee and Expense Application have also been excluded. The schedule was prepared based upon daily time records maintained by KM's attorneys in the ordinary course of business.

7. KM's total fee compensable time for which it seeks an award of attorneys' fees is summarized below.

<b>Table 1</b>				
<b>Timekeeper Name</b>	<b>Position<sup>2</sup></b>	<b>Hourly Rate</b>	<b>Total Hours from inception through 6/30/2023</b>	<b>Total Lodestar from inception through 6/30/2023</b>
David Kovel	Managing Partner	\$1,200	5.50	\$6,600.00
Lauren Wagner Pederson	Of Counsel	\$750	31.75	\$23,812.50
<b>TOTAL</b>			<b>37.25</b>	<b>\$30,412.50</b>

<sup>2</sup> The hourly rates for the attorneys Table 1 are consistent with the rates approved by courts in other financial antitrust and securities class action litigation when conducting a lodestar cross-check.



8. The total time for which KM has spent working on the Action to date is 37.25 hours.

The total lodestar value of these professional services is \$30,412.50.

9. A true and correct copy of KM's resume is attached hereto as Exhibit 1.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on August 8, 2023.



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David E. Kovel

# **EXHIBIT 1**



**Kirby McInerney LLP** is a specialist litigation firm with expertise in commodities, antitrust, securities, and other consumer matters. KM has been a pioneer in finance and class action law and is one of the oldest firms in the field, with over 75 years of experience. With its long track record, KM's experience in sophisticated financial cases is remarkable.

In commodities litigation, KM has been involved in some of the most cutting-edge areas of futures manipulation cases, currently as the court appointed co-liaison counsel for all class actions in the multi-district litigation and co-lead counsel for exchange-based plaintiffs in *In Re: Libor-Based Financial Instruments Antitrust Litigation*, No. 11-md- 02262 (NRB) (S.D.N.Y.). KM is sole lead counsel in *In re North Sea Brent Crude Oil Futures Litigation*, No. 13-md-02475 (ALC) (S.D.N.Y.) and co-lead counsel in other commodities cases such as *Anastasio v. Total Gas & Power North America, Inc. et al.*, No. 15-cv-09689 (S.D.N.Y.). KM also recently won a victory at the Second Circuit in a landmark silver manipulation case establishing pleading standards for monopolization claims in futures markets (*Wacker v. JP Morgan Chase, et al.*, Nos. 16-2482-cv (L), 16-2484-cv (CON), 16-2530-cv (CON) (2d Cir. 2017)). In addition, KM participated in a seminal case involving Sumitomo Corporation's manipulation of the copper market. KM has represented market makers and hedge funds in commodities manipulation cases involving silver, propane and fixed income products. KM's experience in commodities manipulation, in cases brought under the Commodities Exchange Act or under the Sherman Act and state law analogs, spans the markets for gasoline, propane, cement, concrete, steel, potash, silver and even fixed income products.

Notable examples of KM's securities cases include representation of an investment fund that acted as lead counsel for a certified class of purchasers of Preferred Redeemable Increased Dividend Equity Securities in connection with Cendant Corporation's accounting fraud. KM secured a \$350 million settlement – an unprecedented 100 percent recovery for the investors. Also, representing a bank as lead plaintiff, KM acted as co-lead counsel in a securities action brought against Adelphia Communications Corporation, obtaining a \$455 million settlement for the class. KM also represented the New York State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses, which settled for \$168 million.

Our lawyers are exceptionally well versed in commodities markets and litigation. David Kovel, the partner most involved in commodities litigation, was a commodities trader prior to receiving his JD/MBA and worked in the commodities export markets. As a commodities trader, Mr. Kovel took financial risk in futures and options markets and traded physical markets in US, Europe, Asia and Latin America. He became a specialist at trading in futures delivery markets and understanding the relationship between futures prices and the physical spot market. In addition, Mr. Kovel developed experience in commodities markets through his work in Nicaragua on

agricultural export financing projects funded by the U.S. Government. Mr. Kovel is a member of the New York City Bar Association Futures and Derivatives Committee.

Some of our commodities work includes:

- *In re Libor-Based Financial Instruments Antitrust Litigation*, 1:11-md-02262-NRB; *FTC Capital GMBH et al. v. Credit Suisse Group AG et al.*, 1:11-cv-02613-NRB (S.D.N.Y.) (Buchwald, J.). Court appointed co-liaison counsel for all class actions in the multi-district litigation and co-lead counsel for exchange-based plaintiffs alleging that defendant banks colluded to misreport and manipulate LIBOR. The exchange-based class litigation has resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a “futures only” settlement class;
- *Wacker v. JP Morgan Chase, et al.*, Nos. 16-2482-cv (L), 16-2484-cv (CON), 16-2530-cv (CON) (2d Cir. 2017) (reversal of lower court dismissal);
- *In re Credit Default Swaps Auctions Litigation*, 21-cv-00606 (D.N.M.);
- *Dennis v. The Andersons, Inc. et al.*, No. 20-cv-04090 (N.D. of Ill.);
- *Sullivan v. Barclays PLC*, No. 13-cv-02811 (S.D.N.Y.);
- *In re JPMorgan Treasury Futures Spoofing Litig.*, No. 1:20-cv-03515 (S.D.N.Y.);
- *In re Cattle Antitrust Litigation*, No. 19-cv-1222 (D. Minn.);
- *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (S.D.N.Y.);
- *In re Deutsche Bank Spoofing Litig.*, No. 20-cv-03638 (N.D. of Ill.);
- *In re Bank of Nova Scotia Spoofing Litigation*, No. 20-cv-11059 (D.N.J.);
- *In re Natwest Treasury Futures Spoofing Litig.*, 22-cv-00479 (N.D. Ill.);
- *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, No. 14-md-02548 (S.D.N.Y.);
- *In re Crude Oil Commodity Futures Litigation*, No. 11-cv-03600 (S.D.N.Y.);
- *In re North Sea Brent Crude Oil Futures Litigation*, No. 13-md-02475 (S.D.N.Y.);
- *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*, No. 05-cv-01671 (C.D. Cal);
- *In re BP Propane Indirect Purchaser Antitrust Litigation*, No. 06-cv-03541 (N.D. Ill.).
- *In re Potash Antitrust Litigation*, No. 08-cv-06910 (N.D. Ill.).



**Daniel Hume** is a co-managing partner based in our New York office. He leverages more than 25 years of experience to help institutional investors, financial institutions, and individuals recover losses and achieve favorable outcomes in class action and direct securities litigation. Additionally, he has prosecuted antitrust class actions and obtained significant monetary relief for consumers.

Some of Mr. Hume's relevant securities work includes:

- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Lead counsel for the investor class in *In re AT&T Wireless Tracking Stock Securities Litigation*, a securities class action which resulted in recovery of \$150 million for the class.
- Lead counsel for a group of Singapore-based investors in a securities class action, *Dandong v. Pinnacle Performance Ltd*, against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. This litigation resulted in a \$20 million recovery.
- Lead counsel for the investor class in *In re MOL Global, Inc. Securities Litigation*, a securities class action lawsuit alleging that e-payment enabler MOL Global misled shareholders prior to its initial public offering. This litigation resulted in an \$8.5 million recovery.
- Representation of foreign financial institutions in individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations.

Some of Mr. Hume's relevant antitrust work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over \$1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia, and Minnesota, where the litigation proceeded to trial.
- Representation of a class of retailers in *In re Visa Check/Master Money Antitrust Litigation*, an antitrust case which resulted in a settlement of over \$3 billion for the class.

- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.

Mr. Hume is admitted to the New York State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Eighth, and Ninth Circuits, The Appellate Division of the Supreme Court of the State of New York, First Judicial Department, and The United States Supreme Court. He graduated from State University of New York at Albany (B.A. *magna cum laude*, 1988) and Columbia Law School (J.D. 1991).

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**David E. Kovel** is a managing partner based in our New York office focusing on commodities, antitrust, whistleblower, securities, and corporate governance matters. Recently, Mr. Kovel represented a whistleblower client who was awarded nearly \$200 million by the whistleblower program of the Commodity Futures Trading Commission (“CFTC”). This landmark CFTC whistleblower award is the largest, publicly-announced single whistleblower award arising under the Dodd-Frank whistleblower reward programs (the CFTC and U.S. Securities and Exchange Commission (“SEC”). Additionally, Mr. Kovel has been recognized as an expert on antitrust and commodities litigation and is a frequent commentator on these matters. He has an active appellate practice having argued significant commodities, antitrust, and whistleblower matters before various appeals courts. Mr. Kovel also has an active pro bono practice. His work is more fully described below.

Mr. Kovel is admitted to the New York State Bar, the Connecticut State Bar, the U.S. District Courts for the Southern, Eastern, and Western Districts of New York, the U.S. Court of Appeals for the First Circuit, Second Circuit, and D.C. Circuit. He has been a member of the New York City Bar Association Committee on Futures and Derivatives Regulation and is a former member of the New York City Bar Association Antitrust Committee. He graduated from Yale University (B.A.), Columbia University School of Law (J.D.), and Columbia University Graduate School of Business (M.B.A.).

Mr. Kovel traded commodities for several years before attending business and law school. Prior to joining KM, Mr. Kovel practiced at Simpson Thacher & Bartlett LLP. He is fluent in Spanish and at one time played professional soccer in Nicaragua.

Appellate Experience

- *Wacker v. JP Morgan Chase & Co.*, No. 16-2482 (2d Circuit) (achieved reversal under antitrust pleading standards and on behalf of traders of silver futures, alleged victims of market manipulation)
- *Doe v. United States Securities and Exchange Commission*, No. 17-4161 (2d Circuit) (Appeal of a whistleblower award under the Dodd Frank whistleblowers provisions of the Securities Exchange Act)
- *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.) (responded to Moody's appeal in seminal tax case under the New York False Claims Act)
- *In re Libor-Based Financial Instruments Antitrust Litigation* including *Gelboim v. Credit Suisse Group AG*, No. 17-1989 (2d Circuit) (involved in various appeals on pleading standards, jurisdiction, class certification and other matters stemming from this complex class action)
- *In re North Sea Brent Crude Oil Futures Litig.*, No. 17-2233 (2d Circuit) (engaged in appeal on first impression issues related to extraterritoriality under the Commodity Exchange Act)
- *United States of America Ex Rel. Lawton v. Takeda Pharmaceutical Company, et al.*, No. 16-1382 (1st Circuit) (argued appeal of whistleblower alleging violations of federal and state False Claims Acts for off-labeling marketing)
- *Anastasio v. Total Gas & Power North America*, No. 17-1199 (2d Circuit) (argued appeal on behalf of natural gas futures traders alleging market manipulation)
- *Doe v. United States Securities and Exchange Commission*, No. 17-416 (2d Circuit)

Commodities Cases

- *In re Credit Default Swaps Auctions Litigation*, No. 21-cv-00606 (D.N.M.). Co-lead counsel in a class action brought by the firm and the Office of the Attorney General for the State of New Mexico alleging antitrust violations and market manipulation in the credit default swaps market. The case is ongoing.
- *Shak et al. v. JP Morgan Chase & Co. et al.*, No. 15-cv-00922 (S.D.N.Y.) (and related cases). Representation of exchange-based investors alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- *In re Libor-Based Financial Instruments Antitrust Litigation*, No. 11-md-02262; *FTC Capital GMBH et al. v. Credit Suisse Group AG et al.*, No. 11-cv-02613 (S.D.N.Y.) Court appointed co-liaison counsel for all class actions in the multi-district litigation and co-lead counsel for exchange-based class alleging the fixing of prices of a benchmark interest rate. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- *Dennis v. The Andersons, Inc. et al.*, No. 20-cv-04090 (N.D. of Ill.) Representation of a putative class of exchange-based investors alleging monopolization and manipulation of Chicago Board

of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.

- *In re Deutsche Bank Spoofing Litigation*, No. 20-cv-03638 (N.D. of Ill.) Counsel on behalf of a putative class of investors alleging manipulation through “spoofing” of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- *In re Bank of Nova Scotia Spoofing Litigation*, No. 20-cv-11059 (D.N.J.). Court appointed to the Executive Committee and class counsel, alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, No. 20-cv-03515 (S.D.N.Y.), alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank’s recent \$920 million settlement with the DOJ, CFTC, and SEC. The case has a putative settlement of \$15.7 million.
- *In re Cattle Antitrust Litigation*, No. 19-cv-01222 (D. Minn.). Court appointed Executive committee member and class counsel, representing cattle producers and cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- *In re North Sea Brent Crude Oil Futures Litig.*, No. 13-md-02475 (S.D.N.Y.). Sole lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation.
- *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*, No. 05-cv-01671 (C.D. Cal.). Co-lead counsel in an antitrust class action pertaining to Unocal’s alleged manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which plaintiffs claim caused inflated retail prices. Obtained a \$48 million settlement for indirect purchasers.
- *In re BP Propane Indirect Purchaser Antitrust Litigation*, No. 06-cv-03541 (N.D. Ill. 2010). Co-lead counsel for propane purchaser class. Secured a \$15 million settlement.
- *In re Potash Antitrust Litigation*, No. 08-cv-06910 (N.D. Ill. 2008). In leadership group which secured a \$13 million settlement for a class of potash purchasers.
- *CFTC v. Shak*, No. 14-cv-01632-EGS (D.D.C.). Represented defendant in case brought by the CFTC under the Commodity Exchange Act’s newest provisions for violations of an administrative order in the gold futures market.
- *Supreme Auto Transport LLC v. Arcelor Mittal et al.*, No. 08-cv-05468 (N.D. Ill. 2008). In the leadership group on behalf of a proposed class of steel purchaser alleging price fixing.
- *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, No. 14-md-02548 (S.D.N.Y.). Counsel for plaintiff on behalf of gold purchasers in a market manipulation case. The case has resulted in settlements of \$152 million.
- *In re Exide Technologies*, No. 13-11482 (KJC) (Bankr. D. Del.). Expert for bankrupt debtor, a purchaser of metals, opining on the dynamics of plaintiffs’ side representation in antitrust and commodities market cases.

#### Other Antitrust Cases



- *In re Ductile Iron Pipe Fittings Antitrust Litigation*, MDL No. 2347 (D. NJ. 2012). Co-lead counsel on behalf of a proposed class of purchasers of iron pipe fittings for water projects. Class representatives include Wayne County, Michigan. Secured a \$4 million settlement.
- *Microsoft antitrust cases*: Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over \$1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia, and Minnesota, where the litigation proceeded to trial.
- *The City of New York v. GlaxoSmithKline PLC and SmithKline Beecham Corporation*, No. 04-cv-2134-JP (D. Pa. 2004). Represented City of New York in pharmaceutical drug monopolization case. Private settlement.

#### Corporate Governance

- *In re Pfizer Inc. Shareholder Derivative Litigation*, No. 09-cv-7822 (S.D.N.Y.). Counsel for lead plaintiff in a shareholder derivative action. Obtained a \$75 million award and groundbreaking changes to the Board of Director's oversight of regulatory matters

#### Public Whistleblower Cases

- *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.)
- *The State of New York Ex Rel. Vinod Khurana et al v. Spherion Corp.*, No. 15-cv-06605-JFK-AJP (S.D.N.Y.)
- *United States of America Ex Rel. Lawton v. Takeda Pharmaceutical Company, et al.* (D. Mass.)
- *Doe v. United States Securities and Exchange Commission*, No. 17-4161 (2d Circuit)

#### Confidential Whistleblower Cases Ongoing and Resolved

- Commodities.
- Securities.
- Procurement fraud.
- Medical Device/Pharmaceutical fraud.

#### Pro Bono

- Mr. Kovel also has an active pro bono practice, having represented, among others, clients in need of housing referred through the office of *pro se* litigation in the Southern District of New York, whistleblowers various governmental settings, clients in foreclosure matters, and a Latino soccer association in its efforts organize and obtain a fair proportion of field time from a municipality.

#### Frequent commentator on commodities, finance, and whistleblower matters

- *Bloomberg* (television and print), *New York Times*, *Wall Street Journal*, *Reuters*, *Financial Times*, *Forbes*

- Representative comments include the following articles:
  - “Market fixing inquiry gathers pace,” <http://www.ft.com/intl/cms/s/0/0a589512-4589-11e4-9b71-00144feabdc0.html#axzz3MebHU1a2>
  - “Brent Crude Traders Claim Proof BFOE Boys Rigged Market,” <http://www.bloomberg.com/news/2013-11-06/brent-crude-traders-claim-proof-bfoe-boys-rigged-market.html>
  - “Haunted by Inflation, He Snapped Up Silver at \$2, Made a Fortune and Lost It,” <http://www.bloomberg.com/news/2014-10-23/hunt-s-death-revives-memory-of-fortune-lost-on-silver-bet.html>
  - “Regulators Try to Beat Clock in Rate Probe.” [http://www.wsj.com/news/articles/SB10000872396390443890304578006573853603846?mod=\\_newsreel\\_3](http://www.wsj.com/news/articles/SB10000872396390443890304578006573853603846?mod=_newsreel_3)
  - “The Coming New Age Of Whistleblower Lawsuits.” <http://www.forbes.com/2010/11/05/whistleblower-dodd-frank-fraud-leadership-managing-corruption.html>
  - “Proposed IRS Whistleblower Rules Could Undermine FATCA, Critics Argue.” <http://blogs.wsj.com/corruption-currents/2013/02/12/proposed-irs-whistleblower-rules-could-undermine-fatca-critics-argue/>
  - “Arrests Mount In Libor Manipulation Probe.” [http://www.bloomberg.com/video/arrests-mount-in-libor-manipulation-probe-TPKf\\_kj6QE2OckwfJgyqbQ.html](http://www.bloomberg.com/video/arrests-mount-in-libor-manipulation-probe-TPKf_kj6QE2OckwfJgyqbQ.html)

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**David A. Bishop** is a partner practicing out of our New York office, where he coordinates domestic client and government relations. Mr. Bishop joined the firm in 2006 following a distinguished career in local government. Mr. Bishop was elected to the Suffolk County Legislature in 1993 while still attending Fordham Law School. He served in several leadership capacities, including Democratic Party Leader, Chairman of Public Safety and Chairman of Environment. His legislative record earned him recognition from the Nature Conservancy, the Child Care Council, and the Long Island Federation of Labor.

As an attorney in private practice, Mr. Bishop has litigated numerous NASD arbitrations on behalf of claimants.

Some of Mr. Bishop’s relevant experience includes:

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and

commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.

- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Representation in a class action on behalf of homeowners in minority neighborhoods in Nassau County concerning the County's unfair assessment practices.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage-related losses. During the class period, the company's stock fell from approximately \$37 to \$6. This case resulted in a settlement of \$168 million.
- Lead counsel for classes of consumers harmed by price fixing in the LCD flat panel and SRAM markets.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of \$29 million for the class.

Mr. Bishop is admitted to the New York State Bar and U.S. District Court for the Southern and Eastern Districts of New York. He graduated from American University (B.A. 1987) and Fordham University Law School (J.D. 1993).

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**Thomas W. Elrod** is a partner based in our New York office focusing on securities, commodities, and antitrust litigation. From 2015-2020, Mr. Elrod was named a Top Rated Securities Litigation "Rising Star" Attorney by Super Lawyers. Mr. Elrod joined the firm in 2011.

Some of Mr. Elrod's relevant securities experience includes:

- Co-lead counsel in *Kokareva v. Bristow Group Inc.*, a securities class action alleging that an aviation services provider focused on the oil and gas sector, made materially false and misleading statements about its internal controls relating to covenants in the company's secured financing agreements. The case resulted in a \$6.25 million settlement.

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for \$590 million.
- Class counsel in *Shah v. Zimmer Biomet Holdings*, a securities class action alleging that a medical device company did not disclose systemic quality issues at its manufacturing facility. The case resulted in a \$50 million settlement.
- Lead counsel in *In re Hi-Crush Partners L.P. Securities Litigation*, a class action alleging that fracking sand producer Hi-Crush Partners misled shareholders regarding a major customer relationship. This case resulted in a \$3.8 million settlement.
- Lead counsel in *Barfuss v. DGSE Companies, Inc.*, a securities class action alleging that a company that sold precious metals to wholesale and retail customers filed materially misleading financial statements. The case resulted in a \$1.7 million settlement.
- Co-lead counsel in *In re Resonant Inc. Securities Litigation*, a securities class action alleging that a mobile phone component company misled investors concerning its ability to meet the terms of a development agreement. The case resulted in a \$2.75 million settlement.
- Representation of municipal issuers, including governmental entities and hospital systems, in FINRA arbitrations alleging misrepresentations by underwriters in connection with Auction Rate Securities issuances.

Some of Mr. Elrod's relevant antitrust and commodities experience includes:

- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ, CFTC, and SEC. The case has a putative settlement of \$15.7 million.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Court appointed Executive committee member and class counsel in *In re Cattle Antitrust Litigation*, representing cattle producers and cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation in *In re North Sea Brent Crude Oil Futures Litigation*.

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.

Some of Mr. Elrod's other relevant experience includes:

- Representation of a whistleblower who received the largest-ever individual award (nearly \$200 million) arising under the Dodd-Frank whistleblower reward program after he provided information regarding the manipulation of crucial financial benchmarks used by global banks as the basis for the pricing of fixed income securities and derivative products.
- Representation of a nationwide class of residential mortgage loan borrowers in *Rothstein v. GMAC Mortgage LLC*, a class action alleging violations of the Racketeer Influence and Corrupt Organizations Act. This litigation resulted in a \$13 million settlement against GMAC Mortgage.
- Representation of SEC, CFTC, and FCA whistleblowers who claim that their companies have violated federal law or defrauded the United States Government.

Mr. Elrod is admitted to the New York State Bar, New Jersey State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, U.S. District Court for the District of New Jersey, and U.S. Courts of Appeals for the 2nd, 3rd, 7th, and 9th Circuits. He graduated from the University of Chicago (B.A. 2005) and Boston University School of Law (J.D. 2009).

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**Anthony F. Fata** is a partner based in our Chicago office. For more than 20 years, Mr. Fata has represented clients in complex financial matters, including claims arising under the commodity, securities, antitrust, and whistleblower laws. Mr. Fata has regularly appeared before federal and state courts throughout the United States and in regulatory matters overseen by the Securities and Exchange Commission, Commodity Futures Trading Commission, Financial Industry Regulatory Authority, Chicago Mercantile Exchange, and other governmental and self-regulatory agencies.

Prior to joining KM, Mr. Fata practiced at McDermott, Will & Emery LLP, where he defended SEC enforcement matters, securities class actions, shareholder derivative suits, and consumer class actions. He then joined Cafferty Clobes Meriwether & Sprengel LLP to lead the firm's efforts in commodity manipulation matters.

Mr. Fata has developed and litigated numerous proprietary cases and has served in leadership positions in multiple cases. Some of Mr. Fata's experience includes:

Commodities

- *In re Cattle Antitrust Litigation*, No. 19-cv-1222 (D. Minn.): Mr. Fata led efforts to develop this proprietary case on behalf of cattle producers and cattle futures traders. Mr. Fata continues to serve in a leadership capacity on behalf of live cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- *Dennis v. The Andersons, Inc. et al.*, No. 20-cv-04090 (N.D. of Ill.): Co-lead counsel of a putative class of exchange-based investors alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws. Mr. Fata has led all phases of this litigation.
- *Dufoe v. DraftKings Inc., et al*, 1:23-cv-10524 (D.Mass.). Counsel to a class of investors that purchased non-fungible tokens (NFTs) from DraftKings Inc., which operates as a daily fantasy sports contest and sports betting company. The case alleges that DraftKings sold unregistered securities and ensured that money stayed on DraftKings' private and exclusively controlled marketplace, propping up the market for an overall valuation of DraftKings' NFTs and significantly harming investors.
- *In re Deutsche Bank Spoofing Litigation*, No. 20-cv-03638 (N.D. of Ill.): Co-lead counsel on behalf of a putative class of investors alleging manipulation through "spoofing" of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange. Mr. Fata has led all phases of this litigation.
- *In re Bank of Nova Scotia Spoofing Litigation*, No. 20-cv-11059 (D.N.J.). As a court-appointed Executive Committee member, Mr. Fata has served in a leadership capacity in this suit alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- *Hershey v. Pacific Investment Management Company LLC*, No. 05-cv-4681 (N.D. Ill.). Mr. Fata served as local counsel and assisted lead counsel's litigation efforts en route to securing a \$118 million settlement from PIMCO, which was accused of manipulating CBOT treasury note futures.

Confidential Ongoing Whistleblower Cases

- Securities
  - pump and dump manipulation
  - evidence tampering during investigation
  - asset management fees
- Commodities: market manipulation

Consumer

- *Apple Device Performance Litigation*, No. 18-md-02827 (N.D. Cal.). Mr. Fata was appointed as an executive committee member and co-chair of the damages and settlement committee. The case alleges that Apple throttled iPhones to obscure battery issues. The \$325 million settlement in the case was approved by the district court and is awaiting review by the Ninth Circuit.

- *Apple iPhone Warranty Litigation*, No. 10-cv-01610 (N.D. Cal.) Mr. Fata developed and filed the first complaint in this proprietary case alleging that Apple breached its warranty to iPhone customers by denying claims based on a pretext of water damage purportedly shown by "liquid contact indicators." After similar complaints were filed, Mr. Fata worked cooperatively with other plaintiffs' firms and led efforts to secure a \$53 million global settlement for the class.
- *Apple Gift Card Litigation*, No. 20-cv-04812 (N.D. Cal.). Serving as co-lead counsel to a class of consumers who were victims of gift-card scams and from whom Apple allegedly withholds funds. Mr. Fata developed and filed the first complaint in this proprietary case. Drawing on his financial crimes expertise, Mr. Fata developed the factual theories underpinning the case, helped to organize counsel, and led and is currently co-leading efforts on behalf of the class.
- *Midway Moving Sales Practices Litigation*, No. 2003-CH-16091 (Cir. Ct. Cook Cty.). Mr. Fata developed and filed this proprietary case alleging that a moving company used bait-and-switch estimating practices. He successfully obtained an order certifying the class, and defended it on appeal, *Ramirez v. Midway Moving and Storage, Inc.*, 378 Ill. App. 3d 51, 880 N.E. 2d 653 (Ill. App. 1st Dist. 2007). Following extensive litigation efforts, on the eve of trial, the matter was successfully resolved via a class-wide settlement that returned 100% of claimed damages to customers.
- *eWork Inc. Sales Practices Litigation*, No. 06-cv-00686 (D. Colo.). Mr. Fata developed and filed this proprietary case alleging that an internet job-consultant matchmaker utilized deceptive practices to lure independent consultants to pay for referral services for jobs that did not actually exist. After defeating defendants' motion to dismiss, *Ramirez v. eWork, Inc.*, No. 06-CV-00686, 2007 WL 2746634 (D. Colo. Sept. 18, 2007), and through additional hard-fought litigation, Mr. Fata successfully led settlement efforts that forced the company to turn 100% of its cash and liquid assets over to the aggrieved customers. The company ceased operations shortly thereafter.

In addition to his legal practice, since 2016, Mr. Fata has been an adjunct professor at Seton Hall University School of Law. He teaches J.D., M.S.J., and LL.M candidates in a wide range of financial services courses, including Securities Regulation, Regulating Broker Dealers, Regulating Funds and Advisors, Corporate Finance, Corporate Governance, Financial Crimes Compliance, Regulating Depository Institutions, Financial Privacy, and Corporate Law.

Mr. Fata is active in the Chicago Bar Association, where he Co-Chairs the Securities Law Committee and serves on the Editorial Board of the CBA Record. Mr. Fata is also a recurring panelist for the Practising Law Institute Internal Investigations Seminar conducted in Chicago each year.

Mr. Fata regularly authors articles concerning corporate governance, financial markets, and class actions, including:

- *Protecting (or Cracking) the Nest Egg: Why Titles and Contracts Matter When Selecting a Financial Professional*, CBA Record (February 2021) (co-authored with Delaney Slater);

- *Whistleblowers Among Us: The New Regulatory and Self-Policing Paradigm*, CBA Record (May 2018) (co-authored with David Kovel);
- *The Blockchain Bandwagon-Cryptocurrency on the Move: Marketplace Overview and Regulatory Developments*, CBA Record (January 2018) (co-authored with Brian O'Connell);
- *Corporate Cons in the 21st Century: Dealing with the Global Employee Fraud Epidemic*, PLI Internal Investigations Handbook (March 2017) (co-authored with Corey M. Martens);
- *Mitigating, Detecting, and Dealing with Employee Fraud - The Problem of the Inside Job*, CBA Record (January 2017) (co-authored with Corey M. Martens);
- *The Investigation is Internal, But Is This Document Privileged? An Overview of Privilege Issues in Internal Investigations*, PLI Internal Investigations Handbook (April 2016);
- *The Securities Exchange Commission's Whistleblower Program*, PLI Internal Investigations Handbook (March 2015);
- *The Commodity Futures Trading Commission's Whistleblower Program*, PLI Internal Investigations Handbook (March 2014);
- *Untangling the Seamless Web: Seven Critical Assumptions When Planning Investigations*, PLI Internal Investigations Handbook (2013); and
- *Doomsday Delayed: How the Court's Party Neutral Clarification of Class Certification Standards in Walmart v. Dukes Actually Helps Plaintiffs*, 62 DePaul Law Review 675 (March 2013).

Mr. Fata is admitted to the Illinois State Bar, U.S. District Courts for the Northern District of Illinois, U.S. District Court for the Eastern District of Michigan, U.S. District Court for the District of Colorado, and U.S. Courts of Appeals for the 6th, 7th, and 9th Circuits. Mr. Fata earned his juris doctor with honors from The Ohio State University Moritz College of Law in 1999, where he was elected to the Order of the Coif, was recognized as a Public Service Fellow, served as Managing Editor of The Ohio State Journal on Dispute Resolution, was selected as a research assistant to Professor Arthur F. Greenbaum (Civil Procedure and Professional Responsibility) and Robert C. Berry (Sports Law and Regulation), and earned the CALI award for Consumer Law, the Albert A. Levin Memorial Award for Legal Professions and the CALI Excellence for the Future Award. Mr. Fata received his undergraduate degree from Miami University in 1995, where he was selected to serve on the Miami University Student Foundation.

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**Randall M. Fox** is a partner in our New York office, focusing on whistleblower and qui tam matters. He represents whistleblowers in state and federal False Claims Act cases and before the IRS, SEC, and CFTC Whistleblower Offices. Mr. Fox was named the Whistleblower Lawyer of the Year for 2021 by Taxpayers Against Fraud Education Fund, which is the leading public advocacy group for whistleblowers. Recently, Mr. Fox was the lead counsel representing the whistleblower in the historic \$105 million settlement of a tax whistleblower case under the New York False Claims Act. The firm helped its

client win \$22.05 million whistleblower award (21% of the government's recovery) in a case against a hedge fund billionaire alleged to have evaded New York State and New York City taxes. The settlement is the largest income tax recovery under the New York False Claims Act, and one of the largest state recoveries in a False Claims Act case. Mr. Fox's cases generally concern claims of tax, healthcare, procurement, and investment fraud. Mr. Fox writes and speaks frequently about whistleblower issues and has been an advocate for states and localities to incentivize whistleblowers to protect taxpayer funds and promote tax fairness.

Mr. Fox joined KM in 2014 after having served as the founding Bureau Chief of New York Attorney General's Taxpayer Protection Bureau. While at the Bureau, Mr. Fox handled claims about frauds committed against the government and taxpayer funds. Prior to being promoted to Bureau Chief at the Attorney General's office, Mr. Fox was a Special Assistant Attorney General in the New York Attorney General's Medicaid Fraud Control Unit, where he handled cases involving healthcare fraud.

Mr. Fox's cases focus on a wide range of industries and services, and have included matters involving banking organizations, hedge funds, medical providers, large pharmaceutical companies, telecommunications companies, technology companies, various government contractors and large-scale taxpayers.

Some of Mr. Fox's recent whistleblower work includes:

- *New York ex rel Tooley LLC v. Sandell* (N.Y. Supreme Court, N.Y. County). New York False Claims Act qui tam case against a hedge fund owner for evading New York taxes on about \$475 million in deferred compensation, resulting in a \$105 million settlement with a 21% whistleblower award.
- *United States ex rel. Doe v. FPR Specialty Pharmacy* (S.D.N.Y.). federal False Claims Act qui tam case against compounding pharmacy and its owners alleging kickbacks to doctors, independent sales representatives, and patients in the sale of pain creams, resulting in an ability-to-pay settlement for \$426,000 with a 21% whistleblower award.

- *New York ex. rel. Raw Data Analytics, LLC v. JPMorgan Chase* (N.Y. Supreme Court, N.Y. County). New York False Claims Act qui tam case alleging that a large bank kept government money for itself by submitting false reports that hid its obligation to pay millions of dollars in interest when it was late in turning unclaimed properties over to the state; defeated the defendants' motion to dismiss, and the case is ongoing.
- *New York ex rel. Choe v. Spa Castle, Inc.* (N.Y. Supreme Court, N.Y. County). New York False Claims Act case alleging that spa business in Queens underpaid taxes due to fraudulent schemes to manipulate its revenues and to pay employees in cash and off the books, resulting in a settlement of \$2.5 million, with a 23% whistleblower award, and also resulting in criminal tax fraud convictions.

While working for the Office of the Attorney General, Mr. Fox handled or supervised several groundbreaking False Claims Act cases, including the state's investigation and intervention into a tax whistleblower case against cell phone giant Sprint Corporation, which later settled for \$330 million.

Before joining the New York Attorney General's Office in 2007, Mr. Fox was a partner at the law firm of LeBoeuf, Lamb, Greene & MacRae, LLP, where his practice focused on defending clients in class actions, commercial disputes, and securities and consumer fraud actions.

Mr. Fox is admitted to the New York State Bar, all U.S. District Courts for the State of New York, U.S. Court of Appeals for the Second, Third, Eighth, and Ninth Circuits, and U.S. Tax Court. He graduated from Williams College (B.A. 1988) and New York University (J.D. 1991).

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**Robert J. Gralewski, Jr.** is a partner based in San Diego and manages our California office.

Mr. Gralewski has dedicated his entire 23-year legal career to obtaining economic justice for businesses and consumers victimized by price fixing, monopolistic practices, consumer fraud, privacy violations, and unfair employment practices. Mr. Gralewski has successfully prosecuted a wide variety of federal and state court class actions against multinational conglomerates and Fortune 500 companies in industries including technology, food, automotive, consumer services, and healthcare.

Mr. Gralewski has significant experience deposing CEOs, presidents, and other senior executives in high-stakes litigation. For example, Mr. Gralewski has first-chaired apex depositions of Samsung, StarKist, and Foster Farms executives in the *In re Cathode Ray Tube (CRT) Antitrust Litigation*, the *In re Packaged Seafood Products Antitrust Litigation*, and the *In re Broiler Chicken Antitrust Litigation* matters, respectively.

In addition to overseeing discovery against specific defendants in multi-defendant cases, Mr. Gralewski is often called upon to supervise or consult on other aspects of class cases including defending class representative depositions, handling all aspects of third-party discovery, and assisting with complex economic and pass-through issues.

In the ongoing *CRT* case, Mr. Gralewski was one of the principal lawyers who helped achieve settlements exceeding \$500 million in cash. The Special Master handling the matter observed that, "Kirby played an integral role in this case and assumed significant risk . . . Kirby's work was at a very high level [and] Kirby's work greatly benefited the class."

Notably, Mr. Gralewski also has actual antitrust class action trial experience. For over a decade, he represented classes of businesses and consumers in monopoly cases against Microsoft Corporation in several states and served as consulting and advisory counsel to Canadian lead counsel in a similar Canadian class action. Mr. Gralewski was an integral member of the trial teams in the Minnesota and Iowa Microsoft class actions which both settled for more than \$350 million after months of hard-fought jury trials. During both trials, Mr. Gralewski was responsible for the evidence and argued evidentiary issues before the trial judges daily. Ultimately, Mr. Gralewski helped recover more than \$2 billion in the aggregate for businesses and consumers alleged to be overcharged as a result of Microsoft's practices.

Most recently, Mr. Gralewski first-chaired numerous arbitration hearings over Zoom on behalf of employees of a nationwide fast casual chain who were subject to a mandatory arbitration provision. Relying upon JAMS' Employment Arbitration Minimum Standards, he convinced many arbitrators to order broad e-discovery concerning the respondent's practices despite the relatively low-dollar value of the individual proceedings.

In addition to his class cases, Mr. Gralewski maintains an active pro bono practice. Working with Casa Cornelia since 2018, he has succeeded in helping four separate refugees obtain asylum after direct examinations in contested administrative proceedings. In recognition of his dedication and accomplishments, Casa Cornelia awarded Mr. Gralewski its Pro Bono Publico Award in 2019. Mr. Gralewski is also an active member of COSAL (The Committee to Support the Antitrust Laws) and recently helped establish its Diversity and Inclusion Committee on which he serves.

Mr. Gralewski is admitted to the California State Bar, all of the U.S. District Courts for the State of California, and U.S. District Court for the District of Colorado. He graduated from Princeton University (B.A. 1991) and California Western School of Law (J.D. *cum laude*, 1997). Mr. Gralewski was drafted by the Cincinnati Reds after his senior year in high school but elected to attend college instead.

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corporate governance.

**Karen M. Lerner** is a partner in our New York office focused on antitrust and commodities litigation. Over the course of her career, Ms. Lerner has successfully litigated complex class actions that have recovered billions of dollars on behalf of institutional and individual plaintiffs. She has played important roles in several landmark antitrust cases and remains one of the few women ever appointed as Interim Co-Lead Class Counsel in a Commodity Exchange Act case. In addition to her litigation work, she also advises individuals, corporations and non-profits regarding business practices and

Some of her recent antitrust and Commodities Exchange Act work includes:

- Co-lead counsel in *In re Credit Default Swaps Auctions Litigation*, a class action brought by the firm and the Office of the Attorney General for the State of New Mexico alleging antitrust violations and market manipulation in the credit default swaps market. The case is ongoing.
- Court appointed Executive committee member and class counsel in *In re Digital Advertising Antitrust Litigation*, representing publishers alleging that Google monopolized and suppressed competition in online display advertising.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Counsel in the benchmark rate antitrust litigation *Sullivan v. Barclays PLC* on behalf of a putative class of investors who traded futures and options contracts on the NYSE LIFFE exchange against global financial institutions responsible for setting the Euro Interbank Offered Rate ("Euribor"). The case has already resulted in partial settlements of more than \$300 million.
- Counsel in the benchmark antitrust litigation *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, on behalf of a putative class of gold derivative traders. The case has resulted in settlements of \$152 million.
- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ, CFTC, and SEC. The case has a putative settlement of \$15.7 million.

- Court appointed Executive committee member and class counsel in *In re Cattle Antitrust Litigation*, representing cattle producers and cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Counsel in *In re Deutsche Bank Spoofing Litigation* on behalf of a putative class of investors alleging manipulation through "spoofing" of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- Court appointed to the Executive Committee and class counsel in *In re Bank of Nova Scotia Spoofing Litigation*, alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended-release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, Defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.
- Representation as sole lead counsel in *In re North Sea Brent Crude Oil Futures Litigation*.

Some of Ms. Lerner's other relevant experience includes:

- Representation of a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.), alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions. The litigation settled for \$8.5 million.
- *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.

Prior to joining KM, Ms. Lerner was of counsel at McDonough, Korn & Eichhorn, where she handled cases up to and including at trial.

Ms. Lerner is actively involved in promoting volunteerism in the legal community and through women's organizations and is an advocate for diversity and inclusion and is a member of Women Antitrust Plaintiffs' Attorneys (WAPA), an organization for female attorneys who focus their legal practice on representing businesses injured by cartels or other anticompetitive activities. Finally, in addition to her legal practice and activities, Ms. Lerner has served as a member of the Board of Directors for several charitable organizations.

Ms. Lerner is admitted to the New York State Bar, New Jersey State Bar, District of Columbia Bar, United States Supreme Court, U.S. Court of Appeals for the Second and Third Circuits, U.S. Court of Appeals for the District of Columbia, U.S. District Court for the Southern and Eastern Districts of New York, and U.S. District Court for the District of New Jersey. She graduated from University of Albany SUNY (B.A. 1988, *summa cum laude*, *Phi Beta Kappa*) and University of Pennsylvania School of Law (J.D. 1991).

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**Anthony E. Maneiro** is a partner practicing out of our Chicago office who concentrates on securities, commodities, and antitrust matters. From 2019 to 2020, Mr. Maneiro was named a Top Rated Litigation "Rising Star" by Super Lawyers. Mr. Maneiro joined the firm in 2016.

Some of Mr. Maneiro's recent antitrust and Commodities Exchange Act work includes:

- Co-lead counsel in *In re Credit Default Swaps Auctions Litigation*, a class action brought by the firm and the Office of the Attorney General for the State of New Mexico alleging antitrust violations and market manipulation in the credit default swaps market. The case is ongoing.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Counsel in the benchmark antitrust litigation *In re Commodity Exchange, Inc., Gold Futures and Options Trading Litigation*, on behalf of a putative class of gold derivative traders. The case has resulted in settlements of \$152 million.
- Selected by the Court as co-lead counsel in *In re JPMorgan Treasury Futures Spoofing Litigation*, alleging that defendants manipulated U.S. Treasury futures for more than a decade and that this conduct contributed to the bank's recent \$920 million settlement with the DOJ,

CFTC, and SEC. The case has a putative settlement of \$15.7 million.

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Court appointed Discovery Committee Co-Chair in *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended-release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, Defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.
- Court appointed Executive committee member and class counsel in *In re Cattle Antitrust Litigation*, representing cattle producers and cattle futures traders. The suit alleges that the "Big 4" meatpacking firms conspired to suppress prices for fed cattle and manipulated live cattle futures traded on the Chicago Mercantile Exchange.
- Representation of a putative class of exchange-based investors in *Dennis v. The Andersons, Inc. et al.*, alleging monopolization and manipulation of Chicago Board of Trade soft red winter wheat futures contracts in violation of federal antitrust and commodity exchange laws.
- Counsel in *In re Deutsche Bank Spoofing Litigation* on behalf of a putative class of investors alleging manipulation through "spoofing" of U.S. Treasury futures traded on the Chicago Board of Trade and Eurodollar futures traded on the Chicago Mercantile Exchange.
- Court appointed to the Executive Committee and class counsel in *In re Bank of Nova Scotia Spoofing Litigation*, alleging that defendants manipulated precious metals futures traded on the New York Mercantile Exchange and the Commodity Exchange, Inc.
- Representation of exchange-based investors in *Anastasio v. Total Gas & Power North America, Inc.*, alleging price manipulation of physical natural gas as well as price manipulation of natural gas futures and other derivative natural gas contracts.

Some of Mr. Maneiro's other relevant experience includes:

- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.
- Representation in an individual securities fraud action alleging that in marketing their auto-loan

ABS securitizations to investors, TCF Bank and Gateway One materially misrepresented the key metric used by investors to evaluate and price the securitizations' certificates.

- Representation of a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.), alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions. The litigation settled for \$8.5 million.

Mr. Maneiro assists senior attorneys with drafting briefs and motions, legal memoranda, and research. In addition, Mr. Maneiro was selected for the Federal Bar Council American Inn of Court for the Inn and is a member of the Hispanic National Bar Association and the New York City Bar Association, where he serves on the Antitrust and Trade Regulation Committee. He is admitted to the Massachusetts, Illinois and New York State Bars, the U.S. District Court for the District of Massachusetts, the U.S. District Courts for the Eastern and Southern Districts of New York, and the U.S. District Court for the Northern District of Illinois. Mr. Maneiro graduated from Grove City College (B.A. 2010, *magna cum laude*), the London School of Economics and Political Science (M.Sc. 2011), and the Boston University School of Law (J.D. LL.M. 2016).

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**Andrew M. McNeela** is a partner in our New York office focusing on securities, antitrust, commodities, and structured finance litigation. Mr. McNeela joined the firm in 2008.

Prior to joining KM, Mr. McNeela served as an Assistant United States Attorney in the Civil Division of the United States Attorney's Office for the Southern District of New York. In this capacity, he represented the United States in a wide array of civil litigation. Mr. McNeela has argued over twenty cases before the United States Court of Appeals for the Second Circuit. In 2013, he was named one of the top attorneys under 40 by Law360's Rising Stars.

Some of Mr. McNeela's relevant work includes:

- Representation of exchange-based investors in *Shak v. JPMorgan Chase & Co.*, alleging monopolization and manipulation of the silver futures market in violation of federal antitrust and commodity exchange laws. The parties successfully reached a private settlement. The case preceded a related Department of Justice criminal investigation into JPMorgan that remains ongoing.
- Lead counsel in a seven-day bench trial in the United States District Court for the Southern District of New York, representing mutual fund investors who alleged that their advisor, Calamos Advisors LLC, charged excessive fees (decision under submission). At the conclusion of trial, the judge praised counsel for "an extraordinarily well-trying case."



- Representation of a Japanese bank that asserted fraud in connection with its purchase of synthetic CDOs from several prominent New York City-based financial institutions, which resulted in favorable confidential settlements.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of \$75 million.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of \$168 million.
- Lead counsel in *Dandong v. Pinnacle Performance Limited*, a class action lawsuit against Morgan Stanley pertaining to \$154.7 million of notes issued by Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley engineered the Pinnacle notes, which it marketed as a safe investment, to fail, investing money into collateralized debt obligations linked to risky companies, while actively shorting the same assets and betting against their clients. This case settled for \$20 million.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Lead counsel on behalf of a proposed class of Brent crude oil futures traders alleging benchmark manipulation in *In re North Sea Brent Crude Oil Futures Litigation*.
- Lead counsel in the securities class action *In re Herley Industries Inc. Securities Litigation* on behalf of investors. This litigation resulted in a recovery of \$10 million for the class.
- Co-lead counsel for a class of investors in Goldman Sachs common stock in a securities class action, *Lapin v. Goldman Sachs Group, Inc.*, pertaining to Goldman's alleged instruction to their research analysts to favor procurement of investment banking deals over accuracy in their research. This litigation resulted in a recovery of \$29 million for the class.

Mr. McNeela is admitted to the New York State Bar, U.S. District Courts for the Southern and Eastern Districts of New York, and U.S. Court of Appeals for the Second Circuit. He graduated from Washington University (B.A. 1995) and Hofstra University School of Law (J.D. *cum laude*, 1998), where he was a member of the Law Review.

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**Meghan Summers** is a partner based in our New York office focusing on securities, structured finance, and antitrust litigation. In 2019, she was named a Top Rated Securities & Corporate Finance "Rising Star" attorney by SuperLawyers. Ms. Summers began working at the firm in 2008 as a paralegal and law clerk before becoming an associate in 2012.

Ms. Summers' relevant securities and structured finance work includes:

- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.
- Lead counsel in *Dandong v. Pinnacle Performance Limited*, a class action lawsuit against Morgan Stanley pertaining to \$154.7 million of notes issued by Pinnacle Performance Ltd. Plaintiffs alleged that Morgan Stanley engineered the Pinnacle notes, which it marketed as a safe investment, to fail, investing money into collateralized debt obligations linked to risky companies, while actively shorting the same assets and betting against their clients. This litigation resulted in a \$20 million settlement.
- Representation of foreign financial institutions in individual lawsuits against Morgan Stanley, Credit Agricole Corporate and Investment Bank, UBS, Deutsche Bank, Credit Suisse, Goldman Sachs, JP Morgan, and Barclays pertaining to a number of fraudulent structured investment vehicles and asset-backed collateralized debt obligations.
- Lead counsel in *In re MOL Global, Inc. Securities Litigation*, a class action lawsuit alleging that e-payment enabler MOL Global misled shareholders prior to its initial public offering. This litigation resulted in a \$8.5 million settlement.
- Lead counsel in *Rudman v. CHC Group, Ltd.*, a securities class action alleging that CHC Group had misled investors by failing to disclose that one of its two largest customers had stopped making payments on its contracts prior to the company's initial public offering. This litigation resulted in a \$3.85 million settlement.
- Representation in individual securities fraud actions against Merck and Schering-Plough related to the commercial viability of the companies' anti-cholesterol medication, Vytorin, and the subsequent drop in Merck's and Schering-Plough's share price.
- Representation in individual securities fraud actions against Merck related to the safety and commercial viability of its medication, Vioxx, and the subsequent drop in Merck's share price.
- Representation in an individual securities fraud action against BP plc related to the Deepwater Horizon explosion on April 20, 2010, and the subsequent drop in BP's share price.
- Representation in an individual securities fraud action alleging that, in marketing their auto-loan ABS securitizations to investors, TCF Bank and Gateway One materially misrepresented the key metric used by investors to evaluate and price the securitizations' certificates.
- Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries, alleging that HSBC ran money laundering operations out of New

York City. The litigation settled for \$72.5 million, the then largest foreign derivatives settlement ever reached and one of the largest insurer-funded cash payments achieved in a U.S. derivatives lawsuit.

Ms. Summers' relevant antitrust work includes:

- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the foreign exchange market. This litigation has already resulted in partial settlements of more than \$2.3 billion.
- Representation in individual lawsuits against Citibank, JPMorgan, Goldman Sachs, and Barclays, alleging that the banks colluded to prevent a patented method for structuring airline special facility revenue bonds from entering the airline municipal bond market in violation of New York's Donnelly Act.
- Consulting and advisory counsel to Canadian lead counsel in an antitrust case against Microsoft. This litigation resulted in a settlement of \$395 million.

As a law clerk, Ms. Summers worked on a variety of matters, including *In re Citigroup Inc. Securities Litigation*, *In re Wachovia Corporation*, *In re Libor-Based Financial Instruments Antitrust Litigation*, *In re AT&T Wireless Tracking Stock Securities Litigation*, *Dandong v. Pinnacle Performance Limited*, and private antitrust proceedings against Microsoft in the United States and Canada.

Ms. Summers is admitted to the New York State Bar, U.S. District Court for the Southern and Eastern Districts of New York, U.S. District Court for the District of Colorado, U.S. Court of Appeals for the Second and Third Circuits. She graduated from Cornell University (B.S. *summa cum laude*, 2008), where she was ranked first in her major, Pace University School of Law (J.D. *summa cum laude*, 2012), where she was Salutatorian and Articles Editor for the *Pace Law Review*, and King's College, London (Postgraduate Diploma with Merit, EU Competition Law, 2019).

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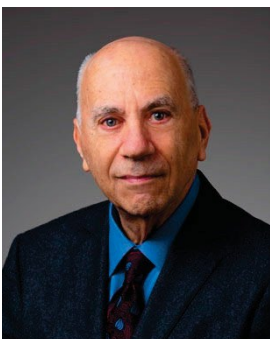
**Karina Kosharskyy** is Of Counsel to the firm. She is based in our New York office and focuses on securities and antitrust litigation. Ms. Kosharskyy joined the firm in 2005.

Some of Ms. Kosharskyy's relevant work includes:

- Lead counsel for consumer classes in connection with antitrust proceedings against Microsoft in the United States and consulting and advisory counsel to Canadian lead counsel in Canada. These litigations have resulted in settlements totaling over \$1 billion for consumers in Canada, Florida, New York, Tennessee, West Virginia, and Minnesota, where the litigation proceeded to trial.
- Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Representation of indirect purchasers in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, a price fixing antitrust case alleging that defendant entities conspired to control prices of television and monitor components. This litigation has resulted in a settlement of \$576 million.

Ms. Kosharskyy is fluent in Russian. She is admitted to the New York and New Jersey State Bars, the U.S. District Courts for the Southern and Eastern Districts of New York, and the U.S. District Court for the District of New Jersey. Ms. Kosharskyy graduated from Boston University (B.A. 2000) and the New York Law School (J.D. 2007).

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**John Low-Beer** is Of Counsel to the firm and focuses on whistleblower litigation. Mr. Low-Beer has represented plaintiffs in class actions and whistleblower litigation including *Tyngsboro Sports II Solar, LLC v. Nat'l Grid USA Services Co.*, Case No. 1:22-cv-11791 (D. Mass.) (ongoing litigation challenging fees on independent solar generation), and *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.) (successful claim re taxation of captive insurance company).

Mr. Low-Beer is an Adjunct Professor at Cornell Law School and also has a separate pro bono and "low

bono" practice, primarily representing community groups and civic organizations in land use cases including *Avella v. City of New York*, 29 N.Y.3d 967 (2017) (invalidating a plan to build a shopping mall on parkland in Queens), *Howard v. 1919 Bedford Realty, LLC*, Index No. 507391/2022 (upholding covenant protecting National Register property in Lefferts Manor, Brooklyn), and *Peyton v. New York City Board of Standards and Appeals*, 36 N.Y.3d 271 (2020) (4-3 decision reversing 1<sup>st</sup> Dept.'s holding that rooftop garden of a luxury building in Manhattan could not be counted as "open space" within the meaning of the Zoning Resolution).

Mr. Low-Beer was formerly a Senior Counsel in the Affirmative Litigation Division of the NYC Law Department, where he was lead attorney on complex and highly publicized matters, including litigation concerning City taxation of consular and U.N. mission staff housing, a successful challenge to New York State's misallocation of \$750 million in federal stimulus funding, a lawsuit forcing the Governor to implement State takeover of \$2.5 billion in City debt, and cases against more than 40 pharmaceutical companies recovering \$240 million.

Mr. Low-Beer has a B.A. from Brown University, a Ph.D. from Harvard University, and a J.D. from Yale Law School. He clerked for Judge Leonard Garth on the U.S. Court of Appeals for the Third Circuit. Previous to that, he was Associate Professor at York College, CUNY, and Assistant Professor at Yale School of Management and Department of Sociology. He is the author of a book, Protest and Participation (Cambridge University Press 1978), a prize-winning note in the Yale L.J., "The Constitutional Imperative of Proportional Representation," and numerous articles, including "Why Community Groups Can Never Win Against Developers," NYLJ Sept. 19, 2019.

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**Alice McInerney** is Of Counsel to the firm and practices out of our New York office.

She concentrates on antitrust and consumer matters, and also handles securities class actions. Ms. McInerney joined the firm in 1995 and has over 30 years of experience as an attorney.

Prior to joining KM, Ms. McInerney was Chief of the Investor Protection Bureau and Deputy Chief of the Antitrust Bureau of the New York Attorney General's office. While there, she chaired the Enforcement Section of the North American Securities Administrators Association and also chaired the Multi-State Task Force on Investigations for the National Association of Attorneys General. Alice is also a member of the National Association of Public Pension Attorneys (NAPPA).

Some of Ms. McInerney's relevant work includes:

- Lead counsel for consumer classes in antitrust cases against Microsoft. These litigations resulted in settlements totaling over \$1 billion dollars for consumers in Florida, New York, Tennessee, West Virginia, and Minnesota.
- Representation of a class of retailers in *In re Visa Check/MasterMoney Antitrust Litigation*, an antitrust case which resulted in a settlement of over \$3 billion for the class.
- Representation of public entities in connection with ongoing Medicaid fraud and False Claims Act litigations arising from health expenditures of these state and local governmental entities.
- Representation of California homeowners in litigation arising from mortgage repayment irregularities. This litigation resulted in settlements that afforded millions of California homeowners clear title to their property. The cases resulted in the notable decision *Bartold v. Glendale Federal Bank*.

Ms. McInerney is admitted to the New York State Bar, the U.S. Supreme Court, the U.S. Court of Appeals for the Second Circuit, and the U.S. District Courts for the Eastern, Northern, Southern, and Western Districts of New York. She graduated from Smith College (B.A. 1970) and Hofstra School of Law (J.D. 1976).

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**Beverly Mirza** is Of Counsel to the firm and practices out of our New York office, concentrating on antitrust and securities litigation. Ms. Mirza joined the firm in 2004.

Ms. Mirza's relevant experience includes:

- Representation of a class of consumers in connection with *In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*. This case involves Unocal's manipulation of the standard-setting process for low-emissions reformulated gasoline in California, which increased retail prices of reformulated gasoline. This litigation resulted in a \$48 million recovery for the class.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.
- Representation, as one of the firms with primary responsibility for the case, of a class of purchasers of computers containing Intel's microprocessor chips in *Coordination Proceedings Special Title, Intel x86 Microprocessor Cases*.
- Representation, as executive committee member, of a class of retailers in *In re Chocolate Confectionary Antitrust Litigation*, alleging price fixing claims against a group of chocolate manufacturers in the United States and abroad.

- Representation of a class of sellers in *In re Ebay Seller Antitrust Litigation*, alleging monopolization claims against Ebay.
- Representation of an objector to the settlement in *Reynolds v. Beneficial National Bank* in the United States Northern District Court for the District of Illinois. Ms. Mirza and KM were lauded by the presiding judge for their "intelligence and hard work," and for obtaining "an excellent result for the class."

Ms. Mirza is admitted to the California State Bar and the U.S. District Courts for the Northern and Central Districts of California. She graduated from California State University of Los Angeles (B.S. *magna cum laude*, 2000) and California Western School of Law (J.D. 2004).

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**Ira M. Press** is Of Counsel to the firm and practices out of our New York office. Mr. Press's practice focuses on securities and consumer litigation. He joined the firm in 1993, and currently leads the firm's institutional investor monitoring program. In this capacity, he has provided advisory services to numerous government pension funds and other institutional investors. He has authored articles on securities law topics and has lectured to audiences of attorneys, experts, and institutional investor fiduciaries.

Mr. Press's advocacy has resulted in several landmark appellate decisions, including *Rothman v. Gregor*, the first ever appellate reversal of a lower court's dismissal of a securities class action suit pursuant to the 1995 Private Securities Litigation Reform Act.

Some of Mr. Press's relevant experience includes:

- Co-lead counsel in *Kokareva v. Bristow Group Inc.*, a securities class action alleging that an aviation services provider focused on the oil and gas sector, made materially false and misleading statements about its internal controls relating to covenants in the company's secured financing agreements. The case resulted in a \$6.25 million settlement.
- Counsel in *Maverick Neutral Levered Fund, Ltd. v. Valeant Pharmaceuticals International, Inc.*, alleging that Valeant materially misrepresented its business model, touting artificial and unsustainable growth that was enabled by the company's deceptive and illegal conduct.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. During the class period, the company's stock fell from approximately \$37 to \$6. This case resulted in a settlement of \$168 million.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against

Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of \$75 million.

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for \$590 million.

Prior to joining KM, Mr. Press practiced at Warshaw Burstein Cohen Schlesinger & Kuh, LLP, where he focused on commercial litigation. Mr. Press is admitted to the New York State Bar, U.S. District Courts for the Eastern, Northern and Southern Districts of New York, U.S. District Court for the District of Colorado, and the U.S. Courts of Appeals for the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits. He graduated from Yeshiva University (B.A. *magna cum laude*, 1986) and New York University Law School (J.D. 1989).

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**Sawa Nagano** is Of Counsel to the firm. She focuses on the representation of clients in relation to price-fixing litigation under the Sherman Antitrust Act and other federal and state laws to recover overcharges caused by international price-fixing cartels. Ms. Nagano joined the firm in 2013.

Recent cases on which Ms. Nagano has worked include:

- Representation of indirect purchasers in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, a price fixing antitrust case alleging that defendant entities conspired to control prices of television and monitor components. This litigation resulted in a settlement of \$576 million.

Prior to joining KM, Ms. Nagano worked with the law firms of both Orrick, Herrington, and Sutcliffe LLP and Crowell and Morning LLP, where she assisted in the investigation of conspiracies to engage in price-fixing and anticompetitive practices by manufacturers and multinational conglomerates, and she represented cable operators on matters arising before the Federal Communications Commission as well as in their relations with local and state franchising authorities. She also worked for the New York bureau of a major Japanese television network. Additionally, she interned with the Office of Commissioner Furchtgott-Roth at the Federal Communications Commission and worked as a student counsel at the Art, Sports, and Entertainment Law Clinic of the Dickinson School of Law of the Pennsylvania State University.

Ms. Nagano is fluent in Japanese. She is admitted to the New York and New Jersey State Bars, the Bar for the District of Columbia, the U.S. District Court for the Southern District of New York, and the U.S. District Court for the District of New Jersey. Ms. Nagano graduated from Sophia University, Tokyo,



Japan (B.A. 1989), New York University (M.A. 1992), and The Dickinson School of Law of the Pennsylvania State University (J.D. 2000).

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**TL Popejoy** is Of Counsel to the firm and practices out of our New York office. Mr. Popejoy has been named a "Rising Star" attorney by Super Lawyers for 2021, 2022, and 2023. Mr. Popejoy joined the firm in 2020. He focuses on antitrust, whistleblower, derivative, and securities litigation involving complex financial products.

Mr. Popejoy has taken a leading role in *In re Credit Default Swaps Auctions Litigation*, 21-cv-00606 (D.N.M.), a class action brought by the

firm and the Office of the Attorney General for the State of New Mexico alleging antitrust violations and market manipulation in the credit default swaps market. KM and Mr. Popejoy represent the New Mexico State Investment Council and the putative class of nationwide investors in the action.

Prior to joining KM, Mr. Popejoy practiced as an attorney at Quinn Emanuel Urquhart & Sullivan, LLP and a startup litigation boutique, where he worked on high-profile cases involving complex financial products in large antitrust class actions, contract disputes, and numerous FINRA and SEC investigations. Some of Mr. Popejoy's past case experience includes: *In re European Government Bonds Antitrust Litigation*; *In re Chicago Board Options Exchange Volatility Index Manipulation Antitrust Litigation*, a class action concerning settlement of the VIX "fear index;" *Iowa Public Employees' Retirement System v. Bank of America Corporation*, a class action concerning collusive behavior in the stock loan industry; *In re Interest Rate Swaps Antitrust Litigation*; *Alaska Electrical Pension Fund v. Bank Of America Corporation*, a class action concerning price manipulation of the ISDAfix benchmark; *In re Treasury Securities Auction Antitrust Litigation*; *Scott v. AT&T Inc.*, involving the sale of customer "geolocation" information; and *Williams v. AT&T Mobility LLC*, representing a victim of "SIM swapping" in a case involving cryptocurrency.

Mr. Popejoy has also represented *pro bono* low-income tenants in New York City, as well as New York City public school students in suspension hearings.

Mr. Popejoy is the author of *The Invention of Potential Life: The Police Power over Women in Reproductive Rights Jurisprudence*, a law review article published during Mr. Popejoy's time in law school by the Women's Rights Law Reporter, a review founded by the late U.S. Supreme Court Justice Ruth Bader Ginsburg. See 37 WoMEN's RIGHTs LAw REPoRTER 83 (Fall 2015).

Before law school, Mr. Popejoy was a Director in algorithmic trading at Credit Suisse and RBC Capital

Markets. He is co-inventor of a patent with the founders of the IEX stock exchange that protects institutional investors from high frequency trading arbitrage, and he has argued successfully before the U.S. Patent and Trademark Office.

Mr. Popejoy is a member of the Aviation Lawyers Association (formerly the International Air & Transportation Safety Bar Association) and is an instrument-rated pilot. His cybersecurity background includes a CISSP certification (Certified Information Systems Security Professional) and computer security architecture.

Mr. Popejoy has also been the recipient of the following awards:

- Individual plaque for *Outstanding Antitrust Litigation Achievement in Private Law Practice*, American Antitrust Institute
- The Legal Aid Society's *Pro Bono Publico* award for outstanding service to The Legal Aid Society and its clients

Mr. Popejoy is admitted to the New York State Bar and the U.S. District Court for the Southern and Eastern Districts of New York. He graduated from Amherst College (B.A. *summa cum laude*), Johns Hopkins University (M.A. Ph.D.), and City University of New York School of Law (J.D.).

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**Henry Telias** is Of Counsel to the firm and practices out of our New York office, specializing in accountants' liability and securities litigation. Mr. Telias joined the firm in 1997.

In addition to his legal work, Mr. Telias is also the firm's chief forensic accountant. He holds the CFF credential (Certified in Financial Forensics) and the PFS credential (Personal Financial Specialist) from the American Institute of Certified Public Accountants. He received his CPA license from New York State in 1982. Prior to practicing as an attorney, he practiced exclusively as a certified public accountant from 1982 to 1989, including 3 years in the audit and tax departments of Deloitte Haskins & Sells' New York office.

Some of Mr. Telias's relevant experience includes:

- Lead counsel in *In re Citigroup Inc. Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case recently settled for \$590 million.

- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of \$168 million.
- Representation of the New York City Pension Funds as lead plaintiff in a class action against Wachovia Corporation arising from Wachovia's alleged misrepresentations of their exposure to the subprime market. This case resulted in a settlement of \$75 million.
- Lead counsel for a certified class of purchasers of PRIDES securities in connection with the Cendant Corporation accounting fraud in *In re Cendant Corporation PRIDES Litigation*. This litigation resulted in an approximate \$350 million settlement for the certified class - an unprecedented 100 percent recovery.

Mr. Telias is admitted to the New York State Bar and the U.S. District Court for the Southern District of New York. He graduated from Brooklyn College (B.S. *cum laude*, 1980) and Hofstra University School of Law (J.D. 1989).

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**Edward M. Varga, III** is Of Counsel to the firm and practices out of our New York office. Mr. Varga joined the firm in 2006 and concentrates on securities and antitrust litigation.

Mr. Varga's relevant experience includes:

- Lead counsel in *In re Citigroup Inc Securities Litigation*, a class action arising out of Citigroup's alleged misrepresentations regarding their exposure to losses associated with numerous collateralized debt obligations. This case settled for \$590 million.
- Representation, as counsel for lead plaintiff and other shareholders, in a derivative action brought against members of the Board of Directors and senior executives of Pfizer, Inc. Plaintiffs made a breach of fiduciary duty claim because defendants allegedly allowed unlawful promotion of drugs to continue even after receiving numerous "red flags" that the improper drug marketing was systemic. Pfizer agreed to pay a proposed settlement of \$75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.
- Lead counsel for a group of Singapore-based investors in a securities class action against Morgan Stanley pertaining to notes issued by Cayman Islands-registered Pinnacle Performance Ltd. Plaintiffs allege that Morgan Stanley routed Pinnacle investors' principal into synthetic collateralized debt obligations (CDOs) that it built to fail and then bet against. As the CDOs failed by design, plaintiffs' principal was swapped to Morgan Stanley, enriching Morgan Stanley while rendering the Pinnacle Notes an all-but-total loss. This case settled for \$20 million.

- Representation of companies that offered IPO securities in antitrust litigation against the 27 largest investment banks in the United States. Plaintiffs allege that the banks conspired to price fix underwriting fees in the mid-sized IPO market.
- Representation of the NY State Common Retirement Fund as lead plaintiff in *In re National City Corporation Securities, Derivative & ERISA Litigation*, a securities class action arising from National City's alleged misrepresentations regarding exposure to subprime mortgage related losses. This case resulted in a settlement of \$168 million.

Mr. Varga is admitted to the New York State Bar. He graduated from Cornell University (B.S. 2000) and New York University Law School (J.D. 2006).

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**Sarah Flohr** is an associate practicing out of our New York office. Ms. Flohr has been named a "Rising Star" attorney by Super Lawyers for 2019, 2020, 2021, and 2022. She focuses on antitrust, consumer fraud, and securities fraud litigation.

Ms. Flohr has extensive experience in all stages of litigation, including drafting motions and pleadings, discovery requests, arguing motions, conducting trials, negotiating settlements, and taking fact and expert depositions. Prior to joining KM, she worked as an associate in Chicago practicing in mass tort litigation. During this time, she played an integral role on numerous teams representing Fortune 500 companies throughout the country. Ms. Flohr drafted and won two motions to exclude experts, resulting in summary judgment being granted on all counts brought against her firm's client in a multi-million-dollar product liability and breach of contract case, which was upheld on appeal by the United States Circuit Court of Appeals for the Second Circuit.

Ms. Flohr is admitted to the New York State Bar, Illinois State Bar, Missouri State Bar, and the U.S. District Courts for the Eastern and Southern Districts of New York and the Northern District of Illinois. She graduated from Indiana University (B.A. 2008) University of Illinois Chicago School of Law (J.D. 2014).

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**Faisal Haider** is an associate practicing out of our New York office.

Prior to joining KM, Mr. Haider served as a Pro Bono Law Clerk to the Honorable Zahid N. Quraishi of the U.S. District Court for the District of New Jersey. During law school, Mr. Haider worked as a Summer Honors Program legal intern at the U.S. Securities and Exchange Commission's Division of Investment Management and as a Research Assistant to Professor Morgan Ricks of Vanderbilt University Law School.

Mr. Haider is admitted to the New Jersey State Bar. He graduated from New York University (B.A. 2016), Vanderbilt University Law School (J.D. 2021), where he served as the Executive Development Editor of the Vanderbilt Journal of Transnational Law, and from Vanderbilt University Owen Graduate School of Management (M.S. 2021). He additionally is an author of *Chancery Court Refuses to Dismiss Action to Enforce Post-Merger Covenant Due to Ambiguities in Merger Agreement*, 73 Vand. L. Rev. En Banc 27 (2020). Mr. Haider joined the firm in 2022.

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**James A. Isacks** is a law clerk practicing out of our New York office. His admission is pending before the New York State Bar. Upon admission to the bar, Mr. Isacks will be an associate. He works on commodities and antitrust litigation.

Prior to joining KM, Mr. Isacks was a student attorney at the Washington University School of Law's First Amendment Clinic, where he researched and wrote portions of briefs filed in the Federal District Court and Eighth Circuit Court of Appeals. Additionally, he served as a Judicial Extern at the Equal Employment Opportunity Commission while in law school.

Mr. Isacks graduated from Louisiana State University, (B.A. 2019) and Washington University in St. Louis School of Law (J.D. 2022) During law school, he served as the Executive Notes Editor of Washington University's Journal of Law and Policy and authored *Deepwater Horizon JO Years Later: Regulations, Rollbacks, and Where We Go from Here*, 69 Wash. U. J. L. & POL'Y 1 (2022). Mr. Isacks joined the firm in 2022.

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**Rohan Kulkarni** is an associate practicing out of our New York office. During law school, Mr. Kulkarni worked as a law clerk for Barrows Levy PLLC and Essex-Newark Legal Services. As a law clerk, he assisted clients in all aspects of commercial litigation, drafted pleadings filed in federal and state courts, and conducted legal research.

Mr. Kulkarni is admitted to the New York State Bar. He graduated from Rutgers University (B.S. 2018), the Maurice A. Deane School of Law at Hofstra University (J.D. 2022), and Frank G. Zarb School of Business at Hofstra University (M.B.A. 2022).

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**Lauren Molinaro** is an associate practicing out of our New York office. Prior to joining KM, Ms. Molinaro was an associate at a major New York plaintiffs' firm, where her practice focused on securities fraud litigation.

Ms. Molinaro is admitted to the New York State Bar and the U.S. District Courts for the Southern and Eastern Districts of New York. She graduated from the University of Wisconsin-Madison (B.A. 2015) and from Fordham University School of Law (J.D. 2021) where she was a staff member of the International Law Journal and a recipient of the Archibald R. Murray Public Service Award. During law school, Ms. Molinaro was a student attorney for the Corporate Social Responsibility Clinic at Fordham University School of Law, where she researched and reported human trafficking in global food supply chains to an international NGO. Additionally, she served as a Judicial Intern for a judge in the New York State Supreme Court. Ms. Molinaro joined the firm in 2023.

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**Belden Nago** is an associate based in our New York office. Mr. Nago joined the firm in 2011 and focuses on securities litigation.

Some of Mr. Nago's relevant experience includes:

- Representation of municipal issuers, including governmental entities and hospital systems, in FINRA arbitrations alleging misrepresentations by underwriters in connection with Auction Rate Securities issuances.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only"

settlement class.

- Representation of a whistleblower in *Anonymous, et ano. v. Moody's Corporation, et al.*, No. 103997/2012 (Sup. Ct. N.Y. Cty. and First Dept.), alleging millions of dollars of tax fraud using a sham captive insurance company for over a decade regarding domestic and international transactions. The litigation settled for \$8.5 million.
- Representation of the proposed class of investors in *Shah v. Zimmer Biomet Holdings*, a securities class action alleging that a medical device company did not disclose systemic quality issues at its manufacturing facility.

Prior to joining KM, Mr. Nago was an associate in the Structured Finance department at Orrick, Herrington & Sutcliffe LLP. He is admitted to the New York State Bar and the U.S. Patent and Trademark Office. Mr. Nago graduated from Northwestern University (B.S. 1997), the Massachusetts Institute of Technology (M.Eng., 1998), and Columbia Law School (J.D. 2003).

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**Marko Radisavljevic** is an associate practicing out of our California office. Mr. Radisavljevic joined the firm in 2016 and concentrates on class action and antitrust matters.

Some of Mr. Radisavljevic's recent work includes:

- First-chaired numerous arbitration hearings on behalf of employees of a nationwide fast casual chain who were subject to a mandatory arbitration provision. Relying upon JAMS Employment Arbitration Minimum Standards, Mr. Radisavljevic convinced many arbitrators to order broad e-discovery concerning the respondent's practices despite the relatively low-dollar value of the individual proceedings.
- Representation of the exchange-based class in *In re LIBOR-Based Financial Instruments Antitrust Litigation*, an antitrust case alleging that defendant banks colluded to misreport and manipulate LIBOR. This litigation has already resulted in partial settlements totaling approximately \$187 million, which collectively represent the largest historical class-wide recovery for a "futures only" settlement class.

Special fiduciary representation for the exchange-based class in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* for a putative class of participants who traded futures and options in the FX market. The case has already resulted in partial settlements of more than \$2.3 billion.

- *In re Effexor XR Antitrust Litigation* for a putative class of direct purchasers of brand name and generic equivalents of extended release venlafaxine hydrochloride capsules against drug manufacturers. Among the claims, defendants are alleged to have delayed market entry of generic versions and entered into reverse payment settlements.

In addition, Mr. Radisavljevic assists senior attorneys with drafting briefs and motions, legal memoranda, and research. He is admitted to the California State Bar. He graduated from the University of San Diego (B.A. *Biology with minors in Chemistry and Philosophy*, 2005) and the California Western School of Law (J.D. 2015).

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**Kelsey Jack** is a staff attorney practicing out of our New York office. Prior to joining KM, Mr. Jack developed extensive experience in antitrust, consumer and data protection, and securities litigation working with firms including Lief Cabraser Heimann & Bernstein, LLP and Bleichmar Fonti & Auld LLP.

Mr. Jack is a Certified Information Privacy Professional (CIPP/US) and was a member of the American Bar Association's (SIL) Privacy, Cybersecurity & Digital Rights Committee. He is admitted to the New York State Bar and the U.S. District Courts for the Southern and Eastern Districts of New York. He graduated from Baruch College, CUNY (B.B.A. *magna cum laude*, 2002) and from Georgetown University Law Center (J.D. 2007), where he was a member of the Georgetown Journal of International Law and earned a Certificate in Refugee and Humanitarian Affairs.

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**Cynthia Markham** is a staff attorney practicing out of our New York office. Prior to joining KM in 2023, Ms. Markham was a staff attorney at Labaton Sucharow and Bleichmar Fonti & Auld, LLP, where she focused on complex commercial and securities matters. Ms. Markham was a member of the teams that successfully prosecuted and resolved cases against Intuitive Surgical, Inc., Teva Pharmaceutical Industries Ltd., and Granite Construction, Inc. She was also involved in the *In re: Facebook, Inc. Consumer Privacy User Profile* litigation.

Ms. Markham is admitted to the New York State Bar. She graduated from John Jay College of Criminal Justice (B.A. 2008) and Rutgers Law School (J.D. 2012).

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**Nodira Rakhmatkarieva** is a staff attorney practicing out of our New York office. Prior to joining KM, Ms. Rakhmatkarieva was a staff attorney at Walden, Macht and Haran, LLP, where she was part of the teams working on DOJ and DEA investigation of a pharmaceutical company in connection with the opioid crisis and a financial institution's internal compliance investigation. Ms. Rakhmatkarieva has extensive experience in the electronic discovery of complex civil litigations, including high profile financial, pharmaceutical and RMBS matters as well as SEC and FTC investigations.

Ms. Rakhmatkarieva is admitted to the New York State Bar and the New Jersey State Bar. She graduated from Rutgers University (B.A. 2001) and from New York Law School (J.D. 2004). She is fluent in Russian and currently studies French.

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**Lauren Wagner Pederson** is formerly Of Counsel to the firm and worked with KM from 2012 to 2016 on commodities, antitrust and securities litigation matters. Ms. Pederson has represented individuals and institutional investors in many high-profile securities and commodities class actions, and has served as counsel to public pension funds, shareholders, traders, hedge funds and companies in a broad range of complex litigation matters. In addition, Ms. Pederson has litigated accounting and legal malpractice actions and tried cases in federal and state courts, including a bench trial in Delaware federal court on behalf of Trust Company of the West in a legal malpractice action arising out of an international private equity transaction. She also has successfully argued and defended appeals before the Court of Appeals for the Eleventh Circuit and has represented individuals and companies in securities arbitrations before FINRA and the New York Stock Exchange. Ms. Pederson has extensive experience in discovery in complex litigation, including managing electronic discovery, overseeing large multi-firm document reviews and conducting international depositions and document production. She also took a number of key depositions in the firm's securities litigation action against Citigroup, Inc., which settled for \$590 million.

Ms. Pederson is a member of the State Bars of New York, Delaware, Georgia, Alabama and the Commonwealth of Pennsylvania. She is admitted to practice in numerous federal courts, including the Second, Tenth and Eleventh Circuit Courts of Appeals and the Southern District of New York. Ms. Pederson received her B.S. degree in Business Administration from Auburn University, and earned her J.D., *summa cum laude*, from the Cumberland School of Law where she was Associate Editor of the Cumberland Law Review, and earned her LL.M degree in Securities and Financial Regulation from Georgetown University Law Center. Ms. Pederson also served as Law Clerk to the Honorable Joel F. Dubina for the United States Court of Appeals for the Eleventh Circuit.

**Client & Adversary Recognition**

KM received the highest available commendations from the City of New York four years in a row for its work on the AWP Litigation. In each of those four years, KM's efforts on the City's behalf received the overall rating of "excellent". The City elaborated, "*Kirby did a truly excellent job and the results reflect that.*"

**Plaintiff / client,  
In re Pharmaceutical Industry Average Wholesale Price Litigation**

*"The case has been in front of the Supreme Court of the United States once, and in front of the Ninth Circuit no fewer than three times. Throughout, [KM] has . . . brought a considerable degree of success . . . and thwarted attempts by other counsel who sought to settle . . . and destroy a potential billion dollars of class rights."*

**Plaintiff / client,  
Epstein v. MCA, Inc.**

*"[KM] represented us diligently and successfully. Throughout [KM's] representation of our firm, [KM's] commitment and attention to client concerns were unimpeachable."*

**European institutional defendant /client  
involved in a multi-million dollar NASO arbitration**

*"Against long odds, [KM] was able to obtain a jury verdict against one of the larger, more prestigious New York law firms."*

**Plaintiff / client,  
Vladimir v. U.S. Banknote Corporation**

*"[KM] represented our investors with probity, skill, and diligence. There is too much money involved in these situations to leave selection of class counsel to strangers or even to other institutions whose interests may not coincide."*

**Plaintiff / institutional client,  
In re Cendant Corporation PRIOES Litigation**

## Notables

The firm has repeatedly demonstrated its ability in the field of securities, antitrust, commodities, structured finance, whistleblower, health care, consumer, and other fraud litigation, and our success has been widely recognized. For example:

CFTC Whistleblower Program award of nearly \$200 million to whistleblower client in connection with recoveries from global banks that manipulated benchmark rates.

*State of NY ex rel. Tooley, LLC v. Sandell, et al.*, No. 101494/2018. Whistleblower client received award of 21% of \$105 million recovery.

*Michael Mason-Mahon v. Douglas J. Flint et al.*, Index No. 602052/2014 (Sup. Ct. Nassau Cty.). Representation in a shareholder derivative lawsuit against officers and directors of HSBC Holdings and its subsidiaries. \$72.5 million settlement.

*In re Bristow Group Inc. Securities Litigation*, No. 19-cv-00509 (S.D.Tex.2019). Co-lead counsel. \$6.25 million settlement.

*Anonymous v. Anonymous*, Index No. 103997/2012 (Sup. Ct., N.Y. Cty. 2019). Representation of whistleblower. Client received award of 30% of \$8.5 million recovery.

*Sullivan v. Barclays PLC*, No. 13-cv-02811 (S.D.N.Y.). Class counsel. This case has already resulted in partial settlements of more than \$300 million.

*In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-cv-07789 (S.D.N.Y.). Special fiduciary representation for the exchange-based class. This case has already resulted in partial settlements of over \$2.3 billion.

*In re Cathode Ray Tube (CRT) Antitrust Litigation*, No. MDL No. 1917 (N.D. Cal. 2019). Representation of indirect purchasers. \$576 million settlement.

*State of New York ex rel. Choe v. Spa Castle, Inc.*, No. 101243/2014 (N.Y. Sup. Ct. 2018). Representation of whistleblower. Client received award of 23% of \$2.5 million recovery.

*Esposito v. American Renal Assocs. Holdings, Inc.*, No. 16-cv-11797 (D. Mass. 2018). Lead counsel. \$4 million settlement.

*In re Resonant Inc. Securities Litigation*, No. 15-cv-01970 (C.D. Cal. 2017). Co-lead counsel. \$2.75 million settlement.

*In re Molycorp, Inc. Securities Litigation*, No. 13-cv-05697 (S.D.N.Y. 2017). Lead counsel. \$1.25 million settlement.

*In re AudioEye, Inc. Securities Litigation*, No. 15-cv-00163 (D. Ariz. 2017). Lead counsel. \$1.525 million settlement.

*In re Bio-Rad Laboratories, Inc. Stockholder Litigation*, C.A. No. 11387 (Del. Ch. Ct.). Co-lead counsel in a shareholder derivative action. The case settled with a parallel action in California state court. As a result of this settlement, Bio-Rad to adopt industry leading, state-of-the-art corporate governance and compliance measures to provide for greater effectiveness of the Board of Directors in responding to potential violations of the Foreign Corrupt Practices Act (FCPA) and similar anti-corruption laws.

*Rothstein v. GMAC Mortgage LLC*, No. 12-cv-3412 (S.D.N.Y.). Lead counsel. \$13 million settlement against GMAC Mortgage LLC in *In re Residential Capital, LLC, et al.*, No. 12-12020 (Bankr. S.D.N.Y. 2016).

*U.S. ex rel. Dickhudt v. Winds Enterprises*, No. 13-cv-01142 (W.D. Wa.). Representation of whistleblower. Client received award of 20% of \$1.5 million settlement.

*In re MOL Global, Inc. Securities Litigation*, No. 14-cv-09357 (S.D.N.Y. 2016). Lead counsel. \$8.5 million settlement.

*Globis Capital Partners, L.P., et al. v. The Cash Store Financial Services Inc., et al.*, No. 13-cv-3385 (S.D.N.Y. 2015): Co-lead counsel. CAD \$13,779,167 cash settlement, representing roughly 50% of total class-wide stock losses.

*Dandong v. Pinnacle Performance Ltd.*, No. 10-cv-08086 (S.D.N.Y. 2015). Lead counsel. \$20 million settlement.

*In re Hi-Crush Partners L.P. Securities Litigation*, No. 12-cv-8557 (S.D.N.Y. 2015). Lead counsel. \$3.8 million settlement while class certification was pending.

*In re Citigroup Inc. Securities Litigation*, No. 07-cv-9901 (S.D.N.Y. 2013). Lead counsel. \$590 million settlement.

*Barfuss v. DGSE Companies, Inc.*, No. 12-cv-3664 (N.D. Tex. 2013). Lead Counsel. \$1.7 million settlement.

*In re National City Corporation Securities, Derivative & ERISA Litigation*, No. 08-cv-70004 (N.D. Ohio 2012). Lead counsel. \$168 million settlement.

*In re Wachovia Equity Securities Litigation*, No. 08-cv-6171 (S.D.N.Y. 2012). Lead counsel. \$75 million settlement.

*In re BP Propane Indirect Purchaser Antitrust Litigation*, No. 06-cv-3541 (N.D. Ill. 2010). Co-lead counsel. \$15 million settlement on behalf of propane purchasers.

*In re J.P. Morgan Chase Cash Balance Litigation*, No. 06-cv-732 (S.D.N.Y. 2010). Co-lead counsel.

"Plaintiff's counsel operated with a strong, genuine belief that they were litigating on behalf of a group of employees who had been injured and who needed representation and a voice, and, at great expense to [themselves], made Herculean efforts on behalf of the class over years. They're to be commended for their fight on behalf of people that they believed had been victimized."

*In re Pfizer Inc. Shareholder Derivative Litigation*, No. 09-cv-7822 (S.D.N.Y.). Pfizer agreed to pay a proposed settlement of \$75 million and to make groundbreaking changes to the Board's oversight of regulatory matters.

*In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456; *City of New York, et al. v. Abbott Laboratories, et al.*, No. 01 Civ. 12257 (D. Mass). KM represented the State of Iowa, the City of New York, and forty-two New York State counties in a lawsuit against forty defendant drug manufacturers asserting that they manipulated their average wholesale price data to inflate prices charged to government drug benefits payers. Recovery of over \$225 million for the plaintiffs.

*In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation and Related Actions*, No. 05-cv-01671 (C.D. Cal). Lead counsel. \$48 million settlement for indirect purchasers.

*In re BISYS Securities Litigation*, No. 04-cv-3840 (S.D.N.Y. 2007). Co-lead counsel. \$66 million settlement.

"In this Court's experience, relatively few cases have involved as high level of risk, as extensive discovery, and, most importantly, as positive a final result for the class members as that obtained in this case."

*Cox v. Microsoft Corporation*, Index No. 105193/00, Part 3 (N.Y. Sup. Ct.). Lead counsel. \$350 million settlement.

*In re AT&T Corp. Securities Litigation*, No. 00-cv-8754 (S.D.N.Y. 2006). Lead counsel. \$150 million settlement.

*In re Adelpia Communications, Inc. Securities Litigation*, No. 04-cv-05759 (S.D.N.Y. 2006). Co-lead counsel. \$478 million settlement.

"[T]hat the settlements were obtained from defendants represented by 'formidable opposing counsel from some of the best defense firms in the country' also evidences the high quality of lead counsels' work."

*Lapin v. Goldman Sachs & Co.*, No. 04-cv-2236 (S.D.N.Y.). Co-lead counsel. \$29 million settlement.

*Montoya v. Herley Industries, Inc.*, No. 06-cv-2596 (E.D. Pa). Lead counsel. \$10 million settlement.

*Carnegie v. Household International Inc., et al.*, No. 98-cv-2178 (N.D. Ill. 2006). Co-lead counsel. \$39 million settlement.

"Since counsel took over the representation of this case . . . , they have pursued this case, conducting discovery, hiring experts, preparing for trial, filing motions where necessary, opposing many motions, and representing the class with intelligence and hard work. They have obtained an excellent result for the class."

*Dutton v. Harris Stratex Networks Inc. et al.*, No. 08-cv-00755 (D. Del). Lead counsel. \$8.9 million settlement.

*In re Isologen Inc. Securities Litigation*, No. 05-cv-4983 (E.D. Pa.). Lead counsel. \$4.4 million settlement.

*In re Textron, Inc. Securities Litigation*, No. 02-cv-0190 (D.R.I.). Co-lead counsel. \$7 million settlement.

*Argent Convertible Classic Arbitrage Fund, L.P. v. Amazon.com, Inc. et al.*, No. 01-cv-0640L (W.D. Wash. 2005). Lead counsel. \$20 million settlement for class of convertible euro-denominated bond purchasers.

*Muzinich & Co., Inc. et al. v. Raytheon Company et al.*, No. 01-cv-0284 (D. Idaho 2005). Co-lead counsel. \$39 million settlement.

*Gordon v. Microsoft Corporation*, No. 00-cv-5994 (Minn. Dist. Ct., Henn. Cty. 2004). Co-lead counsel. \$175 million settlement following two months of trial.

*In re Visa Check/MasterMoney Antitrust Litigation*, No. 96-cv-5238 (E.D.N.Y. 2003). \$3 billion monetary settlement and injunctive relief.

*In re Florida Microsoft Antitrust Litigation*, No. 99-cv-27340 (Fl. Cir. Ct. 11th Cir., Miami/Dade Cty. 2003). Co-lead counsel. \$200 million settlement of antitrust claims.

*In re Churchill Securities, Inc.* (SIPA Proceeding), No. 99 B 5346A (Bankr. S.D.N.Y. 2003). Lead counsel. Over \$9 million recovery for 500+ victims of pyramid scheme perpetrated by defunct brokerage firm.

*In re Laidlaw Bondholder Securities Litigation*, No. 00-cv-2518-17 (D. S.C. 2002). Lead counsel. \$42.8 million settlement.

*Cromer Finance v. Berger et al.* (*In re Manhattan Fund Securities Litigation*), No. 00-cv-2284 (S.D.N.Y. 2002). Co-lead counsel. \$65 million settlement in total.

*In re Boeing Securities Litigation*, No. 97-cv-715 (W.D. Wash. 2001). \$92.5 million settlement.

*In re MCI Non-Subscriber Telephone Rates Litigation*, MDL No. 1275 (S.D. Ill. 2001). Chairman of steering committee. \$88 million settlement.

*In re General Instrument Corp. Securities Litigation*, No. 01-cv-1351 (E.D. Pa. 2001). Co-lead counsel. \$48 million settlement.

*In re Bergen Brunswick/Bergen Capital Trust Securities Litigation*, 99-cv-1305 and 99-cv-1462 (C.D. Cal. 2001). Co-lead counsel. \$42 million settlement.

*Steiner v. Aurora Foods*, No. 00-cv-602 (N.D. Cal. 2000). Co-lead counsel. \$36 million settlement.

*Gerber v. Computer Associates International, Inc.*, No. 91-cv-3610 (E.D.N.Y. 2000). Multi-million dollar jury verdict in securities class action.

*Rothman v. Gregor*, 220 F.3d 81 (2d Cir. 2000). Principal counsel of record in appeal that resulted in first ever appellate reversal of the dismissal of a securities fraud class action under the Securities Reform Act of 1995.

*Bartold v. Glendale Federal Bank*, 81 Cal.App.4th 816 (2000). Ruling on behalf of hundreds of thousands of California homeowners establishing banks' duties regarding title reconveyance.

*In re Cendant Corporation PRIDES Litigation*, 51 F. Supp. 2d 537, 542 (D. N.J. 1999). Lead counsel. \$340 million settlement.



"[R]esolution of this matter was greatly accelerated by the creative dynamism of counsel." \* \* \* "We have seen the gifted execution of responsibilities by a lead counsel."

*In re Waste Management, Inc. Securities Litigation*, No. 97C 7709 (N.D. Ill. 1999). Co-lead counsel. \$220 million settlement.

"...[Y]ou have acted the way lawyers at their best ought to act. And I have had a lot of cases... in 15 years now as a judge and I cannot recall a significant case where I felt people were better represented than they are here... I would say this has been the best representation that I have seen."

*In re Bennett Funding Group, Inc. Securities Litigation*, No. 96-cv-2583 (S.D.N.Y. 1999). Co-lead counsel. \$140 million settlement (\$125 million recovered from Generali U.S. Branch, insurer of Ponzi scheme instruments issued by Bennett Funding Group; \$14 million settlement with Mahoney Cohen, Bennett's auditor).

*In re MedPartners Securities Litigation*, No. 98-cv-06364 (Ala. June 1999). Co-lead counsel. \$56 million settlement.

*In re MTC Electronic Technologies Shareholder Litigation*, No. 93-cv-0876 (E.D.N.Y. 1998). Co-lead counsel. Settlement in excess of \$70 million.

*Skouras v. Creditanstalt International Advisers, Inc., et al.*, NASD Arb., No. 96-05847 (1998). Following an approximately one month hearing, successfully defeated multi-million dollar claim against major European institution.

*In re Woolworth Corp. Securities Class Action Litigation*, No. 94-cv-2217 (S.D.N.Y. 1997). Co-lead counsel. \$20 million settlement.

*In re Archer Daniels Midland Inc. Securities Litigation*, No. 95-cv-2877 (C.D. Ill. 1997). Co-lead counsel. \$30 million settlement.

*Vladimir v. U.S. Banknote Corp.*, No. 94-cv-0255 (S.D.N.Y. 1997). Multi-million dollar jury verdict in § 10(b) action.

*In re Archer Daniels Midland Inc. Securities Litigation*, No. 95-cv-2877 (C. D. Ill. 1997). Co-lead counsel. \$30 million settlement.

*Epstein et al. v. MCA, Inc., et al.*, 50 F.3d 644 (9th Cir. 1995), *rev'd and remanded on other grounds, Matsushita Electric Industrial Co., Ltd. et al. v. Epstein et al.*, No. 94-1809, 116 S. Ct. 873 (February 27, 1996). Lead counsel. Appeal resulted in landmark decision concerning liability of tender offeror under section 14(d)(7) of the Williams Act, SEC Rule 14d-10 and preclusive effect of a release in a state

court proceeding. In its decision granting partial summary judgment to plaintiffs, the court of appeals for the Ninth Circuit stated:

"The record shows that the performance of the Epstein plaintiffs and their counsel in pursuing this litigation has been exemplary."

*In re Abbott Laboratories Shareholder Litigation*, No. 92-cv-3869 (N.D. Ill. 1995). Co-lead counsel. \$32.5 million settlement.

"The record here amply demonstrates the superior quality of plaintiffs' counsel's preparation, work product, and general ability before the court."

*In re Morrison Knudsen Securities Litigation*, No. 94-cv-334 (D. Id. 1995). Co-lead counsel. \$68 million settlement.

*In re T2 Medical Inc. Securities Litigation*, No. 94-cv-744 (N.D. Ga. 1995). Co-lead counsel. \$50 million settlement.

*Gelb v. AT&T*, No. 90-cv-7212 (S.D.N.Y. 1994). Landmark decision regarding filed rate doctrine leading to injunctive relief.

*In re International Technology Corporation Securities Litigation*, No. 88-cv-40 (C.D. Cal. 1993). Co-lead counsel. \$13 million settlement.

*Colaprico v. Sun Microsystems*, No. 90-cv-20710 (N.D. Cal. 1993). Co-lead counsel. \$5 million settlement.

*Steinfink v. Pitney Bowes, Inc.*, No. B90-340 (JAC) (D. Conn. 1993). Lead counsel. \$4 million settlement.

*In re Jackpot Securities Enterprises, Inc. Securities Litigation*, No. CV-S-89-05-LDG (D. Nev. 1993). Lead counsel. \$3 million settlement.

*In re Nordstrom Inc. Securities Litigation*, No. C90-295C (W.D. Wa. 1991). Co-lead counsel. \$7.5 million settlement.

*United Artists Litigation*, No. CA 980 (Sup. Ct., L.A., Cal.). Trial counsel. \$35 million settlement.

*In re A.L. Williams Corp. Shareholders Litigation*, C.A. No. 10881 (Delaware Ch. 1990). Lead counsel. Benefits in excess of \$11 million.

*In re Triangle Inds., Inc., Shareholders' Litigation*, C.A. No. 10466 (Delaware Ch. 1990). Co-lead counsel. Recovery in excess of \$70 million.

*Schneider v. Lazard Freres*, No. 38899, M-6679 (N.Y. App. Div. 1st Dept. 1990). Co-lead counsel. Landmark decision concerning liability of investment bankers in corporate buyouts. \$55 million settlement.

*Rothenberg v. A.L. Williams*, C.A. No. 10060 (Delaware. Ch. 1989). Lead counsel. Benefits of at least \$25 million to the class.

*Kantor v. Zondervan Corporation*, No. 88-cv-C5425 (W.D. Mich. 1989). Lead counsel. Recovery of \$3.75 million.

*King v. Advanced Systems, Inc.*, No. 84-cv-C10917 (N.D. Ill. E.D. 1988). Lead counsel. Recovery of \$3.9 million (representing 90% of damages).

*Straetz v. Cordis*, No. 85-cv-343 (S.D. Fla. 1988). Lead counsel.

"I want to commend counsel and each one of you for the diligence with which you've pursued the case and for the results that have been produced on both sides. I think that you have displayed the absolute optimum in the method and manner by which you have represented your respective clients, and you are indeed a credit to the legal profession, and I'm very proud to have had the opportunity to have you appear before the Court in this matter."

*In re Flexi-Van Corporation, Inc. Shareholders Litigation*, C.A. No. 9672 (Delaware. Ch. 1988). Co-lead counsel. \$18.4 million settlement.

*Entezed, Inc. v. Republic of Nigeria*, I.C.C. Arb. (London 1987). Multi-million dollar award for client.

*In re Carnation Company Securities Litigation*, No. 84-cv-6913 (C.D. Cal. 1987). Co-lead counsel. \$13 million settlement.

*In re Data Switch Securities Litigation*, B84 585 (RCZ) (D. Conn. 1985). Co-lead counsel. \$7.5 million settlement.

*Stern v. Steans*, No. 80-cv-3903. The court characterized the result for the class obtained during trial to jury as "unusually successful" and "incredible" (Jun 1, 1984).

*In re Datapoint Securities Litigation*, No. 82-cv-338 (W.D. Tex.). Lead counsel for a Sub-Class. \$22.5 million aggregate settlement.

*Malchman, et al. v. Davis, et al.*, No. 77-cv-5151 (S.D.N.Y. 1984).

"It is difficult to overstate the far-reaching results of this litigation and the settlement. Few class actions have ever succeeded in altering commercial relationships of such magnitude. Few class action settlements have even approached the results achieved herein.... In the present case, the attorneys representing the class have acted with outstanding vigor and dedication . . . Although the lawyers in this litigation have appeared considerably more in the state courts than in the federal court, they have appeared in the federal court sufficiently for me to attest as to the high professional character of their work. Every issue which has come to this court has been presented by both sides with a thoroughness and zeal which is outstanding .... In sum, plaintiffs and their attorneys undertook a very large and difficult litigation in both the state and federal courts, where the stakes were enormous. This litigation was hard fought over a period of four years. Plaintiffs achieved a settlement which altered commercial relationships involving literally hundreds of millions of dollars."

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Docket No. 15-cv-00871  
(SHS)

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

**DECLARATION OF BRIAN P. MURRAY,  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Brian P. Murray, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am a Partner in the law firm of Glancy Prongay & Murray LLP (“GPM LLP”). I respectfully submit this declaration in support of Class Counsel’s<sup>1</sup> Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”) in connection with services rendered in the above-captioned action (“Action”).

2. The statements herein are true to the best of my personal knowledge, information and belief based on the books and records of GPM LLP and information provided by its attorneys and staff. GPM LLP’s time and expense records are prepared and maintained in the ordinary course of business.

3. At all times relevant hereto, GPM LLP served as additional counsel for California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”). This Court appointed Lowey Dannenberg, P.C. (“Lowey”) as Class Counsel for the Settlement Class in connection with each of the six Settlements in the above-captioned action. *See* ECF Nos. 159, 426, 428-29, 440, 457 (orders preliminarily approving each Settlement).

4. I am one of the attorneys who oversaw my firm’s involvement in the Action. GPM LLP’s time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions

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<sup>1</sup> Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Settlement Agreements with: JPMorgan Chase & Co. (ECF No. 151-1); NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (ECF No. 384-1); Deutsche Bank AG and DB Group Services (UK) Ltd. (ECF No. 384-2); Credit Suisse Group AG and Credit Suisse AG (ECF No. 391-1); NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (ECF No. 432-1); and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (collectively, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, together with TP ICAP and Gottex, the “Settling Brokers”) (ECF No. 454-1).

were made to both time and expenses either in the exercise of billing judgment or to conform with directions from Class Counsel and/or my firm's practice. Accordingly, the time reflected in GPM LLP's fee compensable lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and achieve the Settlements before the Court.

5. The services GPM LLP performed on behalf of the putative class in connection with the prosecution of the litigation include but are not limited to the following: GPM LLP performed an analysis of client records and trades; investigated the allegations of the complaint; and discussed the amended complaint and class definition with lead counsel.

6. Set forth below in ¶ 7 is a summary reflecting the amount of time GPM LLP's attorneys and professional support staff worked on the Action from the inception of the case to June 30, 2023, the timekeeper's current billing rates, and the corresponding lodestar calculations of that work based on the current hourly billing rates. Further, for personnel no longer employed by GPM LLP, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. The time and lodestar incurred preparing the Fee and Expense Application have also been excluded. The schedule was prepared based upon daily time records maintained by GPM LLP's attorneys in the ordinary course of business. Each timekeeper listed below was a full-time employee of the firm.

7. GPM LLP's total fee compensable time for which it seeks an award of attorneys' fees is summarized below:

Timekeeper Name	Position	Hourly Rate <sup>2</sup>	Total Hours from inception through 6/30/2023	Total Lodestar from inception through 6/30/2023
Brian P. Murray	Partner	975	17.2	\$16,770.00
Thomas Kennedy	Associate	650	12.9	\$8,385.00
<b>TOTAL</b>			<b>30.1</b>	<b>\$25,155.00</b>

8. The total time for which GPM LLP has spent working on the Action to date is 30.1 hours. The total lodestar value of these professional services is \$25,155.00. For the Court's reference, we attach as **Exhibit 1** a resume describing GPM's qualifications and brief biographies of its current attorneys who provided services in this Action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on August 8, 2023.

/s/Brian P. Murray

<sup>2</sup> The hourly rates for the shareholders, associate attorneys, and professional support staff in my firm included above are the same rates charged for their services in non-contingent matters and/or which have been accepted and approved in other complex class action litigation. *See, e.g., Senne v. Kansas City Royals Baseball Corp.*, 14-cv-608 (N.D. Cal.); *In re Capital One Customer Data Security Breach Litig.*, 19-md-2915 (E.D. Va.).



**GLANCY PRONGAY & MURRAY LLP**  
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**FIRM RESUME**

**Glancy Prongay & Murray LLP** (the "Firm") has represented businesses, investors, and consumers for nearly 25 years. With offices in New York City and Los Angeles the Firm has successfully prosecuted class action cases and complex litigation in federal and state courts throughout the country. As Lead Counsel or as a member of Plaintiffs' Counsel Executive Committees, the Firm has recovered billions of dollars for parties wronged by corporate fraud and anti-competitive conduct. Indeed, the Institutional Shareholder Services unit of RiskMetrics Group has recognized the Firm as one of the top plaintiffs' law firms in the United States in its Securities Class Action Services report for every year since the inception of the report in 2003. The Firm's efforts have been publicized in major newspapers such as the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*.

Glancy Prongay & Murray's commitment to high quality and excellent personalized services has boosted its national reputation, and we are now recognized as one of the premier plaintiffs' firms in the country. The Firm works tenaciously on behalf of clients to produce significant results and generate lasting corporate reform.

The Firm's integrity and success originate from our attorneys, who are among the brightest and most experienced in the field. Our distinguished litigators have an unparalleled track record of investigating and prosecuting corporate wrongdoing. The Firm is respected for both the zealous advocacy with which we represent our clients' interests as well as the highly-professional and ethical manner by which we achieve results. We are ideally positioned to pursue securities litigation, antitrust litigation, consumer litigation, and derivative and corporate takeover litigation. The Firm's outstanding accomplishments are the direct result of the exceptional talents of our attorneys and employees.

**BRIAN MURRAY** is admitted to the bars of Connecticut, New York, and the United States District Courts for the Southern, Eastern, Western, and Northern Districts of New York, the Eastern District of Michigan, the District of Connecticut, the District of Nebraska, the Eastern and Western Districts of Arkansas, the First, Second, Fifth, and Ninth Circuit Courts of Appeal, and the United States Supreme Court. He received Bachelor of Arts and Master of Arts degrees from the University of Notre Dame in 1983 and 1986, respectively. He received a Juris Doctor degree, *cum laude*, from St. John's University School of Law in 1990. At St. John's, he was the Articles Editor of the ST. JOHN'S LAW REVIEW. Mr. Murray co-wrote: *Jurisdição Estrangeira Tem Papel Relevante Na De Fiesa De Investidores Brasileiros*, ESPACA JURIDICO BOVESPA (August 2008); *The Proportionate Trading Model: Real Science or Junk Science?*, 52 CLEVELAND ST. L. REV. 391 (2004-05); *The Accident of Efficiency: Foreign Exchanges, American Depository Receipts, and Space Arbitrage*, 51 BUFFALO L. REV. 383 (2003); *You Shouldn't Be Required To Plead More Than You Have To Prove*, 53 BAYLOR L. REV. 783 (2001); *He Lies, You Die: Criminal Trials, Truth, Perjury, and Fairness*, 27 NEW ENGLAND J. ON CIVIL AND CRIMINAL CONFINEMENT 1 (2001); *Subject Matter Jurisdiction Under the Federal Securities Laws: The State of Affairs After Itoba*, 20 MARYLAND J. OF INT'L L. AND TRADE 235 (1996); *Determining Excessive Trading in Option Accounts: A Synthetic Valuation Approach*, 23 U. DAYTON L. REV. 316 (1997); *Catch-22 for Investors: Averaging Down Held to Preclude Fraud Remedies*, NEW YORK LAW JOURNAL (March 31, 2014); *Loss Causation Pleading Standard*, NEW YORK LAW JOURNAL (Feb. 25, 2005); *The PSLRA 'Automatic Stay' of Discovery*, NEW YORK LAW JOURNAL (March 3, 2003); and *Inherent Risk In Securities Cases In The Second Circuit*, NEW YORK LAW JOURNAL (Aug. 26, 2004). He also authored *Protecting The Rights of International Clients in U.S. Securities Class Action Litigation*, INTERNATIONAL LITIGATION NEWS (Sept. 2007); *Lifting the PSLRA "Automatic Stay" of Discovery*, 80 N. DAK. L. REV. 405 (2004); *Aftermarket Purchaser Standing Under § 11 of the Securities Act of 1933*, 73 ST. JOHN'S L. REV. 633 (1999); *Recent Rulings Allow Section 11 Suits By Aftermarket Securities Purchasers*, NEW YORK LAW JOURNAL (Sept. 24, 1998); and *Comment, Weissmann v. Freeman: The Second Circuit Errs in its Analysis of Derivative Copyrights by Joint Authors*, 63 ST. JOHN'S L. REV. 771 (1989).

Mr. Murray was on the trial team that prosecuted a securities fraud case under Section 10(b) of the Securities Exchange Act of 1934 against Microdyne Corporation in the Eastern District of Virginia and he was also on the trial team that presented a claim under Section 14 of the Securities Exchange Act of 1934 against Artek Systems Corporation and Dynatach Group which settled midway through the trial.

Mr. Murray's major cases include:

*In re Horsehead Holding Corp. Sec. Litig.*, No. 16-cv-292, 2018 WL 4838234 (D. Del. Oct. 4, 2018) (recommending denial of motion to dismiss securities fraud claims where company's generic cautionary statements failed to adequately warn of known problems for zinc processing plant); *In re Deutsche Bank Sec. Litig.*, 328 F.R.D. 71 (S.D.N.Y. 2018) (granting class certification for Securities Act claims and rejecting defendants' argument that class representatives' trading profits made them atypical class members); *Robb v. Fitbit Inc.*, 216 F. Supp. 3d 1017 (N.D. Cal. 2016) (denying motion to dismiss securities fraud claims where confidential witness statements sufficiently established scienter; case subsequently settled for \$33 million); *In re Eagle Bldg. Tech. Sec. Litig.*, 221 F.R.D. 582 (S.D. Fla. 2004), 319 F. Supp.

2d 1318 (S.D. Fla. 2004) (complaint against auditor sustained due to magnitude and nature of fraud; no allegations of a “tip-off” were necessary); *In re Turkcell Iletisim A.S. Sec. Litig.*, 209 F.R.D. 353 (S.D.N.Y. 2002) (defining standards by which investment advisors have standing to sue); *In re Turkcell Iletisim A.S. Sec. Litig.*, 202 F. Supp. 2d 8 (S.D.N.Y. 2001) (liability found for false statements in prospectus concerning churn rates); *Feiner v. SS&C Tech., Inc.*, 11 F. Supp. 2d 204 (D. Conn. 1998) (qualified independent underwriters held liable for pricing of offering); *Malone v. Microdyne Corp.*, 26 F.3d 471 (4th Cir. 1994) (reversal of directed verdict for defendants); and *Adair v. Bristol Tech. Systems, Inc.*, 179 F.R.D. 126 (S.D.N.Y. 1998) (aftermarket purchasers have standing under section 11 of the Securities Act of 1933). Mr. Murray also prevailed on an issue of first impression in the Superior Court of Massachusetts, in *Cambridge Biotech Corp. v. Deloitte and Touche LLP*, in which the court applied the doctrine of continuous representation for statute of limitations purposes to accountants for the first time in Massachusetts. 6 Mass. L. Rptr. 367 (Mass. Super. Jan. 28, 1997). In addition, in *Adair v. Microfield Graphics, Inc.* (D. Or.), Mr. Murray settled the case for 47% of estimated damages. In the *Qiao Xing Universal Telephone* case, claimants received 120% of their recognized losses.

Among his current cases, Mr. Murray is currently co-lead counsel *Official Committee of Unsecured Creditors of First NBC Bank Holding Co. v. Ryan* (E.D. La.); *Li v. Fleet New York Metropolitan Regional Center LLC* (E.D.N.Y.); and *Meyer v. Cabot Lodge Sec. LLC* (N.Y. Supreme). He also has major roles in *Smallman v. MGM Resorts Int’l* (D. Nev.), and *Springmeyer v. Marriott Int’l Inc.* (D. Md.).

Mr. Murray served as a Trustee of the Incorporated Village of Garden City (2000-2002); Commissioner of Police for Garden City (2000-2001); Co-Chairman, Derivative Suits Subcommittee, American Bar Association Class Action and Derivative Suits Committee (2007-2010); Member, Sports Law Committee, Association of the Bar for the City of New York, 1994-1997; Member, Litigation Committee, Association of the Bar for the City of New York, 2003-2007; Member, New York State Bar Association Committee on Federal Constitution and Legislation, 2005-2008; Member, Federal Bar Council, Second Circuit Committee, 2007-2020.

Mr. Murray has been a panelist at CLEs sponsored by the Federal Bar Council and the Institute for Law and Economic Policy, the University of Notre Dame, and the German-American Lawyers Association Annual Meeting in Frankfurt, Germany, and is a frequent lecturer before institutional investors in Europe and South America on the topic of class actions.

**THOMAS J. KENNEDY** works out of the New York office, where he concentrates on securities, antitrust, and consumer litigation. He received a Juris Doctor degree from St. John's University School of Law in 1995. At St. John's, he was a member of the ST. JOHN'S JOURNAL OF LEGAL COMMENTARY. Mr. Kenned graduated from Miami University in 1992 with a Bachelor of Science degree in Accounting and has passed the CPA exam. Mr. Kennedy was previously associated with the law firm Murray Frank LLP.

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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**DECLARATION OF VINCENT BRIGANTI  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Vincent Briganti, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am the Chairman and a shareholder of the law firm Lowey Dannenberg, P.C. (“Lowey” or “Class Counsel”). I respectfully submit this declaration in support of Class Counsel’s<sup>1</sup> Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”) in connection with services rendered in the above-captioned action (“Action”).

2. The statements herein are true to the best of my personal knowledge, information and belief based on Lowey’s books and records and information provided by Lowey attorneys and staff. The time and expense records are prepared and maintained in the ordinary course of business.

3. At all times relevant hereto, Lowey served as counsel for California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”). This Court appointed Lowey as Class Counsel for the Settlement Class in connection with each of the six Settlements in the above-captioned action. *See* ECF Nos. 159, 426, 428-29, 440, 457 (orders preliminarily approving each Settlement).

4. I am the attorney who oversaw my firm’s involvement in the Action. Lowey’s time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made

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<sup>1</sup> Unless otherwise defined, capitalized terms have the same meaning as in the Stipulations and Agreements of Settlement with (1) JPMorgan Chase & Co. (“JPMorgan”); (2) NatWest Markets plc (f/k/a The Royal Bank of Scotland plc) (“RBS”); (3) Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, “Deutsche Bank”); (4) Credit Suisse Group AG and Credit Suisse AG (collectively, “Credit Suisse”); (5) NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (collectively, “ICAP”), and (6) TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (together, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, collectively with TP ICAP and Gottex, the “Settling Brokers”). ECF Nos. 151-1, 384-1, 384-2, 391-1, 432-1, and 454-1. JPMorgan, RBS, Deutsche Bank, Credit Suisse, ICAP, and the Settling Brokers are referred to as “Settling Defendants”.

to both time and expenses either in the exercise of billing judgment or to conform with my firm's practice. Accordingly, the time reflected in Lowey's fee compensable lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and achieve the Settlements with the Settling Defendants now before the Court. In addition, these fees and expenses are often charged by Lowey to its fee-paying clients.

5. The services Lowey performed on behalf of Plaintiffs and the putative class are set forth in my separate declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlements with Settling Defendants dated August 9, 2023 ("August 2023 Briganti Decl."), filed herewith, and include but are not limited to the following:

- Independently investigating the facts and circumstances of the case, including reviewing regulatory filings and settlements and researching the market for Swiss Franc LIBOR-Based Derivatives, and developing a litigation strategy;
- Consulting with a range of experts that assisted with evaluating the size of the Swiss Franc LIBOR-Based Derivatives market, developing econometric models for the Swiss Franc LIBOR market, and estimating the potential damages caused by Defendants' alleged misconduct;
- Conferring with clients and analyzing client transaction records;
- Drafting and filing the initial complaint and three amended complaints;
- Researching relevant case law relating to procedural and substantive issues likely to be raised in the Action, including, *inter alia*, personal jurisdiction over foreign Defendants, Article III and antitrust standing, and pleading requirements for antitrust, CEA, RICO, and common law claims in the context of benchmark litigation;

- Coordinating the preparation and drafting numerous briefs and declarations in response to Defendants’ multiple motions to dismiss, and drafting or responding to supplemental authority letters related to Defendants’ motions to dismiss the First, Second, and Third Amended Complaints;
- Reviewing and analyzing documents, data, audio files and other information received from Settling Defendants as cooperation materials;
- Preparing and filing a notice of appeal to the Second Circuit Court of Appeals (“Second Circuit”);
- Negotiating and filing a joint motion in the Second Circuit to vacate the Court’s 2019 decision dismissing this action and for remand after the Second Circuit rendered its opinion in *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, 991 F.3d 370 (2d Cir. 2021);
- Developing settlement strategy and settlement presentations for discussions with Settling Defendants;
- Negotiating settlement with all Settling Defendants, which included preparing for and attending a settlement mediation with one of the Settling Defendants and conducting dozens of settlement meet-and-confers over an eight-and-a-half-year period from 2015 through mid-2023;
- Drafting mediation statements;
- Drafting term sheets and stipulations of settlement;
- Preparing preliminary approval motions related to each of the Settlements;
- Assisting the Claims Administrator in the execution of the Class Notice plan;
- Collaborating with experts to develop the Distribution Plan; and



- Supervising notice and settlement administration, including the implementation of the Distribution Plan.

6. Set forth below in ¶ 7 is a summary reflecting the amount of time Lowey's attorneys and professional support staff worked on the Action from the inception of the case to June 30, 2023, the timekeeper's current billing rates, and the corresponding lodestar calculations of that work based on the current hourly billing rates. For timekeepers involved in first-level document review, their lodestar calculation has been adjusted to cap the billing rate for any document review work at \$400/hour. Further, for personnel no longer employed by Lowey, the lodestar calculation is based on the billing rates for such personnel in his or her final year of employment. Timekeepers that billed less than 10 hours billed in this Action have been excluded. The time and lodestar incurred preparing the Fee and Expense Application have also been excluded. The schedule was prepared based upon daily time records maintained by Lowey's attorneys and professional support staff in the ordinary course of business. Each timekeeper listed below was a full-time employee of the firm.

7. Lowey's total fee compensable time for which it seeks an award of attorneys' fees is summarized below:

Timekeeper Name	Position <sup>2</sup>	Hourly Rate	Total Hours from inception through 6/30/2023	Total Lodestar from inception through 6/30/2023
Vincent Briganti	S	\$1,395.00	1,016.9	\$1,418,575.50
Geoffrey Horn	S	\$1,395.00	816.2	\$1,138,682.70
Peter St. Phillip	S	\$1,395.00	229.2	\$319,734.00
Raymond Girnys	P	\$1,090.00	649.8	\$708,282.00
Christian Levis	P	\$1,090.00	1,299.0	\$1,415,910.00
Sitso Bediako	P	\$1,090.00	629.0	\$685,620.90
Margaret MacLean	P	\$1,090.00	240.4	\$262,036.00
Barbara Hart	P	\$980.00	42.3	\$41,454.00
Johnathan Serebinski	SA	\$775.00	30.3	\$23,482.50
Peter Demato	SA	\$775.00	135.7	\$85,217.50
Frank Strangeman	SA	\$775.00	512.9	\$397,497.50
Roland St. Louis	SA	\$775.00	1,443.3	\$1,060,545.00
Scott V. Papp	SA	\$700.00	258.0	\$180,600.00
John D'Amico	SA	\$700.00	278.6	\$116,840.00
Jennifer Tembeck	SA	\$700.00	329.2	\$230,440.00
Charles Kopel	A	\$560.00	316.3	\$163,814.50
Lee Lefkowitz	A	\$550.00	611.5	\$336,325.00
Ian Sloss	A	\$550.00	1,396.3	\$708,850.00
Noelle Forde	A	\$525.00	13.0	\$6,825.00
Nicole Maruzzi	A	\$525.00	16.3	\$8,557.50
Luke Goveas	A	\$525.00	20.2	\$10,087.00
Anthony Christina	A	\$525.00	31.9	\$13,597.50
Radhika Gupta	A	\$525.00	32.4	\$15,778.50
Yuanchen Lu	A	\$490.00	16.0	\$7,540.00
William Olson	A	\$490.00	16.4	\$6,587.00
Christopher DeVivo	A	\$490.00	63.0	\$26,970.00
Sylvie Bourassa	A	\$490.00	306.7	\$142,354.00
Craig Marder	A	\$485.00	14.6	\$7,081.00
Bracha Gefen	A	\$460.00	554.5	\$253,870.00
Samantha Breitner	A	\$430.00	34.3	\$14,749.00
Henry Kusjanovic	A	\$430.00	67.4	\$28,982.00
Amir Alimehri	A	\$410.00	40.5	\$16,605.00
Lee Yun Kim	A	\$410.00	687.9	\$275,370.00
Richard Frank	A	\$400.00	28.7	\$11,480.00
Melissa Cabrera	A	\$400.00	55.5	\$22,200.00

<sup>2</sup> “S” refers to Shareholders. “P” refers to Partners. “SA” refers to Senior Associates. “A” refers to Associates. “PL” refers to Paralegals. The hourly rates for the shareholders, associate attorneys and professional support staff in my firm included above are the same rates charged for their services in non-contingent matters and/or which have been accepted and approved in other complex class action litigation. *See, e.g.,* Order Granting Class Counsel’s Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, at 2, *Sullivan, et al. v. Barclays plc, et al.*, No. 13 Civ. 2811 (PKC)(S.D.N.Y. Nov. 15, 2022), ECF No. 550.

Timekeeper Name	Position <sup>2</sup>	Hourly Rate	Total Hours from inception through 6/30/2023	Total Lodestar from inception through 6/30/2023
Christina McPhaul	A	\$400.00	138.3	\$55,320.00
Michelle Conston	A	\$400.00	431.9	\$172,760.00
Tim Rode	A	\$390.00	274.8	\$107,172.00
Grace Lee	A	\$380.00	219.5	\$83,410.00
Matthew Acocella	A	\$375.00	102.0	\$38,250.00
Anthony Odorisi	A	\$365.00	56.1	\$20,476.50
Julia McGrath	A	\$365.00	317.0	\$115,705.00
Bonnie Espino	A	\$350.00	32.2	\$11,270.00
Yong Kim	A	\$340.00	532.2	\$180,948.00
Matthew Guarnero	A	\$325.00	21.4	\$6,955.00
Adam Settle	A	\$325.00	22.6	\$7,345.00
Garam Choe	A	\$325.00	160.6	\$52,195.00
<b>PROFESSIONAL STAFF</b>				
Katherine Vogel	PL	\$365.00	24.1	\$8,796.50
<b>TOTALS</b>			<b>14,567</b>	<b>\$11,023,143.60</b>

8. The total time for which Lowey has spent working on the Action to date is **14,567** hours. The total lodestar value of these professional services is **\$11,023,143.60**. For the Court's reference, we attach as **Exhibit A** Lowey's resume describing the firm's qualifications and brief biographies of its current attorneys who provided services in this Action. Also attached as **Exhibit B** is a chart further listing the timekeepers involved in the various litigation activities and a summary of the hours spent on each respective activity.

9. Lowey's total lodestar does not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

10. As detailed and categorized in the below schedule, Lowey has paid a total of **\$218,156.98** in expenses from inception to present for which it is currently requesting reimbursement.

<b>Expense Categories</b>	<b>Cumulative Expenses</b>
Travel - Airfare, Lodging, Meals, Taxi	\$21,912.47
Computer Research, Databases & Docket	\$17,683.77
Conferences, Meetings, Telephone, & Telecopier	\$146.99
Court Transcripts/Court Reporter Fees	\$204.60
Document Production, Review, IT and Maintenance	\$7,376.17
Professional, Consulting, or Expert Fees	\$155,694.52
Postage, Mailing, FedEx, UPS, Fares & Messengers	1,336.89
In-House Copying	\$12,834.90
Service and Filing Fees	\$966.67
<b>TOTAL</b>	<b>\$218,156.98</b>

11. The above schedule was prepared using information from Lowey's books and records, including its expense records. These books and records are prepared from expense reports, receipts, check and bank records and other source materials.

12. The majority of Lowey's expenses were utilized for expert fees. Lowey retained a number of experts to perform critical services, including (1) data analytics, including of data sets produced via settlement cooperation and other sources; (2) market analysis and preliminary damages estimates; (3) development of the Distribution Plan; (4) foreign language translation services; and (5) mediation services from JAMS, Inc. Document hosting and production costs were incurred in connection with the collection and review of documents related to the cooperation materials received from the Settling Defendants. Travel expenses include costs related to participation in a settlement mediation session in San Francisco, California (including flight, hotel, meals, and ground transportation expenses for multiple attorneys), travel and meetings with clients and prospective clients concerning the litigation, travel to Court hearings, taxi services and meals costs arising during critical deadlines and/or travel for this case. Computer research costs

principally consists of Westlaw and Lexis-Nexis legal research charges. Filing fees principally include fees for the filing of the initial complaint and the notice of appeal. Class Counsel also capped all of their in-housing copying and printing charges to \$0.15 per page.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on August 9, 2023.

/s/ Vincent Briganti

# **EXHIBIT A**



LOWEY DANNENBERG

# Firm Resume



# Contents

<b>1 Firm Overview</b>	<b>12 Securities Litigation</b>
<b>2 Antitrust Class Actions</b>	<b>12 Active Securities Cases</b>
2 In re GSE Bonds Antitrust Litigation	12 Shafer et al v. Active Network LLC et al
2 In re European Government Bonds Antitrust Litigation	12 Jedrzejczyk v. Skillz Inc.
2 In re Mexican Government Bonds Antitrust Litigation	12 In Re: Kirkland Lake Gold LTD Securities Litigation
3 Sullivan, et al. v. Barclays plc, et al. (Euribor)	13 Said-Ibrahim et al v. FuboTV Inc. et al
3 Laydon v. Mizuho Bank, Ltd., et al.; Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al. (Yen-LIBOR and Euroyen TIBOR)	13 United Industrial Workers Pension Plan v. Waste Management, Inc., et al.
3 In re London Silver Fixing Ltd., Antitrust Litig.	13 Boykin v. K12, Inc.
4 Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG et al.	<b>13 Notable Recoveries</b>
4 Fund Liquidation Holdings LLC v. Citibank, N.A.	<b>17 Consumer Protection</b>
4 Dennis, et al. v. JPMorgan Chase & Co., et al.	17 In re FedLoan Student Loan Servicing Litigation
<b>5 Commodities Litigation</b>	17 Broder v. MBNA Corp.
5 Sumitomo	17 Snyder v. Nationwide Insurance Company
5 In re Natural Gas	17 Wysocki et al v. ZoomInfo Technologies Inc.
6 Amaranth	17 In Re Archstone Westbury Tenant Litigation
6 Pacific Inv. Mgmt. Co. (“PIMCO”)	17 Lyons v. Litton Loan Servicing LP
6 Optiver	17 In re Warfarin Sodium Antitrust Litigation
6 White v. Moore Capital Management, L.P.	<b>18 Data Breach Class Actions</b>
6 In re Crude Oil Commodity Futures Litigation	18 Barr v. Drizly, LLC, Case No. 20-CV-11492 (D. Mass.)
7 Kraft Wheat Manipulation	18 In re Wawa, Inc. Data Security Litigation, No. 19-cv-06019 (E.D. Pa.)
7 Lansing Wheat Manipulation	18 Doe v. Hey Favor, Inc., 3:23-00059 (N.D. Cal.).
7 The Andersons Wheat Manipulation	18 In re Rutter’s Inc. Data Security Breach Litigation, No. 20-cv-00382 (M.D. Pa.)
8 In re JPMorgan Precious Metals Spoofing Litigation	18 Hozza v. PrimoHoagies Franchising, Inc., No. 20-cv-04966 (D.N.J.)
8 Boutchard, et al. v. Gandhi, et al. — E-mini Index Futures Spoofing	18 In re USAA Data Security Litigation, No. 21-cv-05813 (S.D.N.Y.)
8 JPMorgan Treasuries Spoofing	<b>19 Privacy Class Actions</b>
8 Deutsche Treasury and Eurodollar Spoofing	19 In re Google Assistant Privacy Litigation, No. 19-cv-04286 (N.D. Cal.)
8 In re NatWest Treasury Futures Spoofing Litigation	19 Lopez v. Apple, Inc., No. 19-cv-04577 (N.D. Cal.)
<b>9 Healthcare: Prescription Overcharge Antitrust Litigation</b>	19 In re Apple Processor Litigation, No. 18-cv-00147 (N.D. Cal.)
9 Drugs Failing to Meet FDA’s Manufacturing Standards	19 Frasco v. Flo Health, Inc., No. 21-cv-00757 (N.D. Cal.)
9 “Pay-for-Delay” Antitrust Claims	19 Wesch v. Yodlee, Inc., No. 20-cv-05991 (N.D. Cal.)
10 Price Fixing of Pharmaceutical Drugs	20 Laskowski v. Florida Health Sciences Center, Inc., No. 8:23-cv-00456 (M.D. Fl.)
10 Deceptive Marketing Claims	20 Doe v. The Regents of the University of California, No. 3:23-cv-00598 (N.D. Cal.)
11 Class Action Defense/Lien Recovery Cases	<b>21 Lowey Dannenberg’s Recognized Expertise</b>





## Firm Overview

Since the firm's founding by Stephen Lowey in the 1960s, Lowey Dannenberg, P.C. ("Lowey Dannenberg") has represented sophisticated clients in complex federal antitrust, commodities, and securities litigation. Lowey Dannenberg also regularly represents some of the world's largest health insurers in healthcare cost recovery actions.

Lowey Dannenberg has recovered billions of dollars for its clients and the classes they represent. Those clients include some of the nation's largest pension funds, e.g., the California State Teachers' Retirement System ("CalSTRS"), the Treasurer of the Commonwealth of Pennsylvania and the Pennsylvania Treasury Department, the New York State Common Retirement Fund, and the New York City Pension Funds; sophisticated institutional investors, including Federated Investors, which manages more than \$600 billion in assets; and Fortune 100 companies like Aetna, Anthem, CIGNA, Humana, and Verizon.

Aetna and Humana have publicly lauded Lowey in Corporate Counsel Magazine as their "Go To" outside counsel because of the firm's years of service to Fortune 100 health insurers in opt-out litigation involving state and federal fraud claims.



## Antitrust Class Actions

Lowey Dannenberg regularly serves as court appointed lead or co-lead counsel on some of the most important and complex antitrust class actions against some of the world's largest corporations, financial institutions, and producers. The firm has more than 40 attorneys who specialize in prosecuting these cases, including the following representative matters.

*The Court itself had occasion to notice the high quality of [Lowey Dannenberg's] work, both in briefs and oral argument. Moreover, counsels' achievement in obtaining valuable recompense and forward-looking protections for its clients is particularly noteworthy given the caliber and vigor of its adversaries.*

Judge Jed Rakoff, *In re GSE Bonds Antitrust Litigation*, No. 19-CV-1704 (S.D.N.Y.)

### In re GSE Bonds Antitrust Litigation

Lowey Dannenberg served as Court-appointed Co-Lead Counsel in an antitrust class action alleging that several of the world's largest banks and brokers conspired to fix the prices of debt securities issued by government sponsored entities (e.g., Fannie Mae, Freddie Mac, Federal Farm Credit Banks, and Federal Home Loan Banks) between 2009 and 2016. *In re GSE Bonds Antitrust Litigation*, No. 19-cv-1704 (S.D.N.Y.) (Rakoff, J.).

On June 16, 2020, Judge Jed S. Rakoff finally approved settlements with all defendants totaling more than \$386 million. Judge Rakoff praised "the high quality of [Lowey's] work, both in briefs and oral argument," and Lowey's achievement in "obtaining valuable recompense and forward-looking protections for its clients" in the face of vigorous opposition from adversaries of the highest caliber. *See In re GSE Bonds Antitrust Litig.*, No. 19-CV-1704 (JSR), 2020 WL 3250593 (S.D.N.Y. June 16, 2020). Notably, in addition to the substantial financial recovery in the case, Lowey worked closely with its client, the Treasurer of the Commonwealth of Pennsylvania, to curb future misconduct and successfully negotiated settlement provisions that required each defendant to maintain or create a compliance program designed prevent and detect future anticompetitive conduct in the GSE Bond Market.

### In re European Government Bonds Antitrust Litigation

Lowey Dannenberg serves as court-appointed co-lead counsel in *In re European Government Bonds Antitrust Litigation*, Case No. 19-cv-2601 (VM) (S.D.N.Y.) and the related case *Ohio Carpenters' Pension Fund et al. v. Deutsche Bank AG et al.*, No. 1:22-cv-10462 (S.D.N.Y.). Both cases are currently pending before Judge Victor Marrero in the Southern District of New York, and involve alleged price-fixing by dealers responsible for bringing bonds issued by Eurozone member countries to the secondary market. On March 14, 2022, Judge Marrero sustained antitrust claims against six dealers. *In re Euro Gov't Bonds Antitrust Litig.*, No. 19-cv-2601 (VM), 2022 WL 768680 (S.D.N.Y. Mar. 14, 2022). Judge Marrero has also preliminarily approved four Settlements with State Street, JPMorgan, Natixis, and UniCredit, resulting in a settlement fund of \$40 million.

### In re Mexican Government Bonds Antitrust Litigation

Lowey Dannenberg serves as Court-appointed sole Lead Counsel in a class action against 10 global financial institutions that allegedly violated the Sherman Act by colluding to fix the prices of debt securities issued by the Mexican Government between 2006 and 2016. Plaintiffs are eight institutional investors that transacted in Mexican government debt, including directly with Defendants. The case is pending before Judge J. Paul Oetken in the Southern District of New York. On October 28, 2021, Judge Oetken granted final approval of a settlement with Defendants JPMorgan Chase and Barclays PLC for \$20.7 million. *In re Mexican Government Bonds Antitrust Litigation*, 1:18-cv-02830 (S.D.N.Y.).

### **Sullivan, et al. v. Barclays plc, et al. (Euribor)**

Lowey Dannenberg is co-lead counsel prosecuting claims against international financial institutions responsible for setting the Euro Interbank Offered Rate (“Euribor”), a global reference rate used to benchmark, price and settle over \$200 trillion of financial products. Co-Lead Plaintiffs include the California State Teachers’ Retirement System (“CalSTRS”). So far, Lowey Dannenberg has recovered a total of \$546.5 million for Euribor-based derivatives investors, which includes (1) a \$94 million settlement with Barclays plc and related Barclays entities; (2) a \$45 million settlement with Defendants HSBC Holdings plc and HSBC Bank plc; (3) a \$170 million settlement with Defendants Deutsche Bank AG and DB Group Services (UK) Ltd.; and (4) a \$182.5 million settlement with Defendants Citigroup Inc., Citibank, N.A., JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. On November 15, 2022, Judge Castel issued an Order granting final approval of an additional \$55 million settlement with Defendants Crédit Agricole S.A. and Crédit Agricole CIB.

On April 18, 2023, the Court preliminarily approved a settlement with Defendant Société Générale for \$105,000,000. The claims against the remaining defendants in the case are presently on appeal before the United States Court of Appeals, Second Circuit.

### **Laydon v. Mizuho Bank, Ltd., et al.; Sonterra Capital Master Fund Ltd., et al. v. UBS AG, et al. (Yen-LIBOR and Euroyen TIBOR)**

Lowey Dannenberg is sole lead counsel prosecuting claims against international financial institutions responsible for the intentional and systematic manipulation of the London Interbank Offered Rate (“LIBOR”) for the Japanese Yen and Euroyen TIBOR (the Tokyo Interbank Offered Rate). The firm represents clients in two actions relating to manipulation of products price-based on these benchmarks (“Euroyen-based derivatives”): *Laydon v. Mizuho Bank, Ltd. et al.*, 12-cv-03419 (S.D.N.Y.) (Daniels, J.) (involving exchange based Euroyen-based derivatives) and *Sonterra Capital Master Fund, Ltd. et al. v. UBS AG et al.*, 15-cv-5844 (Daniels, J.) (involving over-the-counter Euroyen-based derivatives). Co-Lead Plaintiffs in the *Sonterra* matter include CalSTRS. In the *Sonterra* action, Lowey Dannenberg recently prevailed on its appeal before the United States Court of Appeals, Second Circuit, which reversed the lower court’s dismissal of the case. *Sonterra Capital Master Fund Ltd. v. UBS AG*, 954 F.3d 529 (2d Cir. 2020).

Lowey Dannenberg has thus far recovered \$329.5 million for the Settlement Class and received substantial cooperation from settling defendants that it is using in the actions against the remaining defendants. In 2016,

Judge Daniels granted final approval of a \$35 million settlement with HSBC Holdings plc and HSBC Bank plc, a \$23 million settlement with Citigroup, Inc. and several Citi entities, and a cooperation settlement with R.P. Martin. In 2017, Judge Daniels granted final approval of a \$77 million settlement with Deutsche Bank AG and DB Group Services (UK) Ltd. and a \$71 million settlement with JPMorgan Chase & Co. and related entities. On July 12, 2018, Judge Daniels granted final approval of a \$30 million settlement with the The Bank of Tokyo-Mitsubishi UFJ, Ltd. and Mitsubishi UFJ Trust and Banking Corporation. In December 2019, the court finally approved two sets of settlements, one with Bank of Yokohama, Ltd., Shinkin Central Bank, The Shoko Chukin Bank, Ltd., Sumitomo Mitsui Trust Bank, Ltd. and Resona Bank, Ltd. for \$31.75 million, and the second with Mizuho Bank, Ltd., Mizuho Corporate Bank, Ltd., and Mizuho Trust & Banking Co., Ltd., The Norinchukin Bank, and Sumitomo Mitsui Banking Corporation for \$39.25 million. March 14, 2023, Judge Daniels granted final approval of three settlements with Barclays Bank PLC, Barclays Capital Inc., and Barclays PLC for \$17,750,000; Nex International Limited (f/k/a ICAP plc) and ICAP Europe Limited for \$2,375,000; and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc) for \$2,375,000.

### **In re London Silver Fixing Ltd., Antitrust Litig.**

Lowey Dannenberg is serving as co-lead counsel on behalf of a class of silver investors, including Commodity Exchange Inc. (“COMEX”) silver futures contracts traders, against banks that allegedly colluded to fix the London Silver Fix, a global benchmark that impacts the value of more than \$30 billion in silver and silver-based financial instruments. Judge Valerie E. Caproni sustained Sherman Antitrust Act and CEA claims alleged in Lowey Dannenberg’s complaint, which relied predominately on sophisticated econometric analysis that Lowey Dannenberg developed in conjunction with a team of leading financial markets experts. *See In re London Silver Fixing Ltd., Antitrust Litig.*, No. 14-md-2573, 2016 WL 5794777 (S.D.N.Y. Oct. 3, 2016). In appointing Lowey Dannenberg, the Court praised Lowey Dannenberg’s experience, approach to developing the complaint, attention to detail, and the expert resources that the firm brought to bear on behalf of the class. *See In re London Silver Fixing Ltd., Antitrust Litig.*, Case No. 14-md-2573 (VEC), ECF No. 17 (Nov. 25, 2014 S.D.N.Y.) (Caproni, J.). On June 15, 2021, Judge Caproni granted final approval of a \$38 million settlement with Deutsche Bank AG and several of its subsidiaries. *See Final Approval Order 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, and Deutsche Bank AG New York Branch, *In re London Silver Fixing, Ltd., Antitrust Litig.*, No. 14-md-2573 (S.D.N.Y. Jun. 15, 2021), ECF No. 536. The case is ongoing against the remaining defendants.

### **Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG et al.**

Lowey Dannenberg is court-appointed sole lead counsel in a class action against numerous global financial institutions responsible for setting the London Interbank Offered Rate for the Swiss Franc (Swiss Franc LIBOR). Defendants settled with global regulators, paid billions in fines, and/or were granted leniency by the European Commission for alleged anti-competitive conduct in the Swiss Franc LIBOR and Swiss Franc LIBOR derivatives market. On September 21, 2021, the Second Circuit Court of Appeals vacated dismissal and remanded the case to Judge Stein, where it remains pending. *Sonterra Capital Master Fund Ltd. v. Credit Suisse Group AG, et al.*, Case No. 15-cv-0871 (S.D.N.Y.). On August 16, 2017, the Court preliminarily approved a \$22,000,000 settlement with JPMorgan Chase & Co. On February 15, 2023, the Court preliminarily approved settlements with (1) NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) for \$21,000,000; (2) Credit Suisse Group AG and Credit Suisse AG for \$13,750,000; and (3) Deutsche Bank AG and DB Group Services (UK) Ltd. for \$13,000,000. On May 16, 2023, the Court preliminarily approved a settlement with TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG; Gottex Brokers SA; and Velcor SA for \$2,100,000. The case is ongoing against the remaining defendant.

### **Fund Liquidation Holdings LLC v. Citibank, N.A.**

Lowey Dannenberg filed a proposed class action in July 2015 alleging that the 20 global financial institutions responsible for setting the Singapore Interbank Offered Rate (“SIBOR”) and the Singapore Swap Offer Rate (“SOR”) manipulated these benchmark rates to benefit their own derivatives positions at the expense of U.S. investors. The Monetary Authority of Singapore investigated these banks and found that traders manipulated SIBOR and SOR, imposing sanctions. On March 17, 2021, the Second Circuit Court of Appeals vacated dismissal of the action and remanded the case to Judge Hellerstein for further proceedings. On November 29, 2022, Judge Hellerstein granted final approval of seven settlements totaling \$155,458,000 with all Defendants in the case. *Fund Liquidation Holdings LLC v. Citibank, N.A., et al.*, 16-cv-5263 (S.D.N.Y.).

### **Dennis, et al. v. JPMorgan Chase & Co., et al.**

Lowey Dannenberg is co-lead counsel in an antitrust class action against numerous global financial institutions responsible for setting the Australian Bank Bill Swap Reference Rate (“BBSW”), pending before Judge Lewis A. Kaplan in the Southern District of New York. *Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-6496 (LAK) (S.D.N.Y.). The case alleges that the defendants engaged in uneconomic transactions in Prime Bank Bills, a type of short-term debt instrument, to manipulate BBSW. In addition to prevailing against most of the defendants on their motions to dismiss, (see *Dennis v. JPMorgan Chase & Co.*, 343 F. Supp. 3d 122 (S.D.N.Y. 2018), adhered to on denial of reconsideration, No. 16-CV-6496 (LAK), 2018 WL 6985207 (S.D.N.Y. Dec. 20, 2018); *Dennis v. JPMorgan Chase & Co.*, 439 F. Supp. 3d 256 (S.D.N.Y. 2020)), Lowey Dannenberg has negotiated class settlements totaling \$185,875,000 with those defendants. Judge Kaplan granted final approval of the settlements on November 1, 2022.

## Commodities Litigation

Lowey Dannenberg has successfully prosecuted the most important and complex commodity manipulation actions since the enactment of the Commodity Exchange Act (“CEA”). As court-appointed lead counsel, Lowey Dannenberg has a history of successfully certifying classes of investors harmed by market manipulation schemes.

### Sumitomo

In *In re Sumitomo Copper Litigation* (“Sumitomo”), Master File No. 96 CV 4854 (S.D.N.Y.) (Pollack, J.), Lowey Dannenberg was appointed as one of three executive committee members. Stipulation and Pretrial Order No. 1, dated October 28, 1996, at ¶ 13. Plaintiffs’ counsel’s efforts in *Sumitomo* resulted in a settlement on behalf of the certified class of more than \$149 million, which represented **the largest** class action recovery in the history of the CEA at the time. *In re Sumitomo Copper Litig.*, 182 F.R.D. 85, 95 (S.D.N.Y. 1998). One of the most able and experienced United States District Court judges in the history of the federal judiciary, the Honorable Milton Pollack, took note of counsel’s skill and sophistication:

*The unprecedented effort of Counsel exhibited in this case led to their successful settlement efforts and its vast results. Settlement posed a saga in and of itself and required enormous time, skill and persistence. Much of that phase of the case came within the direct knowledge and appreciation of the Court itself. Suffice it to say, the Plaintiffs’ counsel did not have an easy path and their services in this regard are best measured in the enormous recoveries that were achieved under trying circumstances in the face of natural, virtually overwhelming, resistance.*

*In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 396 (S.D.N.Y. 1999).

### In re Natural Gas

Lowey Dannenberg served as co-lead counsel in *In re Natural Gas Commodity Litigation*, Case No. 03 CV 6186 (VM) (S.D.N.Y.) (“*In re Natural Gas*”), which involved manipulation of the price of natural gas futures contracts traded on the NYMEX by more than 20 large energy companies.

Plaintiffs alleged that Defendants, including El Paso, Duke, Reliant, and AEP Energy Services, Inc., manipulated the prices of NYMEX natural gas futures contracts by making false reports of the price and volume of their trades to publishers of natural gas price indices across the United States, including Platts. Lowey Dannenberg won significant victories throughout the litigation, including:

- > defeating Defendants’ motions to dismiss (*In re Natural Gas*, 337 F. Supp. 2d 498 (S.D.N.Y. 2004));
- > prevailing on a motion to enforce subpoenas issued to two publishers of natural gas price indices for the production of trade report data (*In re Natural Gas*, 235 F.R.D. 199 (S.D.N.Y. 2005)); and
- > successfully certifying a class of NYMEX natural gas futures traders who were harmed by defendants’ manipulation of the price of natural gas futures contracts traded on the NYMEX from January 1, 2000 to December 31, 2002. *In re Natural Gas*, 231 F.R.D. 171, 179 (S.D.N.Y. 2005), *petition for review denied, Cornerstone Propane Partners, LP, et al. v. Reliant Energy Services, Inc., et al.*, Docket No. 05-5732 (2d Cir. August 1, 2006).

The total settlement obtained in this complex litigation—\$101 million—was at the time, the **third largest** recovery in the history of the CEA.

## Amaranth

Lowey Dannenberg served as co-lead counsel in *In re Amaranth Natural Gas Commodities Litigation*, Master File No. 07 Civ. 6377 (S.D.N.Y.) (SAS) (“Amaranth”), a certified CEA class action alleging manipulation of NYMEX natural gas futures contract prices in 2006 by Amaranth LLC, one of the country’s largest hedge funds prior to its widely-publicized multi-billion dollar collapse in September 2006. Significant victories Lowey Dannenberg achieved in the *Amaranth* litigation include:

- > On April 27, 2009, Plaintiffs’ claims for primary violations and aiding-and-abetting violations of the CEA against Amaranth LLC and other Amaranth defendants were sustained. *Amaranth*, 612 F. Supp. 2d 376 (S.D.N.Y. 2009).
- > On April 30, 2010, the Court granted Plaintiffs’ motion for pre-judgment attachment pursuant to Rule 64 of the Federal Rules of Civil Procedure and Section 6201 of the New York Civil Practice Law and Rules against Amaranth LLC, a Cayman Islands company and the “Master Fund” in the Amaranth master-feeder-fund hedge fund family. *Amaranth*, 711 F. Supp. 2d 301 (S.D.N.Y. 2010).
- > On September 27, 2010, the Court granted Plaintiffs’ motion for class certification. *Amaranth*, 269 F.R.D. 366 (S.D.N.Y. 2010). In appointing Lowey Dannenberg as co-lead counsel for plaintiffs and the Class, the Court specifically noted “the impressive resume” of Lowey Dannenberg and that “Plaintiffs’ counsel has vigorously represented the interests of the class throughout this litigation.” On December 30, 2010, the Second Circuit Court of Appeals denied Amaranth’s petition for appellate review of the class certification decision.
- > On April 11, 2012, the Court entered a final order and judgment approving the \$77.1 million settlement reached in the action. The \$77.1 million settlement is **more than ten times greater** than the \$7.5 million joint settlement achieved by the Federal Energy Regulatory Commission (“FERC”) and the Commodity Futures Trading Commission (“CFTC”) against Amaranth Advisors LLC and at that time, represented the **fourth largest** class action recovery in the 85-plus year history of the CEA.

## Pacific Inv. Mgmt. Co. (“PIMCO”)

Lowey Dannenberg served as counsel to certified class representative Richard Hershey in a class action alleging manipulation by PIMCO of the multi-billion-dollar market of U.S. 10-Year Treasury Note futures contracts traded on the Chicago Board of Trade (“CBOT”). *Hershey v. Pacific Inv. Management Co. LLC*, 571 F.3d 672 (7th Cir. 2009). The case settled in 2011 for \$118.75 million, the **second largest** recovery in the history of the CEA at that time.

## Optiver

Lowey Dannenberg acted as co-lead counsel in a proposed class action alleging that Optiver US, LLC and other Optiver defendants manipulated NYMEX light sweet crude oil, heating oil, and gasoline futures contracts prices in violation of the Sherman Antitrust Act and CEA. *In re Optiver Commodities Litigation*, Case No. 08 CV 6842 (S.D.N.Y.) (LAP), Pretrial Order No. 1, dated February 11, 2009. The Honorable Loretta A. Preska of the Southern District of New York granted final approval of a \$16.75 million settlement in June 2015.

## White v. Moore Capital Management, L.P.

Lowey Dannenberg acted as counsel to a class representative in an action alleging manipulation of NYMEX palladium and platinum futures prices in 2007 and 2008 in violations of the Sherman Antitrust Act, CEA, and RICO. *White v. Moore Capital Management, L.P.*, Case No. 10 CV 3634 (S.D.N.Y.) (Pauley, J.). Judge William H. Pauley III granted final approval of a settlement in the amount of \$70 million in 2015.

## In re Crude Oil Commodity Futures Litigation

Lowey Dannenberg served as counsel to a class representative and large crude oil trader in a Sherman Antitrust Act class action involving the alleged manipulation of NYMEX crude oil futures and options contracts. *In re Crude Oil Commodity Futures Litigation*, Case No. 11-cv-03600 (S.D.N.Y.) (Forrest, J.). The Court granted final approval to a \$16.5 million settlement in January 2016.

### Kraft Wheat Manipulation

Lowey Dannenberg serves as court-appointed co-lead counsel for a class of wheat futures and options traders pursuing claims against Kraft Foods Group, Inc. and Mondelez Global LLC (collectively, “Kraft”), alleging Kraft manipulated the prices of Chicago Board of Trade wheat futures and options contracts. On June 27, 2016, Judge Edmond E. Chang denied Kraft’s motion to dismiss Plaintiffs’ CEA, Sherman Act and common law unjust enrichment claims relating to Kraft’s alleged “long wheat futures scheme.” See *Ploss v. Kraft Foods Grp., Inc.*, 197 F. Supp. 3d 1037 (N.D. Ill. 2016). On January 3, 2020, Judge Chang certified a class of wheat futures and options traders to bring the claims in the case. See *Ploss v. Kraft Foods Grp., Inc.*, 431 F. Supp. 3d 1003 (N.D. Ill. 2020). Kraft filed a petition to the United States Court of Appeals for the Seventh Circuit, seeking permission to immediately appeal Judge Chang’s certification of the class, which was denied on February 21, 2020. The case is currently pending before Judge John F. Kness in the Northern District of Illinois.

### Lansing Wheat Manipulation

Lowey Dannenberg is serving as co-lead counsel for a class of wheat futures and options traders pursuing claims against Lansing Trade Group, LLC and Cascade Commodity Consulting, LLC, alleging they manipulated the prices of Chicago Board of Trade wheat futures and options contracts in 2015. See *Budicak, et al. v. Lansing Trade Group, LLC, et al.*, No. 19 CV 2499 (JAR) (D. Kan.). On March 25, 2020, Chief District Judge Julie A. Robinson denied Defendants motions to dismiss and sustained claims under the Sherman Act, the CEA, and for unjust enrichment. *Budicak, Inc. v. Lansing Trade Grp., LLC*, No. 2:19-CV-2449-JAR-ADM, 2020 WL 2892860 (D. Kan. Mar. 25, 2020). On June 16, 2023, Judge Toby Crouse granted final approval of proposed settlements with Lansing Trade Group and Cascade Commodity Consulting totaling \$18 million.

### The Andersons Wheat Manipulation

Lowey Dannenberg is leading the prosecution of claims on behalf of a class of wheat futures and options traders against The Andersons, Inc. for alleged manipulation of the wheat futures and options market in the fourth quarter of 2017. On July 9, 2021 and May 3, 2022, respectively, the Court denied Defendants’ motions to dismiss in their entirety. *Dennis v. The Andersons Inc.*, Case No. 20-cv-04090 (N.D. Ill.).



## SPOOFING LITIGATION

Lowey Dannenberg continues to innovate and is at the forefront of litigation under the CEA arising from claims of market participants spoofing various futures markets.

### **In re JPMorgan Precious Metals Spoofing Litigation**

Lowey Dannenberg serves as Court-appointed sole Lead Counsel in a commodities manipulation class action against JPMorgan and several of its traders, alleging spoofing in the market for precious metals futures and options between 2009 and 2015. Plaintiffs filed a motion for preliminary approval of a \$60 million settlement with Defendant JPMorgan on November 20, 2021. On July 7, 2022, the Court granted final approval of the settlement with JPMorgan. *In re JPMorgan Precious Metals Spoofing Litigation*, No. 18-CV-10356 (S.D.N.Y.).

### **Boutchard, et al. v. Gandhi, et al. — E-mini Index Futures Spoofing**

Lowey Dannenberg is prosecuting claims on behalf of a class of investors that transacted E-mini Index Futures (e.g., Dow, S&P, Nasdaq) and options against Tower Research Capital LLC and several of its traders for alleged spoofing violations between 2012 and 2014. On July 30, 2021, Judge John J. Tharp, Jr. granted final approval of a \$15 million settlement with Tower. *Boutchard v. Gandhi et al*, No. 18-CV-07041 (N.D. Ill).

### **JPMorgan Treasuries Spoofing**

On October 9, 2020, the Court appointed Lowey Dannenberg to serve as Interim Co-Lead Counsel in a commodities manipulation class action against JPMorgan, alleging manipulation in the market for U.S. Treasuries futures and options between 2009 and the present. On September 22, 2021, Plaintiffs filed a motion for preliminary approval of a \$15.7 million settlement. On June 3, 2022, the Court granted final approval of the settlement with JPMorgan. *In re JPMorgan Treasuries Spoofing Litigation*, No. 20-CV-3515 (S.D.N.Y.).

### **Deutsche Treasury and Eurodollar Spoofing**

On September 1, 2020, Lowey Dannenberg was appointed Interim Co-Lead Counsel in a commodities manipulation class action against Deutsche Bank, alleging manipulation in the market for U.S. Treasury and Eurodollar futures and options throughout 2013. The case is pending before Judge Joan B. Gottschall in the Northern District of Illinois, *Rock Capital Markets, LLC v. Deutsche Bank Securities Inc.*, No. 20-CV-3638.

### **In re NatWest Treasury Futures Spoofing Litigation**

On March 8, 2022, Lowey Dannenberg was appointed Interim Co-Lead Counsel in a commodities manipulation class action against NatWest, alleging manipulation in the market for U.S. Treasury futures and options from at least January 1, 2008 through May 31, 2014. The case is pending before The Honorable John F. Kness in the Northern District of Illinois, *In re NatWest Treasury Futures Spoofing Litigation*, No. 21-CV-6816.



# Healthcare: Prescription Overcharge Antitrust Litigation

Lowey Dannenberg is the nation's premier pharmaceutical recovery law firm. It is known in the healthcare industry for its market-leading initiatives, depth of experience, and consistent results. The Firm's advice is valued by the largest health benefits companies in the United States, including Aetna CVS, Anthem, the Blue Cross and Blue Shield Association, Cigna, HCSC, Humana, and numerous other companies. Lowey Dannenberg's expertise was highlighted when Aetna and Humana each identified Lowey as a "Go-to Law Firm" for litigation services Corporate Counsel magazine's "In House Law Departments at the Top 500 Companies."

Health insurers routinely turn to Lowey Dannenberg for its industry expertise, particularly in the areas of:

- > **Defective Drugs and Products** – Litigating on behalf of insurers to recover overpayments for defective drugs and medical products, including those manufactured in violation of FDA standards
- > **Prescription Drug and Device Price Manipulation** – Recovering overcharges from prescription drug and medical device price manipulation, including "generic delay" cases, price fixing, and "off-label" marketing
- > **Lien Recovery** – Prosecuting and negotiating medical lien reimbursements in mass tort litigation
- > **Class Action Defense** – Representing health insurers facing class actions in state and federal courts

## Drugs Failing to Meet FDA's Manufacturing Standards

- > **Blue Cross Blue Shield Ass'n, et al. v. GlaxoSmithKline LLC.** Lowey Dannenberg and its co-counsel represented 39 health insurers (accounting for 60% of the U.S. market for non-governmental health insurance) in a novel recovery action seeking billions in damages against British drug maker GlaxoSmithKline for selling prescription drugs manufactured under conditions that amounted to egregious violations of federal standards. After defeating summary judgment (*Blue Cross Blue Shield Ass'n v. GlaxoSmithKline LLC*, 417 F. Supp. 3d 531 (E.D. Pa. 2019)), the parties confidentially settled on the literal eve of trial.
- > **Rezulin Litigation.** Lowey Dannenberg, representing a class of endpayers, made law that has influenced every third party payer prescription drug case since. Louisiana BlueCross BlueShield ("LABCBS"), sued Warner Lambert and Pfizer for alleged misrepresentations about the qualities of their antidiabetic medication, Rezulin, injuring LABCBS in excessive purchases of the drug. Lowey successfully argued to reverse dismissal of LABCBS' class action in a precedent-setting appeal to the Second Circuit. This case established the

direct rights (as contrasted with derivative, and more limited, subrogation rights) of third-party payers to sue pharmaceutical manufacturers for drug overcharges for defective drugs. *Desiano v. Warner-Lambert Co.*, 326 F.3d 339 (2d Cir. 2003).

## "Pay-for-Delay" Antitrust Claims

- > **Aggrenox Generic Delay Litigation:** Lowey Dannenberg represented Humana and 10 other health insurers in a generic delay antitrust case against defendant Boehringer Ingelheim Pharmaceuticals, Inc., the Aggrenox brand manufacturer, and generic manufacturer Barr Pharmaceuticals Inc. (later acquired by Teva Pharmaceuticals), before Judge Stefan R. Underhill in the District of Connecticut in connection with their antitrust claims. Class actions on behalf of direct purchasers reached a \$146 million settlement and indirect purchasers reached a \$54 million settlement. The litigation asserted claims under state antitrust law, claiming a \$100 million co-promotion agreement was a disguised pay-for-delay, and as a result, insurers overpaid for Aggrenox. Lowey achieved confidential settlements on behalf of Humana and several other health insurers who opted-out of the class to separately litigate their claims. *Humana Inc. v. Boehringer Ingelheim Pharma GmbH & Co. KG, et al.*, No. 3:14-cv-00572 (D. Conn.).
- > **Lidoderm Generic Delay Litigation:** Lowey Dannenberg represented 21 health insurers in connection with their antitrust claims against sellers of branded and generic Lidoderm. *Government Employees Health Association v. Endo Pharmaceuticals, Inc., et al.*, No. 3:14-cv-02180-WHO (N.D. Cal.).
- > **Hytrin Generic Delay Litigation:** Lowey Dannenberg represented a class of health insurers asserting antitrust claims against Abbott Laboratories and Geneva Pharmaceuticals, sellers of branded and generic Hytrin, and ultimately settled the case for \$28.7 million. *In re Terazosin Hydrochloride Antitrust Litig.*, No. 1:99-MD-01317 (S.D. Fl.).

- > **Cardizem CD Generic Delay Litigation:** In 1998, Lowey Dannenberg filed the first-ever generic delay class action antitrust cases for endpayers (a term reflecting consumers and health insurers). Those cases were centralized by the Judicial Panel on Multidistrict Litigation (“JPML”) under the caption *In re Cardizem CD Antitrust Litigation*, MDL No. 1278 (E.D. Mich.). After the court certified a class (200 F.R.D. 326 (E.D. Mich. 2001)) and affirmed partial summary judgment for plaintiffs (332 F.3d 896 (6th Cir. 2003)), the case was settled for \$80 million.
- > **Federal Trade Commission v. Actavis, 570 U.S. 756 (2013).** America’s Health Insurance Plans (AHIP), the national trade association representing health insurers, retained Lowey Dannenberg to represent it before the United States Supreme Court as *amicus curiae* in a seminal “pay-for-delay” pharmaceutical case. *Federal Trade Commission v. Actavis*, 570 U.S. 756 (2013).

### Price Fixing of Pharmaceutical Drugs

- > **Generic Pharmaceuticals Price Fixing.** Lowey Dannenberg represents 39 of the nation’s largest health insurers, including Anthem, Aetna, Humana, and 23 BlueCross BlueShield licensees in connection with their claims relating to widespread price-fixing of generic pharmaceutical products. Lowey Dannenberg’s clients collectively purchased billions of dollars of these drugs during the alleged price-fixing conspiracies. Some of this litigation has been centralized before the Honorable Cynthia M. Rufe in *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, MDL No. 2724 (E.D. Pa.).

### Deceptive Marketing Claims

- > ***In re Neurontin Marketing and Sales Practices Litig.*** Lowey represented Aetna in an individual action seeking recovery against Pfizer for its off-label marketing of Neurontin and served as class counsel on the Plaintiffs’ Steering Committee. The firm secured the first-ever verdict in history against a pharmaceutical manufacturer finding it engaged in a RICO enterprise by fraudulently marketing its drug, resulting in a \$142 million trebled award. This pivotal decision reversed a negative trend in off-label drug marketing cases. The Court’s conclusion that “Aetna’s economic injury was a foreseeable and natural consequence” of Pfizer’s scheme represents a common-sense application of the law to the economic realities of the prescription drug market.  
  
Lowey later argued and won a landmark RICO decision in the United States Court of Appeals for the First Circuit, holding drug manufacturers accountable to health insurers for damages attributable to marketing fraud. *In re Neurontin Mktg. & Sales Practices Litig.*, 712 F.3d 51 (1st Cir. 2013).
- > ***Warfarin Sodium Antitrust Litig.*** Lowey Dannenberg represented health insurers asserting antitrust and unfair trade practices claims against DuPont Pharmaceuticals Company. *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516 (3rd Cir. 2004).

### Class Action Defense/Lien Recovery Cases

- > Lowey Dannenberg secured judgments dismissing the class action lawsuits, which sought to apply New York State’s anti-subrogation law to void health insurance plans’ subrogation and reimbursement rights in New York. *Meek-Horton v. Trover, et al.*, 910 F. Supp. 2d 690 (S.D.N.Y. 2013); *Potts v. Rawlings Co. LLC*, 897 F. Supp. 2d 185 (S.D.N.Y. 2012).
- > Lowey Dannenberg defended Aetna and secured judgments dismissing the class action lawsuits seeking to bar certain reimbursement lien recoveries under New Jersey law. *Minerley v. Aetna, Inc.*, No. 13-cv-1377, 2019 WL 2635991 (D.N.J. June 27, 2019), *aff’d*, No. 19-2730, 2020 WL 734448 (3d Cir. Feb. 13, 2020) and *Roche v. Aetna, Inc.*, 165 F. Supp. 3d 180 (D.N.J. 2016), *aff’d*, 681 F. App’x 117 (3d Cir. 2017).
- > Lowey Dannenberg successfully established Medicare Advantage Organizations’ reimbursement recovery rights under the Medicare Secondary Payer Act. *In re Avandia Mktg., Sales Practices & Prod. Liab. Litig.*, 685 F.3d 353, 367 (3d Cir. 2012).



## Securities Litigation

Lowey Dannenberg has represented clients in cases involving financial fraud, auction rate securities, options backdating, Ponzi schemes, challenges to unfair mergers and tender offers, statutory appraisal proceedings, proxy contests and election irregularities, failed corporate governance, stockholder agreement disputes, and customer/brokerage firm arbitration proceedings.

Lowey securities litigation practice has recovered billions of dollars on behalf of defrauded investors. The firm has also achieved landmark, long term corporate governance changes at public companies, including reversing results of elections and returning corporate control to the companies' rightful owners, its stockholders.

Lowey Dannenberg's public pension fund clients include the California State Teachers' Retirement System (CalSTRS), the New York State Common Retirement Fund, the State of Connecticut Retirement Plans and Trust Funds, the Treasurer of the Commonwealth of Pennsylvania, and the Pennsylvania Treasury Department. Representative institutional investor clients include Federated Investors, Inc., Glickenhau & Co., Millennium Partners LLP, Karpus Investment Management LLP, Amegy Bank, Monster Worldwide Inc., Zebra Technologies, Inc., and Delcath Systems, Inc.

### Active Securities Cases

#### Shafer et al v. Active Network LLC et al

Lowey Dannenberg serves as court-appointed co-lead counsel in *Shafer et al v. Active Network LLC et al*, No. 1:23-CV-00577 (N.D. Ga.). The case is currently pending before Judge Leigh Martin May. The securities lawsuit alleges that: (a) Active Network used deceptive and abusive acts and practices to dupe its customers into enrolling into Active Network's own discount club; (b) since July 2011, Active Network and by extension, Global Payments, was aware of such unauthorized conduct and that it was violating relevant regulations and laws aimed at protecting its consumers; (c) since 2011, Global Payments failed to properly monitor its subsidiary from engaging in such unlawful conduct, detect and stop the misconduct, and identify and remediate harmed consumers; (d) all the foregoing subjected the Company to a foreseeable risk of heightened regulatory scrutiny or investigation; (e) Global Payments' revenues were in part the product of Active Network's unlawful conduct and thus unsustainable; and (f) as a result, the Company's public statements were materially false and misleading at all relevant times. *Shafer et al v. Active Network LLC et al*, No. 1:23-CV-00577 (N.D. Ga.).

#### Jedrzejczyk v. Skillz Inc.

Lowey Dannenberg currently serves as Lead Counsel for a proposed class of investors alleging that Skillz misled investors by (1) reporting metrics unrelated to the company's performance instead of disclosing its true key

metrics, including revenue per paying user; (2) touting a synchronous gameplay feature and an expansion into India that could not be accomplished on the company's announced timelines; and (3) misclassifying liabilities as equity. The case is pending before Judge Richard Seeborg in the Northern District of California. *Jedrzejczyk v. Skillz Inc.*, No. 3:21-CV-03450-RS (N.D. Cal.).

#### In Re: Kirkland Lake Gold LTD Securities Litigation

Lowey Dannenberg serves as sole Lead Counsel representing a proposed class of shareholders against Toronto-based gold-mining company Kirkland Lake Gold Ltd. (now merged with Agnico Eagle Mines Ltd. as of February 2022). Plaintiffs allege that the company misled investors when its CEO Anthony Makuch repeatedly downplayed the possibility that the company would engage in any mergers or acquisitions, while simultaneously negotiating the acquisition of Detour Gold Corporation in 2019. On September 30, 2021, Judge Paul Oetken in the Southern District of New York sustained Plaintiff's securities fraud claims, finding that "Plaintiff sufficiently pleaded facts supporting his contention that Kirkland materially misled investors" when discussing the company's acquisition strategy. *In re Kirkland Lake Gold Ltd. Sec. Litig.*, No. 20-cv-4953 (JPO), 2021 WL 4482151 (S.D.N.Y. Sept. 30, 2021).

### Said-Ibrahim et al v. FuboTV Inc. et al

Lowey Dannenberg serves as a court-appointed lead counsel in Said-Ibrahim et al v. FuboTV Inc. et al, No. 1:21-CV-01412 (S.D.N.Y.). The case is currently pending before Judge Andrew L. Carter, Jr., and Plaintiffs have recently filed a second amended complaint. The securities lawsuit alleges FuboTV's false and misleading statements concerning their business operations and performance metrics, including, among others, its ability to grow subscription and advertising revenue, cost escalations and its prospects of entering the arena of online sports wagering. *Said-Ibrahim et al v. FuboTV Inc. et al*, No. 1:21-CV-01412 (S.D.N.Y.).

### United Industrial Workers Pension Plan v. Waste Management, Inc., et al.

Lowey Dannenberg filed a class action lawsuit against Waste Management Inc. alleging that the company and its senior executives made false and misleading statements to investors regarding its anticipated merger with Advance Disposal Services ("ADS"). More specifically, plaintiff alleges that Waste Management failed to disclose that the U.S. Department of Justice had indicated to Waste Management that it would require the company to divest assets in excess of the \$200 million Antitrust Revenue Threshold contained in the Merger Agreement in order to obtain antitrust clearance. As a result, the merger would not be completed by the end date under the Merger Agreement as Waste Management represented, which would trigger the mandatory redemption of the redeemable senior notes issued to finance the merger, to the financial detriment of investors who purchased the notes at inflated prices between February 13, 2020 and June 23, 2020, inclusive. *United Industrial Workers Pension Plan v. Waste Management, Inc., et al.*, No. 22-CV-04838 (S.D.N.Y.).

### Boykin v. K12, Inc.

Lowey Dannenberg filed and is currently litigating a class action alleging that K12, an education company, misled the investing public by claiming it was well-positioned to take advantage of the sudden demand for online education caused by the onset of the COVID-19 pandemic, when K12 lacked the technological, administrative, and cybersecurity abilities to take on a large number of new customers while providing adequate training and a functional product. The case is currently pending before the United States Court of Appeals for the Fourth Circuit. *Boykin v. K12, Inc.*, No. 21-2351 (4th Cir.).

## Notable Recoveries

Notable achievements for our securities clients include the following:

- > *Norfolk County Retirement System v. Community Health Systems, Inc., et al.* 11-cv-0433 (M.D. Tenn.). Lowey Dannenberg recovered \$53 million on behalf of Lead Plaintiff, the New York City Pension Funds, and the certified class of investors in Community Health System common stock. As Lead Counsel in this hard-fought and long-standing securities class action, Lowey Dannenberg charged Community Health Systems, one of the largest for-profit hospital systems in the United States, with failing to disclose that its highly-touted growth and performance were achieved through a scheme to improperly inflate Medicare patient admissions.

U.S. District Judge Eli J. Richardson addressed Lowey Dannenberg's efforts at the final approval hearing finding that "counsel for plaintiff has been diligent, very diligent, has worked very hard, knows the case, knows the facts, is very experienced in these sorts of securities fraud class actions, and has gone to the mat for their client for many years." During the litigation, Lowey Dannenberg achieved a unanimous reversal of the lower court's dismissal of the case before the Sixth Circuit Court of Appeals and successfully opposed Supreme Court review. *Norfolk Cty. Ret. Sys. v. Community Health Sys., Inc.*, 877 F.3d 687 (6th Cir. 2017), cert. denied 139 S. Ct. 310 (2018). Following extensive discovery, the court preliminarily approved the settlement in January 2020, which the Court approved and made final on June 19, 2020.

- > *In re Beacon Associates Litigation*, 09-CV-0777 (S.D.N.Y.); *In re J.P. Jeanneret Associates, Inc., et al.*, 09-cv-3907 (S.D.N.Y.). Lowey Dannenberg represented several unions, which served as Lead Plaintiffs, in litigation arising from Bernie Madoff's Ponzi scheme. On March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the \$219.9 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. Lowey Dannenberg, as Liaison Counsel, was instrumental in achieving this outstanding result. The settlement covered several additional lawsuits in federal and New York state courts against the settling defendants, including suits brought by the United States Secretary of Labor and the New York Attorney General. Plaintiffs in these cases asserted claims under the federal securities laws, ERISA, and state laws arising out of hundreds of millions of dollars of losses sustained by unions and other investors in Bernard Madoff feeder funds. The settlement recovered an extraordinary 70% of investors' losses. This settlement, combined with anticipated recovery from a separate liquidation of Madoff assets, is expected to restore the bulk of losses to the pension funds for the local

unions and other class members. In granting final approval, Judge McMahon praised both the result and the lawyering in these coordinated actions, noting that “[i]n the history of the world there has never been such a response to a notice of a class action settlement that I am aware of, certainly, not in my experience,” and that “[t]he settlement process really was quite extraordinary.” In her written opinion, Judge McMahon stated that “[t]he quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement.” *In re Beacon Associates Litig.*, 09 CIV. 777 CM, 2013 WL 2450960, at \*14 (S.D.N.Y. May 9, 2013).

- > *In re Juniper Networks, Inc. Sec. Litig.*, No. C-06-04327 JW (N.D. Cal.). In 2010, as lead counsel for the Lead Plaintiff, the New York City Pension Funds, Lowey Dannenberg achieved a settlement in the amount of \$169.5 million, one of the largest settlements in an options backdating case, after more than three years of hard-fought litigation.
- > *In re ACS Shareholder Litigation*, Consolidated C.A. No. 4940-VCP (Del. Ch.). Lowey Dannenberg successfully challenged a multi-billion-dollar merger between Xerox Corp. and Affiliated Computer Systems (“ACS”), which favored Affiliated’s CEO at the expense of our client, Federated Investors, and other ACS shareholders. In expedited proceedings, Lowey achieved a \$69 million settlement as well as structural protections in the shareholder vote on the merger. The settlement was approved in 2010.
- > *In re Bayer AG Securities Litigation*, 03 Civ. 1546 (WHP) (S.D.N.Y.). We represented the New York State Common Retirement Fund as Lead Plaintiff in a securities fraud class action arising from Bayer’s marketing and recall of its Baycol drug. Lowey Dannenberg was appointed as lead counsel for the New York State Common Retirement Fund at the inception of merits discovery, following the dismissal of the New York State Common Retirement Fund’s former counsel. The class action settled for \$18.5 million in 2008.
- > *In re WorldCom Securities Litigation*, Master File No. 02 Civ. 3288 (DLC) (S.D.N.Y.). Lowey Dannenberg’s innovative strategy and zealous prosecution produced an extraordinary recovery in the fall of 2005 for the New York City Pension Funds in the *WorldCom Securities Litigation*, substantially superior to that of any other WorldCom investor in either class or opt-out litigation. Following our advice to opt out of a class action in order to litigate their claims separately, the New York City Pension Funds recovered almost \$79 million, including 100% of their damages resulting from investments in WorldCom bonds.
- > *Federated American Leaders Fund, Inc.*, No. 08-cv-01337-PB (D.N.H.). In 2008, Lowey Dannenberg successfully litigated an opt-out case on behalf of client Federated Investors, Inc., arising out of the *Tyco Securities Litigation*. The client asserted claims unavailable to the class (including a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for violations of the New Jersey RICO statute). Pursuit of an opt-out strategy resulted in a recovery of substantially more than the client would have received had it merely remained passive and participated in the class action settlement.
- > *In re Philip Services Corp., Securities Litigation*, No. 98 Civ. 835 (AKH) (S.D.N.Y.). On March 19, 2007, the United States District Court for the Southern District of New York approved a \$79.75 million settlement of a class action, in which Lowey Dannenberg acted as Co-Lead Counsel, on behalf of United States investors of Philip Services Corp., a bankrupt Canadian resource recovery company. \$50.5 million of the settlement was paid by the Canadian accounting firm of Deloitte & Touche, LLP, perhaps the largest recovery from a Canadian auditing firm in a securities class action, and among the largest obtained from any accounting firm. Earlier in the litigation, the United States Court of Appeals for the Second Circuit issued a landmark decision protecting the rights of United States citizens to sue foreign companies who fraudulently sell their securities in the United States. *DiRienzo v. Philip Services Corp.*, 294 F.3d 21 (2d Cir. 2002).
- > *In re New York Stock Exchange/Archipelago Merger Litigation*, No. 601646/05 (N.Y. Sup. Ct.). Lowey Dannenberg acted as co-lead counsel for a class of seatholders seeking to enjoin the merger between the New York Stock Exchange (“NYSE”) and Archipelago Holdings, Inc. As a result of the action, the merger terms were revised, providing the seatholders with more than \$250 million in additional consideration. Further, the NYSE agreed to retain an independent financial adviser to report to the court as to the fairness of the deal to the NYSE seatholders. Plaintiffs also provided the court with their expert’s analysis of the new independent financial adviser’s report so that seatholders could assess both reports prior to the merger vote. The court noted that “these competing presentations provide a fair and balanced view of the proposed merger and present the NYSE Seatholders with an opportunity to exercise their own business judgment with eyes wide open. The presentation of such differing viewpoints ensures transparency and complete disclosure.” *In re New York Stock Exchange/ Archipelago Merger Litigation*, No. 601646/05, 2005 WL 4279476, at \*14 (N.Y. Sup. Ct. Dec. 5, 2005).

- > *Delcath Systems, Inc. v. Ladd, et al.*, No. 06 Civ. 6420 (S.D.N.Y.). On September 25, 2006, Lowey Dannenberg helped Laddcap Value Partners win an emergency appeal, reversing a federal district court's order disqualifying the votes Laddcap solicited to replace the board of directors of Delcath Systems, Inc. Prior to Lowey Dannenberg's involvement in the case, on September 20, 2006, the district court enjoined Laddcap, Delcath's largest stockholder, from submitting stockholder consents on the grounds of alleged and unproven violations of federal securities law. After losing an injunction proceeding in the district court on September 20, 2006, and with the election scheduled to close on September 25, 2006, Laddcap hired Lowey Dannenberg to prosecute an emergency appeal, which Lowey won on September 25, 2006, the last day of the election period. *Delcath Systems, Inc. v. Ladd*, 466 F.3d 257 (2d Cir. 2006). Shortly thereafter, the case settled with Laddcap gaining seats on the board, reimbursement of expenses, and other benefits.
- > *Salomon Brothers Municipal Partners Fund, Inc. v. Thornton*, No. 05-cv-10763 (S.D.N.Y.). Lowey Dannenberg represented Karpus Investment Management in its successful proxy contest and subsequent litigation to prevent the transfer of management by Citigroup to Legg Mason of the Salomon Brothers Municipal Partners Fund. We defeated the Fund's preliminary injunction action which sought to compel Karpus to vote shares it had solicited by proxy but withheld from voting in order to defeat a quorum and prevent approval of the transfer. *Salomon Brothers Mun. Partners Fund, Inc. v. Thornton*, 410 F. Supp. 2d 330 (S.D.N.Y. 2006).
- > *In re DaimlerChrysler AG Sec. Litigation*, Master Docket No. 00-993-JJF (D. Del.). Lowey Dannenberg represented Glickenhau & Co., a major registered investment advisor and, at the time, the second largest stockholder of Chrysler, in an individual securities lawsuit against DaimlerChrysler AG. Successful implementation of the firm's opt-out strategy led to a recovery for its clients far in excess of that received by other class members. See *Tracinda Corp. v. DaimlerChrysler AG*, 197 F. Supp. 2d 42 (D. Del. 2002); *In re DaimlerChrysler AG Sec. Litig.*, 269 F. Supp. 2d 508 (D. Del. 2003).
- > *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734 (Del. Ch.). Following a three-day bench trial in a statutory appraisal proceeding, the Delaware Chancery Court awarded the firm's clients, an institutional investor and investment advisor, \$30.43 per share plus compounded prejudgment interest, for a transaction in which the public shareholders who did not seek appraisal were cashed out at \$28 per share. *Doft & Co. v. Travelocity.com, Inc.*, No. Civ. A. 19734, 2004 WL 1152338 (Del. Ch. May 20, 2004), *modified*, 2004 WL 1366994 (Del. Ch. June 10, 2004).
- > *MMI Investments, LP v. NDCHealth Corp., et al.*, 05 Civ. 4566 (S.D.N.Y.). Lowey Dannenberg filed an individual action on behalf of hedge fund, MMI Investments, asserting claims for violations of the federal securities laws and the common law, including claims not available to the class, most notably a claim for violation of § 18 of the Securities Exchange Act of 1934 and a claim for common law fraud. After zealously litigating the client's claims, the Firm obtained a substantial settlement, notwithstanding the fact that the class claims were dismissed.
- > *Omnicare, Inc. v. NCS Healthcare, Inc.* Lowey Dannenberg, as Co-Lead Counsel on behalf of an institutional investor, obtained an injunction from the Delaware Supreme Court, enjoining a proposed merger between NCS Healthcare, Inc. and Genesis Health Ventures, Inc., in response to Lowey Dannenberg's argument that the NCS board breached its fiduciary obligations by agreeing to irrevocable merger lock-up provisions. As a result of the injunction, the NCS shareholders were able to benefit from a competing takeover proposal by Omnicare, Inc., a 300% increase from the enjoined transaction, providing NCS's shareholders with an additional \$99 million. *Omnicare, Inc. v. NCS Healthcare, Inc.*, 818 A.2d 914 (Del. 2003).
- > *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*. Lowey Dannenberg successfully represented an affiliate of Millennium Partners, a major private investment fund, in litigation in the Delaware Chancery Court over a board election. Lowey's efforts resulted in the voiding of two elections of directors of meVC Draper Fisher Jurvetson Fund 1, Inc., a NYSE-listed closed end mutual fund, on grounds of breach of fiduciary duty. In a subsequent proxy contest litigation in the United States District Court for the Southern District of New York, the entire board of directors was ultimately replaced with Millennium's slate. *meVC Draper Fisher Jurvetson Fund 1, Inc. v. Millennium Partners*, 260 F. Supp. 2d 616 (S.D.N.Y. 2003); *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund 1, Inc.*, 824 A.2d 11 (Del. Ch. 2002).

- > *In re CINAR Securities Litigation*, Master File No. 00 CV 1086 (E.D.N.Y. Dec. 2, 2002). Lowey Dannenberg acted as Lead Counsel, obtaining a \$27.25 million settlement on behalf of client the Federated Kaufmann Fund and a class of purchasers of securities of CINAR Corporation. The court found that “the quality of [Lowey Dannenberg’s] representation has been excellent.”
- > *In re Reliance Securities Litigation*, MDL No. 1304 (D. Del. 2002). In proceedings in which Lowey Dannenberg acted as co-counsel to a Bankruptcy Court-appointed estate representative, the firm obtained recoveries in a fraudulent conveyance action totaling \$106 million.





## Consumer Protection

Lowey Dannenberg has served as lead or co-lead counsel in many challenging consumer protection cases. The firm has recovered millions of dollars on behalf of consumers injured as a result of unfair business practices. The firm's Consumer Protection Group has experience litigating class actions under state and federal consumer protection law and before state and federal courts.

### **In re FedLoan Student Loan Servicing Litigation**

Attorneys from Lowey Dannenberg were appointed by Judge C. Darnell Jones, II as Co-Lead Counsel and Executive Committee members in *In re FedLoan Student Loan Servicing Litigation*, No. 18-MD-2833 (E.D. Pa.) ("*FedLoan*"). Lowey Dannenberg filed the first action in the *FedLoan* litigation alleging that one of the nation's largest student loan servicers, the Pennsylvania Higher Education Assistance Agency, failed to properly service student loans in order to maximize the fees it received from the Department of Education under its loan servicing contract. Lowey Dannenberg also brought claims against the U.S. Department of Education for failing to comply with the Higher Education Act and its own regulations and rules. The alleged scheme harmed student loan borrowers by causing them to accrue additional interest on their loans, improperly extending their repayment terms, and erroneously placing their loans into forbearance. The litigation is ongoing.

### **Broder v. MBNA Corp.**

Lowey Dannenberg served as Lead Counsel in *Broder v. MBNA Corp.*, No. 605153/98 (Sup. Ct., N.Y. County), and recovered \$22.8 million dollars on behalf of a class of holders of credit cards issued by MBNA Bank, who took cash advances in response to a deceptive MBNA promotion. The Court noted that Lowey Dannenberg is an "able law firm having long-standing experience in commercial class action litigation."

### **Snyder v. Nationwide Insurance Company**

In *Snyder v. Nationwide Insurance Company*, Index No. 97/0633 (Sup. Ct. Onondaga Co. December 17, 1998), Lowey Dannenberg, as co-lead counsel, secured a \$100 million dollar settlement for consumers purchasing "vanishing premium" life insurance policies. In approving the settlement, the Court found that the attorneys of Lowey Dannenberg are "great attorneys" who did a "very, very good job" for the class.

### **Wysocki et al v. ZoomInfo Technologies Inc.**

Lowey Dannenberg has recently filed a consumer class action lawsuit against ZoomInfo Technologies and certain of its subsidiaries in United States Federal District Court in the Western District of Washington. The lawsuit alleges that ZoomInfo violated constitutional, statutory and common law privacy rights under the federal and state laws of Plaintiffs and Class Members. *Wysocki et al v. ZoomInfo Technologies Inc. et al*, No. 3:22-CV-05453 (W.D. Wash.).

### **In Re Archstone Westbury Tenant Litigation**

As lead counsel, Lowey Dannenberg successfully represented a class of renters of mold-infested apartments in a \$6.3 million settlement of a complex landlord-tenant class action in *In Re Archstone Westbury Tenant Litigation*, Index No. 21135/07 (N.Y. Sup. Ct. Nassau County).

### **Lyons v. Litton Loan Servicing LP**

In *Lyons v. Litton Loan Servicing LP, et al.*, No. 13-cv-00513 (S.D.N.Y.), Lowey Dannenberg served as Class Counsel and recovered \$4.1 million on behalf of a class of homeowners alleging that mortgage servicers colluded to force them to buy unnecessary lender-placed insurance.

### **In re Warfarin Sodium Antitrust Litigation**

In *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516 (3rd Cir. 2004), the Third Circuit Court of Appeals affirmed the United States District Court for the District of Delaware's approval of a \$44.5 million class action settlement paid by DuPont Pharmaceuticals to consumers and third-party payers nationwide to settle claims of unfair marketing practices in connection with the prescription blood thinner, Coumadin. Lowey Dannenberg, appointed by the District Court to the Plaintiffs' executive committee as the representative of third-party payers, successfully argued the appeal.

## Data Breach Class Actions

Lowey Dannenberg represents both consumers and financial institutions in some of the largest data breach class actions this year, including those affecting tens of millions of customers across the hospitality, healthcare, and retail industries.

### **Barr v. Drizly, LLC, Case No. 20-CV-11492 (D. Mass.)**

Lowey Dannenberg served as court-appointed class counsel on behalf of millions of consumers impacted by a data breach at one of the largest alcohol delivery companies, Drizly LLC (“Drizly”). On March 30, 2021, U.S. District Judge Leo T. Sorokin granted preliminary approval of a settlement in which Drizly agreed to pay a total of no less than \$1,050,000 and no more than \$3,150,000, and issue service credits up to \$447,750. Drizly also agreed to implement and maintain sufficient data security measures to prevent future data breaches. On November 22, 2021, the Court granted final approval of the settlement. As a result of Lowey Dannenberg’s robust notice program, Drizly paid the maximum amount under the terms of the settlement.

### **In re Wawa, Inc. Data Security Litigation, No. 19-cv-06019 (E.D. Pa.)**

Lowey Dannenberg serves as co-lead counsel in a class action against Wawa, Inc. (“Wawa”) on behalf of a class of financial institutions affected by Wawa’s failure to properly secure their card processing system. As a result of Wawa’s conduct, unauthorized third parties were able to gain access to customers’ payment card information for over nine months. The data breach is estimated to have impacted more than 30 million individuals at 850 locations. Judge Gene E.K. Pratter of the U.S. District Court for the Eastern District of Pennsylvania sustained several of Plaintiffs’ claims, including negligence and injunctive relief.

### **Doe v. Hey Favor, Inc., 3:23-00059 (N.D. Cal.)**

Lowey Dannenberg represents a class of Hey Favor, Inc. website and app users alleging their personal data, including prescription information, were unlawfully disclosed to and intercepted by Meta Platforms, Inc., TikTok, Inc., and FullStory, Inc. using sophisticated tracking technology (e.g., the Meta Pixel, the TikTok Pixel, and Session Replay Software).

### **In re Rutter’s Inc. Data Security Breach Litigation, No. 20-cv-00382 (M.D. Pa.)**

Lowey Dannenberg is serving as co-lead class counsel in a class action on behalf of consumers against Rutter’s Holdings, Inc. (“Rutter’s”). The action arises out of Rutter’s failure to secure its point-of-sale system, which allowed hackers to compromise customers’ payment card information. The breach is estimated to have lasted approximately eight months.

Chief Judge John E. Jones, III of the U.S. District Court for the Middle District of Pennsylvania sustained several of Plaintiffs’ key claims, including negligence, breach of implied contract, and unjust enrichment. During discovery, Lowey Dannenberg successfully argued that Rutter’s must turn over investigative reports prepared by third party consultants, which Rutter’s argued were protected by the attorney-client privilege and work product doctrine.

### **Hozza v. PrimoHoagies Franchising, Inc., No. 20-cv-04966 (D.N.J.)**

Lowey Dannenberg recently settled a class action against PrimoHoagies Franchising, Inc. (“PrimoHoagies”) arising out of the company’s deficient data security that exposed consumers’ personal data, including credit card information. The data breach is estimated to have lasted seven months, impacting dozens of locations across seven states.

### **In re USAA Data Security Litigation, No. 21-cv-05813 (S.D.N.Y.)**

On November 17, 2021, Judge Vincent L. Briccetti appointed Lowey Dannenberg as co-lead counsel representing a proposed class of consumer plaintiffs. The case alleges that United Services Automobile Association (“USAA”) allowed unauthorized third parties to intentionally target and improperly obtain Plaintiffs’ and class members’ personally identifiable information, including Driver’s License numbers, through the use of USAA’s online insurance quote and/or policy process. Plaintiffs defeated Defendant’s Motion to Dismiss, including sustaining claims pursuant to the Drivers Privacy Protection Act.

## Privacy Class Actions

Lowey Dannenberg is at the forefront of some of the most high-profile and largest privacy cases in the country, including those involving new and emerging technology.

### **In re Google Assistant Privacy Litigation, No. 19-cv-04286 (N.D. Cal.)**

Lowey Dannenberg serves as co-lead class counsel in one of the largest privacy cases in the country, representing a class of consumers against tech giant Google. Plaintiffs' claims arise out of Google's unlawful and intentional recording of Plaintiffs' and class members' confidential communications without their consent through its Google Assistant software. Lowey Dannenberg has successfully defeated several rounds of motion to dismiss briefing over two years of litigation, and recently certified a class.

### **Lopez v. Apple, Inc., No. 19-cv-04577 (N.D. Cal.)**

Similar to the case above, Lowey Dannenberg serves as co-lead class counsel in a class action on behalf of consumers alleging that Apple unlawfully and intentionally recorded Plaintiffs' and class members' confidential communications without their consent through its Siri-enabled devices. On September 2, 2021, Judge Jeffrey S. White of the Northern District of California credited Plaintiffs' well-pled allegations in sustaining several of Plaintiffs' claims, including those under the Federal Wiretap Act, the California Invasion of Privacy Act, and the California Constitution.

### **In re Apple Processor Litigation, No. 18-cv-00147 (N.D. Cal.)**

Lowey Dannenberg currently serves as co-lead class counsel in a proposed class action against Apple alleging that Plaintiffs and the class were harmed by Apple's failure to disclose defects in its central processing units (CPUs) that Apple designed and placed in millions of its devices, which exposed users' sensitive personal information to unauthorized third parties. After dismissal for lack of standing, Lowey Dannenberg led the appellate efforts before the U.S. Court of Appeals for the Ninth Circuit who ultimately vacated the District Court's decision and remanded for further proceedings.

### **Frasco v. Flo Health, Inc., No. 21-cv-00757 (N.D. Cal.)**

Lowey Dannenberg serves as court appointed co-lead counsel in a class action against Flo Health, Inc. ("Flo"), Google, LLC, Facebook, Inc., AppsFlyer, Inc. and Flurry, Inc. Plaintiffs represent a class of consumers alleging that Flo collected and disclosed their intimate health data to some of the largest data analytics and advertising companies in the world. Plaintiffs allege claims for invasion of privacy, breach of contract, and violation of the Federal Wiretap Act, among others. Lowey Dannenberg successfully defeated two separate motions to dismiss, including sustaining first-of-its-kind aiding and abetting violations of the California Confidentiality of Medical Information Act claims against Google, Meta, and Flurry.

### **Wesch v. Yodlee, Inc., No. 20-cv-05991 (N.D. Cal.)**

Lowey Dannenberg is leading the prosecution against Yodlee, Inc., one of the largest data and analytics companies in the world. Lowey Dannenberg represents a class of consumers whose financial data Yodlee, Inc. surreptitiously collected and sold without consent through software incorporated in third party applications. Lowey Dannenberg has successfully defeated two rounds of motion to dismiss briefing and a motion for summary judgment, leaving intact claims for invasion of privacy, fraud, unjust enrichment, and violation of California's Anti-Phishing Act.

**Laskowski v. Florida Health Sciences Center, Inc., No. 8:23-cv-00456 (M.D. Fl.)**

Lowey Dannenberg represents a class of Tampa General Hospital patients who allege that their highly sensitive data, including information relating to their patient status, medical conditions, prescriptions, appointments, specific treatment, messages to healthcare providers and PII was disclosed to Meta Platforms, Inc. through Tampa General Health’s intentional incorporation of Meta’s tracking software (e.g., the Meta Pixel) on its website and patient portal.

**Doe v. The Regents of the University of California, No. 3:23-cv-00598 (N.D. Cal.)**

Lowey Dannenberg represents a class of University of California San Francisco Medical Center (“UCSF”) patients who allege that their highly sensitive data, including information relating to their medical conditions, appointments, specific treatment, messages to health care providers, and PII was disclosed to Meta Platforms, Inc. through UCSF’s incorporation of Meta’s tracking software (e.g., the Meta Pixel) on its website and patient portal.



## Lowey Dannenberg's Recognized Expertise

Courts have repeatedly recognized the attorneys of Lowey Dannenberg as expert practitioners in the field of complex litigation.

For example, on March 15, 2013, the Honorable Colleen McMahon of the United States District Court for the Southern District of New York granted final approval of the \$219 million settlement of Madoff feeder-fund litigation encompassing the *In re Beacon* and *In re Jeanneret* class actions. In a subsequent written decision, with glowing praise, Judge McMahon stated:

- > “The quality of representation is not questioned here, especially for those attorneys (principally from Lowey Dannenberg) who worked so hard to achieve this creative and, in my experience, unprecedented global settlement.”
  - > “I thank everyone for the amazing work that you did in resolving these matters. **Your clients—all of them—have been well served.**”
  - > “Not a single voice has been raised in opposition to this remarkable settlement, or to the Plan of Allocation that was negotiated by and between the Private Plaintiffs, the NYAG and the DOL.”
  - > “All formal negotiations were conducted with the assistance of two independent mediators - one to mediate disputes between defendants and the investors and another to mediate claims involving the Bankruptcy Estate. Class Representatives and other plaintiffs were present, in person or by telephone, during the negotiations. The US Department of Labor and the New York State Attorney General participated in the settlement negotiations. **Rarely has there been a more transparent settlement negotiation. It could serve as a prototype for the resolution of securities-related class actions, especially those that are adjunctive to bankruptcies.**”
- > “The proof of the pudding is that an astonishing 98.72% of the Rule 23(b)(3) Class Members who were eligible to file a proof of claim did so (464 out of 470), and only one Class Member opted out [that Class Member was not entitled to recover anything under the Plan of Allocation]. I have never seen this level of response to a class action Notice of Settlement, and I do not expect to see anything like it again.”
  - > “I am not aware of any other Madoff-related case in which counsel have found a way to resolve all private and regulatory claims simultaneously and with the concurrence of the SIPC/Bankruptcy Trustee. Indeed, I am advised by Private Plaintiffs’ Counsel that the Madoff Trustee is challenging settlements reached by the NYAG in other feeder fund cases [Merkin, Fairfield Greenwich] which makes the achievement here **all the more impressive.**”

In *Juniper Networks, Inc. Securities Litigation*, the court, in approving the settlement, acknowledged that “[t]he successful prosecution of the complex claims in this case required the participation of highly skilled and specialized attorneys.” *In re Juniper Networks, Inc., CO6-04327, Order dated August 31, 2010 (N.D. Cal.)*. In *the WorldCom Securities Litigation*, the court repeatedly praised the contributions and efforts of the firm. On November 10, 2004, the court found that “the Lowey Firm . . . has worked tirelessly to promote harmony and efficiency in this sprawling litigation .

[Lowey Dannenberg] has done a superb job in its role as Liaison Counsel, conducting itself with professionalism and efficiency . . .” *In re WorldCom, Inc. Securities Litigation*, No. 02 Civ. 3288, 2004 WL 2549682, at \*3 (S.D.N.Y. Nov. 10, 2004).

In the *In re Bayer AG Securities Litigation*, 03 Civ. 1546, 2008 WL 5336691, at \*5 (S.D.N.Y. Dec. 15, 2008) order approving a settlement of \$18.5 million for the class of plaintiffs, Judge William H. Pauley III noted that the attorneys from Lowey Dannenberg are “nationally recognized complex class action litigators, particularly in the fields of securities and shareholder representation,” that “provided high-quality representation.”

In the *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073 (N.D. Cal.) hearing for final approval of settlement and award of attorneys’ fees, Judge Phyllis J. Hamilton noted that “[t]he \$8 million settlement . . . is excellent, in light of the circumstance.” Judge Hamilton went on to say that “most importantly, the reaction of the class has been exceptional with only two opt- outs and no objections at all received.” See Tr. of Hearing on Plaintiff’s Motion for Final Approval of Settlement/Plan of Allocation and for an Award of Attorneys’ Fees and Reimbursement of Expenses, *In re Luminent Mortgage Capital, Inc., Securities Litigation*, No. C07-4073-PJH (N.D. Cal. Apr. 29, 2009), ECF No. 183.





LOWEY DANNENBERG



**LOWEY DANNENBERG, P.C.**  
**ATTORNEY BIOGRAPHIES**

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Peter A. Barile, III	Of Counsel	B.A., University of Connecticut (1991) J.D., University of Connecticut School of Law, <i>magna cum laude</i> (1999)	Connecticut District of Columbia New York U.S. Supreme Court Second Circuit Fourth Circuit Sixth Circuit Seventh Circuit Ninth Circuit Federal Circuit D.C. Circuit D. Conn. D.D.C. N.D. Ill. E.D.N.Y. S.D.N.Y.	Peter A. Barile III litigates high-stakes, complex antitrust, trade regulation, and commodities manipulation cases. Mr. Barile has twenty years of experience as an antitrust litigator, representing clients on both sides of the docket in a variety of industries and contexts, from consumers and investors to institutions and corporations, whether as individual plaintiffs, class plaintiffs, opt-outs, targets of government investigations, or defendants. Prior to joining the firm, he practiced both in New York and in Washington D.C. with major global law firms renowned for their historically leading antitrust practices.
Sitso Bediako	Partner	B.A., Harvard University (2000) J.D., University of Minnesota Law School (2008), <i>cum laude</i>	Minnesota New York D. Minn. S.D.N.Y. E.D.N.Y. United States Tax Court	Sitso Bediako is a partner at Lowey Dannenberg, P.C. and a member of the Firm's Commodities and Derivatives Practice Group. Mr. Bediako has helped recover more than \$1 billion in settlements of behalf of classes of individual investors, pension funds, state governments and institutional investors impacted by alleged manipulation of financial markets. In addition to investigating and prosecuting claims against defendants, Mr. Bediako has negotiated class action settlements and guided these settlements through the approval process, including managing the work of settlement administrators and escrow agents, supervising the notification of potential class members, and directing the implementation of the court-approved plans to distribute funds to class members.



<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Sylvie Bourassa	Associate	L.M., Université de Sherbrooke (1992) LL.B., Université du Québec à Montréal (1987) LL.B., Dalhousie Law School (1999)	New York California ( <i>voluntary inactive status</i> )	Ms. Bourassa is a member of the Quebec Bar and of the Law Society of Saskatchewan (voluntary inactive status). She practiced law in Canada for several years, mostly in Quebec. In Canada, she worked on civil mass actions representing plaintiffs in the Canadian Indian Residential Schools' cases involving aboriginal students alleging physical and sexual abuse. She is fluent in French.
Vincent Briganti	Chairman	B.A., Iona College (1993), <i>with honors</i> J.D., New York Law School (1996), <i>with honors</i>	Connecticut New York Second Circuit Eighth Circuit E.D.N.Y. S.D.N.Y.	Vincent Briganti is Chairman of Lowey Dannenberg, P.C. He is the head of the Firm's Commodities and Derivatives Practice Group. Under his guidance, Lowey has earned its position as one of the top financial services antitrust plaintiff's firms in the world. Mr. Briganti is currently serving as court-appointed lead counsel in numerous class actions against global banking institutions involving antitrust, commodities fraud, and RICO claims. Throughout his two-decade career at the Firm, Mr. Briganti has achieved substantial victories on behalf of his clients, recovering in excess of a billion dollars as well as significant corporate compliance reforms designed to detect and prevent anticompetitive conduct.
Anthony Christina	Associate	B.A., The Pennsylvania State University (2013), <i>Phi Beta Kappa</i> J.D., Dickinson School of Law (2016)	District of Columbia New Jersey Pennsylvania Third Circuit D.N.J. E.D. Pa. M.D. Pa. W.D. Pa.	Anthony M. Christina is an associate at Lowey Dannenberg's Pennsylvania office. Mr. Christina is a member of the firm's Healthcare, Commodities, Antitrust, and Data Breach practice groups. Mr. Christina's practice concentrates on prosecution of antitrust violations and pharmaceutical overcharges, commodities manipulation, and defense of class actions. During his tenure at the firm, Christina has litigated against some of the largest corporations in the world and achieved substantial victories at the trial and appellate court levels for California State Teachers' Retirement System ("CalSTRS"), the Treasurer of the Commonwealth of Pennsylvania, and health insurers, such as Aetna, Anthem, Blue Cross Blue Shield Association, Horizon Blue Cross Blue Shield of New Jersey, Cigna, and Humana.

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
John D'Amico	Associate	B.A., Duke University (1988) J.D., Fordham University School of Law (1998)	New Jersey New York D.N.J. E.D.N.Y. S.D.N.Y.	John D'Amico's practice focuses on securities fraud, commodities manipulation, and consumer fraud. He is a seasoned litigator with more than a decade of experience in a wide range of complex commercial matters, in both state and federal courts. Prior to law school, Mr. D'Amico had a marketing career with prominent New York City organizations. His firsthand experience dealing with the operational issues of business entities has been invaluable to his understanding and representation of his commercial clients.
Peter Demato	Senior Associate	B.S., SUNY, Stony Brook University (2010) J.D., Brooklyn Law School (2013), <i>cum laude</i>	New York Second Circuit S.D.N.Y.	Peter Demato has represented clients in complex litigation in both state and federal courts, including antitrust, commodities, securities, corporate governance, and intellectual property matters. Mr. Demato also has experience with alternative dispute resolution, including mediations and FINRA arbitrations.
Christopher Devivo	Associate	B.A., New York University (2008) J.D., New York Law School (2021)	New York	Christopher Devivo is an associate in the firm's New York office. Prior to joining Lowey Dannenberg, Mr. Devivo worked at American Express in various roles in finance, marketing, and most recently, risk management, where he was responsible for overseeing the compliance review process for new product launches.
Noelle Forde	Senior Associate	B.A., Yeshiva University Stern College for Women (2011) J.D., Benjamin N. Cardozo School of Law (2016)	New York S.D.N.Y.	Noelle Forde is an associate in the firm's New York office. Prior to joining Lowey, Ms. Forde worked as an antitrust and trade regulation associate at a litigation firm in Manhattan. There, Ms. Forde's practice focused on complex antitrust litigation on behalf of consumers and individual businesses in a number of industries, including the automobile and pharmaceutical industries. She gained particular depth of experience with cases involving price-fixing cartels and indirect purchasers.

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Raymond P. Girnys	Partner	B.A., The University of Scranton (2008), <i>magna cum laude</i> J.D., New York Law School (2011), <i>summa cum laude</i>	New York New Jersey Seventh Circuit S.D.N.Y.	Raymond Girnys is a partner at Lowey Dannenberg and a member of the Firm's Antitrust and Commodities practice groups. Mr. Girnys is currently prosecuting cases involving the alleged manipulation of The London Interbank Offered Rate ("LIBOR") for the Japanese Yen, Swiss Franc and Pound Sterling, the Euroyen Tokyo Interbank Offered Rate ("TIBOR"), the Euro Interbank Offered Rate ("Euribor"), the Singapore Interbank Offered Rate ("SIBOR") and the Singapore Swap Offer Rate ("SOR"), and the Australian Bank Bill Reference Rate ("BBSW"). Recoveries secured in LIBOR Manipulation cases in the past four years have already exceeded \$800 million. Mr. Girnys actively represent investors in commodity futures manipulation cases, including as lead counsel in a certified class action against Kraft Foods Group and Mondelez Global for manipulation of the wheat futures market ( <i>Ploss v. Kraft Foods Group, Inc. et al.</i> , Case No. 15-cv-2937 (N.D. Ill.) (Kness, J.)) and against Lansing Trade Group, LLC in a separate manipulation of the wheat futures market. <i>Budicak Inc. et al. v. Lansing Trade Group, LLC et al.</i> , Case No. 19-cv-2449 (D. Kan.) (Robinson, J.).
Radhika Gupta	Associate	LLM, New York University School of Law (2019)	New York	Radhika is an associate at Lowey Dannenberg's New York office and is a part of complex antitrust litigation and securities fraud practice. Prior to joining Lowey Dannenberg, P.C., Radhika served as a legal intern in the Chambers of Justice Salvatore J. Modica, Queens County, Supreme Court of New York. She graduated from New York University School of Law with an LL.M in International Business Regulation, Litigation and Arbitration. She got her B.A. LL.B (Hons.) from a leading law school in New Delhi. Radhika is licensed as an attorney in India, where she worked at a law firm in New Delhi for four years. She worked on a variety of commercial and civil matters and represented clients before courts all over the Country, including the Supreme Court of India.
Geoffrey M. Horn	Partner	B.A., Trinity College (1989) J.D., Albany Law School (1993)	New York Second Circuit Eleventh Circuit S.D.N.Y.	Geoffrey Horn heads the firm's commodity litigation practice group, one of the premier commodity litigation practice groups in the country. He also represents third-party payers such as major health insurers, HMOs, employers, and health and pharmacy benefits plans.

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Charles Kopel	Associate	B.A., Yeshiva University (2014), <i>summa cum laude</i> J.D., New York University School of Law (2017)	New Jersey New York Pennsylvania S.D.N.Y. E.D. Pa.	Charles Kopel specializes in price-fixing class actions, government records appeals, and qui tam litigation. Together with his colleagues, Mr. Kopel has attained substantial settlements for his clients. Prior to joining the firm, Mr. Kopel served as a Legal Intern for the City of Philadelphia Law Department, and as a Law Clerk for the Delaware Department of Justice. At NYU School of Law, Mr. Kopel served as a Senior Articles Editor of the Journal of International Law and Politics. He also worked as a research assistant to Professor Jose Alvarez, a widely recognized expert of international legal process.
Christian Levis	Partner	B.A., New York University (2008), <i>cum laude</i> J.D., Fordham University School of Law (2012)	New Jersey New York Second Circuit Ninth Circuit D. Colo. D.D.C. E.D.N.Y. S.D.N.Y.	Christian Levis is a partner at Lowey Dannenberg, P.C., whose practice focuses on complex class actions. He has extensive experience litigating class actions across various practice areas, including antitrust, commodities, consumer protection, data breach and privacy law. Mr. Levis has litigated against some of the largest corporations in the world and has achieved substantial recoveries on behalf of plaintiffs such as the California State Teachers' Retirement System ("CalSTRS"), the nation's largest educator-only pension fund, and the Treasurer of the Commonwealth of Pennsylvania.
Yuanchen Lu	Associate	B.A., College of William and Mary, <i>summa cum laude</i> (2018) J.D., New York University School of Law (2021)	New York	Prior to joining Lowey Dannenberg, Mr. Lu served as a judicial intern to the Honorable Ona T. Wang of the U.S. District Court for the Southern District of New York. Mr. Lu had also worked briefly for the Prisoners' Legal Services of New York. Mr. Lu earned his J.D. from New York University School of Law in 2021. During law school, Mr. Lu served as a student editor for NYU Tax Law Review and was an active member of the Asian-Pacific American Law Students Association. He received his undergraduate degree, <i>summa cum laude</i> , in Philosophy and Economics from the College of William and Mary in 2018. He was a member of the Phi Beta Kappa honor society.

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Margaret C. MacLean	Partner	B.A., Dartmouth College (2004) J.D., Columbia Law School (2007)	New York Eleventh Circuit S.D.N.Y. E.D.N.Y.	Ms. MacLean is a seasoned litigator with experience in federal and state court as well as arbitration. She has represented individuals and corporations in a wide variety of commercial disputes, in industries including steel, precious metals, luxury goods, energy, entertainment, technology and more. Fluent in Spanish and French, Ms. MacLean has often worked on cases with an international component. Her substantive experience spans the litigation process from beginning to end, from preparing the complaint to arguing the appeal, and everything in between: examining witnesses at trial and in arbitration, taking and defending depositions, working with experts, drafting pleadings and briefs of all sorts, and managing discovery.
Nicole Maruzzi	Associate	B.A., Seton Hall (2009), J.D., Suffolk University Law School (2016) <i>summa cum laude</i>	Massachusetts First Circuit	Nicole Maruzzi is an associate at Lowey Dannenberg, P.C., whose practice focuses on litigating complex class actions. Prior to joining Lowey Dannenberg, Ms. Maruzzi worked in a plaintiffs' class action law firm in Boston, Massachusetts. Her practice there focused on prosecuting ERISA, RICO, and securities class actions as well as qui tam lawsuits.
William Olson	Associate	B.A., University of South Carolina (2012) J.D., Villanova University Charles Widger School of Law (2016)	Pennsylvania E.D. Pa.	Mr. Olson is an associate who primarily represents large health insurers and institutional investors in antitrust and complex commercial litigation matters in federal courts across the country. Prior to joining Lowey Dannenberg, Mr. Olson served a Judicial Fellowship with The Honorable Mark A. Kearney in the United States District Court for the Eastern District of Pennsylvania.

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Roland R. St. Louis, III	Senior Associate	B.A., Southern Methodist University (2010) J.D., New York University School of Law (2014)	New York S.D.N.Y.	Roland R. St. Louis is an associate in the Antitrust and Commodities Litigation group. His most recent practice includes the following matters: - <i>In re: London Silver Fixing Ltd. Antitrust Litigation</i> , Case No. 1:14-md-02573 (S.D.N.Y.): A lawsuit alleging that some of the world's largest financial institutions engaged in a multifaceted scheme to fix the prices of silver and silver financial instruments using several interrelated means, in violation of the Sherman Antitrust Act and the Commodities Exchange Act; - <i>Aetna, Inc. et al. v. Insys Therapeutics, Inc. et al.</i> , 2:17-cv-04812 (E.D. Pa.): A lawsuit seeking recovery for fraudulently procured reimbursements for Subsys, a powerful fentanyl product. Prior to joining Lowey Dannenberg, Mr. St. Louis was the general counsel fellow in the Office of the General Counsel at New York University.
Scott V. Papp	Senior Associate	B.A., State University of New York at Albany (1992) J.D., Pace Law School, <i>cum laude</i> (2003)	New York Connecticut U.S. Supreme Court Second Circuit Eleventh Circuit. S.D.N.Y E.D.N.Y. W.D.N.Y.	Scott V. Papp focuses his practice on securities fraud litigation, shareholder rights, whistleblower actions and complex commercial litigation in federal and state courts. Mr. Papp's notable securities fraud cases include <i>Community Health Systems, Inc. (Norfolk Retirement Sys. v. Community Health Sys.</i> , 11-cv-0433 (M.D. Tenn); <i>MMI Investments L.P. v. NDCHealth Corporation</i> , 05 Civ. 4566 (S.D.N.Y) (successful recovery for a client who opted-out of a class action) and <i>In re Philip Services Corp. Securities Litigation</i> , 98 Civ. 835 (AKH) (S.D.N.Y.) (securities fraud class action recovering \$79.75 million). Mr. Papp also successfully represented Aetna, Inc. where he defended the company through an appeal to the United States Court of Appeals for the 11th Circuit, resulting in the dismissal of nationwide class action with no liability. <i>Main Drug, Inc. v. Aetna U.S. Healthcare</i> , 475 F.3d 1228 (11th Cir. 2007). Prior to joining Lowey Dannenberg, Mr. Papp clerked in the Superior Court of Connecticut, Stamford Judicial District. In addition, Mr. Papp interned at the United States Attorney's Office for the Southern District of New York and the United States Securities and Exchange Commission's Northeast Regional Office during law school.

<b>Name</b>	<b>Title</b>	<b>Education</b>	<b>Admissions</b>	<b>Bio</b>
Peter D. St. Phillip	Partner / Head of Litigation	B.A., Trinity College (1990) J.D., Seton Hall University School of Law, <i>cum laude</i> (1993)	New Jersey New York Pennsylvania U.S. Supreme Court First Circuit Second Circuit Third Circuit Fifth Circuit Sixth Circuit Eighth Circuit Ninth Circuit D. Conn. D.N.J. E.D.N.Y. S.D.N.Y. E.D. Pa.	Peter St. Phillip is the firm's head of litigation and represents institutional clients in large-scale cost recovery litigation. Among his clients are major health insurers as well as hedge funds and other investment firms. Mr. St. Phillip has extensive appellate experience stemming from his clerkship with the United States Court of Appeals for the Third Circuit. He has lectured on appellate advocacy and routinely argues appeals in the federal circuit courts, including Aetna's successful appeal in a landmark RICO decision that holds drug manufacturers accountable to health insurers for damages connected to marketing fraud. He has prosecuted many antitrust and cost recovery matters and is known for defending expert economic testimony in prosecutions of commodity manipulation securities claims, prescription drug cases, and antitrust matters. He is responsible for day-to-day litigation efforts in several antitrust, pharmaceutical, and healthcare cases, and is sought by clients for his extensive expertise in complex litigation over medical and pharmaceutical cost recovery claims and pharmacy benefits management.
Frank P. Strangeman	Senior Associate	B.S., St. Peter's College, <i>cum laude</i> (2002), Economics Medal recipient J.D. Fordham University School of Law (2007)	New Jersey New York E.D.N.Y. S.D.N.Y.	Frank Strangeman is a senior associate at Lowey Dannenberg, P.C. His practice focuses on commodities manipulation and antitrust litigation. He also represents Aetna in healthcare litigation in federal and state court. Mr. Strangeman's responsibilities include: managing e-discovery in complex litigation, facilitating various aspects of the settlement approval process, coordinating report filings for expert witnesses, and motion practice in state and federal courts.
Jennifer Tembeck	Senior Associate	B.A., Hofstra University (2004), <i>with honors</i> J.D., Pace Law School (2007)	New Jersey New York	Ms. Tembeck draws on her finance background to lend expertise to the firm's cases involving compliance and complex instruments. Prior to joining Lowey Dannenberg, she worked at Standard Chartered Bank, BlackRock, Kelso Capital and Goldman Sachs.

# **EXHIBIT B**



**EXHIBIT B**  
**Breakdown of Lowey Dannenberg's Services**

<b>MOTION</b>	<b>ATTORNEYS AND POSITION</b>	<b>RATE</b>	<b>HOURS</b>
Research and Drafting Initial Complaint	Vincent Briganti, Shareholder	\$ 1,395	17.9
	Geoffrey Horn, Shareholder	\$ 1,395	17.1
	Peter St. Phillip, Shareholder	\$ 1,395	2.1
	Raymond Girnys, Partner	\$ 1,090	6.5
	Christian Levis, Partner	\$ 1,090	36.5
	Michelle Conston, Associate	\$ 400	1.1
	Katherine Vogel, Paralegal	\$ 365	2.0
	<b>TOTAL</b>		<b>83.2</b>
Research and Drafting Amended Complaints	Vincent Briganti, Shareholder	\$ 1,395	123.2
	Geoffrey Horn, Shareholder	\$ 1,395	175.0
	Peter St. Phillip, Shareholder	\$ 1,395	16.4
	Raymond Girnys, Partner	\$ 1,090	120.3
	Christian Levis, Partner	\$ 1,090	282.2
	Sitso Bediako, Partner	\$ 1,090	19.4
	Margaret MacLean, Partner	\$ 1,090	19.6
	Barbara Hart, Partner	\$ 980	0.5
	Frank Strangeman, Senior Associate	\$ 775	9.8
	Peter Demato, Senior Associate	\$ 775	77.9
	Roland St. Louis, Senior Associate	\$ 775	143.9
	Jennifer Tembeck, Senior Associate	\$ 700	1.0
	Charles Kopel, Associate	\$ 560	11.7
	Ian Sloss, Senior Associate	\$ 550	299.2
	Christopher DeVivo, Associate	\$ 490	22.0
	Sylvie Bourassa, Associate	\$ 490	67.1
	Bracha Gefen, Associate	\$ 460	50.2
	Henry Kusjanovic, Associate	\$ 430	13.5
	Christina McPhaul, Associate	\$ 400	130.9
	Melissa Cabrera, Associate	\$ 400	13.0
	Michelle Conston, Associate	\$ 400	108.9
	Tim Rode, Associate	\$ 390	41.8
	Matthew Acocella, Associate	\$ 375	22.3
	Anthony Odorisi, Associate	\$ 365	46.8
	Julia McGrath, Associate	\$ 365	6.4
	Katherine Vogel, Paralegal	\$ 365	0.4
Yong Kim, Associate	\$ 340	9.5	
<b>TOTAL</b>		<b>1,832.9</b>	

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

<b>MOTION</b>	<b>ATTORNEYS AND POSITION</b>	<b>RATE</b>	<b>HOURS</b>
Research and Briefing for First Motion to Dismiss	Vincent Briganti, Shareholder	\$ 1,395	55.1
	Geoffrey Horn, Shareholder	\$ 1,395	108.7
	Peter St. Phillip, Shareholder	\$ 1,395	137.1
	Raymond Girnys, Partner	\$ 1,090	50.6
	Christian Levis, Partner	\$ 1,090	247.8
	Sitso Bediako, Partner	\$ 1,090	190.3
	Barbara Hart, Partner	\$ 980	1.0
	Roland St. Louis, Senior Associate	\$ 775	16.0
	Ian Sloss, Senior Associate	\$ 550	32.2
	Lee Lefkowitz, Senior Associate	\$ 550	301.9
	Samantha Breitner, Associate	\$ 430	4.5
	Lee Yun Kim, Associate	\$ 410	16.0
	Christina McPhaul, Associate	\$ 400	1.0
	Melissa Cabrera, Associate	\$ 400	26.9
	Michelle Conston, Associate	\$ 400	182.0
	Matthew Acocella, Associate	\$ 375	29.7
	Katherine Vogel, Paralegal	\$ 365	6.5
	Bonnie Espino, Associate	\$ 350	32.2
	Garam Choe, Associate	\$ 325	64.9
	<b>TOTAL</b>		<b>1,504.4</b>

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

MOTION	ATTORNEYS AND POSITION	RATE	HOURS
Research and Briefing for Second Motion to Dismiss	Vincent Briganti, Shareholder	\$ 1,395	100.5
	Geoffrey Horn, Shareholder	\$ 1,395	44.0
	Peter St. Phillip, Shareholder	\$ 1,395	3.5
	Raymond Girnys, Partner	\$ 1,090	21.4
	Christian Levis, Partner	\$ 1,090	274.5
	Sitso Bediako, Partner	\$ 1,090	7.0
	Margaret MacLean, Partner	\$ 1,090	58.7
	Frank Strangeman, Senior Associate	\$ 775	1.1
	Johnathan Seredynski, Senior Associate	\$ 775	4.1
	Peter Demato, Senior Associate	\$ 775	1.0
	Roland St. Louis, Senior Associate	\$ 775	428.4
	Jennifer Tembeck, Senior Associate	\$ 700	246.7
	Charles Kopel, Associate	\$ 560	123.7
	Ian Sloss, Senior Associate	\$ 550	333.2
	Lee Lefkowitz, Senior Associate	\$ 550	203.1
	Anthony Christina, Associate	\$ 525	0.1
	Sylvie Bourassa, Associate	\$ 490	0.1
	Craig Maider, Associate	\$ 485	14.6
	Bracha Gefen, Associate	\$ 460	356.0
	Henry Kusjanovic, Associate	\$ 430	45.0
	Samantha Breitner, Associate	\$ 430	29.8
	Amir Alimehri, Associate	\$ 410	19.5
	Christina McPhaul, Associate	\$ 400	0.8
	Tim Rode, Associate	\$ 390	214.5
	Matthew Acocella, Associate	\$ 375	45.0
	Anthony Odorisi, Associate	\$ 365	1.3
	Julia McGrath, Associate	\$ 365	166.3
	Katherine Vogel, Paralegal	\$ 365	2.5
	<b>TOTAL</b>		<b>2,746.4</b>
Research and Briefing for Third Motion to Dismiss	Vincent Briganti, Shareholder	\$ 1,395	14.9
	Geoffrey Horn, Shareholder	\$ 1,395	10.6
	Raymond Girnys, Partner	\$ 1,090	54.7
	Christian Levis, Partner	\$ 1,090	9.5
	Margaret MacLean, Partner	\$ 1,090	117.6
	Johnathan Seredynski, Senior Associate	\$ 775	3.7
	Roland St. Louis, Senior Associate	\$ 775	181.3
	Charles Kopel, Associate	\$ 560	71.9
	Luke Goveas, Associate	\$ 525	5.1
	Katherine Vogel, Paralegal	\$ 365	4.0
		<b>TOTAL</b>	

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

MOTION	ATTORNEYS AND POSITION	RATE	HOURS
Settlement Negotiations, Mediation and Notice Administration	Vincent Briganti, Shareholder	\$ 1,395	405.2
	Geoffrey Horn, Shareholder	\$ 1,395	214.3
	Peter St. Phillip, Shareholder	\$ 1,395	5.2
	Raymond Girnys, Partner	\$ 1,090	215.6
	Christian Levis, Partner	\$ 1,090	115.5
	Sitso Bediako, Partner	\$ 1,090	280.7
	Margaret MacLean, Partner	\$ 1,090	8.0
	Frank Strangeman, Senior Associate	\$ 775	458.6
	Roland St. Louis, Senior Associate	\$ 775	354.9
	Scott V. Papp, Senior Associate	\$ 700	258.0
	Jennifer Tembeck, Senior Associate	\$ 700	60.9
	Charles Kopel, Associate	\$ 560	0.8
	Ian Sloss, Senior Associate	\$ 550	27.6
	Lee Lefkowitz, Senior Associate	\$ 550	10.3
	Luke Goveas, Associate	\$ 525	5.0
	Nicole Maruzzi, Associate	\$ 525	16.3
	Noelle Forde, Associate	\$ 525	8.6
	Radhika Gupta, Associate	\$ 525	32.4
	Sylvie Bourassa, Associate	\$ 490	3.8
	Yuanchen Lu, Associate	\$ 490	16.0
	Bracha Gefen, Associate	\$ 460	121.3
	Henry Kusjanovic, Associate	\$ 430	7.1
	Christina McPhaul, Associate	\$ 400	0.7
	Michelle Conston, Associate	\$ 400	83.1
	Grace Lee, Associate	\$ 380	6.5
	Julia McGrath, Associate	\$ 365	84.7
	Katherine Vogel, Paralegal	\$ 365	3.9
	<b>TOTAL</b>		<b>2,805.0</b>

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

MOTION	ATTORNEYS AND POSITION	RATE	HOURS
Case Investigation	Vincent Briganti, Shareholder	\$ 1,395	49.4
	Geoffrey Horn, Shareholder	\$ 1,395	52.1
	Peter St. Phillip, Shareholder	\$ 1,395	24.5
	Raymond Girnys, Partner	\$ 1,090	36.2
	Christian Levis, Partner	\$ 1,090	167.0
	Sitso Bediako, Partner	\$ 1,090	62.3
	Barbara Hart, Partner	\$ 980	4.0
	Johnathan Seredynski, Senior Associate	\$ 775	22.5
	Roland St. Louis, Senior Associate	\$ 775	59.3
	Jennifer Tembeck, Senior Associate	\$ 700	20.6
	John D'Amico, Senior Associate	\$ 700	14.0
	Charles Kopel, Associate	\$ 560	32.2
	Ian Sloss, Senior Associate	\$ 550	64.9
	Lee Lefkowitz, Senior Associate	\$ 550	15.2
	Anthony Christina, Associate	\$ 525	0.6
	Noelle Forde, Associate	\$ 525	3.5
	Sylvie Bourassa, Associate	\$ 490	108.8
	Bracha Gefen, Associate	\$ 460	7.0
	Henry Kusjanovic, Associate	\$ 430	1.8
	Amir Alimehri, Associate	\$ 410	21.0
	Lee Yun Kim, Associate	\$ 410	1.0
	Christina McPhaul, Associate	\$ 400	0.1
	Melissa Cabrera, Associate	\$ 400	9.0
	Michelle Conston, Associate	\$ 400	16.1
	Tim Rode, Associate	\$ 390	18.5
	Grace Lee, Associate	\$ 380	213.0
	Matthew Acocella, Associate	\$ 375	0.3
	Anthony Odorisi, Associate	\$ 365	8.0
	Julia McGrath, Associate	\$ 365	19.9
	Katherine Vogel, Paralegal	\$ 365	1.5
	Yong Kim, Associate	\$ 340	6.0
	Adam Settle, Associate	\$ 325	4.2
	Garam Choe, Associate	\$ 325	51.6
Matthew Guarnero, Associate	\$ 325	21.4	
	<b>TOTAL</b>		<b>1,137.5</b>

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

<b>MOTION</b>	<b>ATTORNEYS AND POSITION</b>	<b>RATE</b>	<b>HOURS</b>	
Litigation Strategy & Analysis	Vincent Briganti, Shareholder	\$ 1,395	7.6	
	Geoffrey Horn, Shareholder	\$ 1,395	9.0	
	Peter St. Phillip, Shareholder	\$ 1,395	6.1	
	Raymond Girnys, Partner	\$ 1,090	12.3	
	Sitso Bediako, Partner	\$ 1,090	1.1	
	Barbara Hart, Partner	\$ 980	10.8	
	Charles Kopel, Associate	\$ 560	0.3	
	Lee Lefkowitz, Senior Associate	\$ 550	0.9	
	Lee Yun Kim, Associate	\$ 410	4.0	
	Michelle Conston, Associate	\$ 400	0.6	
	Garam Choe, Associate	\$ 325	9.2	
	<b>TOTAL</b>			<b>61.9</b>
	Case Management	Vincent Briganti, Shareholder	\$ 1,395	63.8
Geoffrey Horn, Shareholder		\$ 1,395	45.8	
Peter St. Phillip, Shareholder		\$ 1,395	5.3	
Raymond Girnys, Partner		\$ 1,090	39.4	
Christian Levis, Partner		\$ 1,090	18.5	
Sitso Bediako, Partner		\$ 1,090	52.0	
Margaret MacLean, Partner		\$ 1,090	1.5	
Barbara Hart, Partner		\$ 980	6.3	
Frank Strangeman, Senior Associate		\$ 775	5.9	
Peter Demato, Senior Associate		\$ 775	3.6	
Roland St. Louis, Senior Associate		\$ 775	19.2	
John D'Amico, Senior Associate		\$ 700	4.0	
Charles Kopel, Associate		\$ 560	5.5	
Ian Sloss, Senior Associate		\$ 550	286.3	
Lee Lefkowitz, Senior Associate		\$ 550	6.7	
Anthony Christina, Associate		\$ 525	0.7	
Luke Goveas, Associate		\$ 525	0.1	
Christina McPhaul, Associate		\$ 400	1.3	
Michelle Conston, Associate		\$ 400	0.2	
Matthew Acocella, Associate		\$ 375	1.7	
Julia McGrath, Associate		\$ 365	7.8	
Katherine Vogel, Paralegal		\$ 365	2.5	
Garam Choe, Associate		\$ 325	7.3	
<b>TOTAL</b>			<b>585.4</b>	

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

<b>MOTION</b>	<b>ATTORNEYS AND POSITION</b>	<b>RATE</b>	<b>HOURS</b>
Expert Work	Vincent Briganti, Shareholder	\$ 1,395	78.4
	Geoffrey Horn, Shareholder	\$ 1,395	4.6
	Peter St. Phillip, Shareholder	\$ 1,395	0.8
	Raymond Girnys, Partner	\$ 1,090	7.1
	Christian Levis, Partner	\$ 1,090	18.9
	Sitso Bediako, Partner	\$ 1,090	2.2
	Barbara Hart, Partner	\$ 980	3.1
	Frank Strangeman, Senior Associate	\$ 775	5.9
	Roland St. Louis, Senior Associate	\$ 775	7.2
	Julia McGrath, Associate	\$ 365	2.6
	<b>TOTAL</b>		<b>130.8</b>
	Document Review	Peter Demato, Senior Associate	\$ 775
Roland St. Louis, Senior Associate		\$ 775	154.7
John D'Amico, Senior Associate		\$ 700	260.6
Charles Kopel, Associate		\$ 560	38.3
Ian Sloss, Senior Associate		\$ 550	352.9
Anthony Christina, Associate		\$ 525	25.2
Christopher DeVivo, Associate		\$ 490	41.0
Sylvie Bourassa, Associate		\$ 490	88.1
William Olson, Associate		\$ 490	16.4
Bracha Gefen, Associate		\$ 460	20.0
Lee Yun Kim, Associate		\$ 410	666.9
Richard Frank, Associate		\$ 400	28.7
Julia McGrath, Associate		\$ 365	29.3
Yong Kim, Associate		\$ 340	516.7
Adam Settle, Associate		\$ 325	18.4
<b>TOTAL</b>			<b>2,310.4</b>
Court Appearances and Preparation	Vincent Briganti, Shareholder	\$ 1,395	58.5
	Geoffrey Horn, Shareholder	\$ 1,395	48.2
	Peter St. Phillip, Shareholder	\$ 1,395	25.4
	Raymond Girnys, Partner	\$ 1,090	35.0
	Christian Levis, Partner	\$ 1,090	89.7
	Sitso Bediako, Partner	\$ 1,090	6.2
	Frank Strangeman, Senior Associate	\$ 775	2.3
	Lee Lefkowitz, Senior Associate	\$ 550	73.4
	Michelle Conston, Associate	\$ 400	39.9
	Garam Choe, Associate	\$ 325	27.6
	<b>TOTAL</b>		<b>406.2</b>

**EXHIBIT B (Continued)**  
**Breakdown of Lowey Dannenberg's Services**

<b>MOTION</b>	<b>ATTORNEYS AND POSITION</b>	<b>RATE</b>	<b>HOURS</b>	
Client/ Class Member Communication	Vincent Briganti, Shareholder	\$ 1,395	24.3	
	Geoffrey Horn, Shareholder	\$ 1,395	84.8	
	Peter St. Phillip, Shareholder	\$ 1,395	2.8	
	Raymond Girnys, Partner	\$ 1,090	42.4	
	Christian Levis, Partner	\$ 1,090	35.9	
	Sitso Bediako, Partner	\$ 1,090	6.3	
	Barbara Hart, Partner	\$ 980	16.6	
	Frank Strangeman, Senior Associate	\$ 775	28.2	
	Roland St. Louis, Senior Associate	\$ 775	78.4	
	Anthony Christina, Associate	\$ 525	4.9	
	Luke Goveas, Associate	\$ 525	0.2	
	Christina McPhaul, Associate	\$ 400	3.3	
	Melissa Cabrera, Associate	\$ 400	6.6	
	Matthew Acocella, Associate	\$ 375	3.0	
	<b>TOTAL</b>			<b>337.7</b>
	Appeal	Vincent Briganti, Shareholder	\$ 1,395	18.1
Geoffrey Horn, Shareholder		\$ 1,395	2.1	
Raymond Girnys, Partner		\$ 1,090	8.3	
Christian Levis, Partner		\$ 1,090	3.0	
Sitso Bediako, Partner		\$ 1,090	1.5	
Margaret MacLean, Partner		\$ 1,090	35.0	
Frank Strangeman, Senior Associate		\$ 775	1.1	
Charles Kopel, Associate		\$ 560	31.9	
Anthony Christina, Associate		\$ 525	0.4	
Luke Goveas, Associate		\$ 525	9.8	
Noelle Forde, Associate		\$ 525	0.9	
Sylvie Bourassa, Associate		\$ 490	38.8	
Christina McPhaul, Associate		\$ 400	0.2	
Katherine Vogel, Paralegal		\$ 365	0.8	
<b>TOTAL</b>				<b>151.9</b>



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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**DECLARATION OF ERIC F. CITRON  
IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD  
OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

I, Eric F. Citron, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. At all times relevant hereto, I was a Partner in the law firm of Goldstein & Russell (“G&R”).<sup>1</sup> I respectfully submit this declaration in support of Class Counsel’s<sup>2</sup> Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses (the “Fee and Expense Application”) in connection with services rendered in the above-captioned action (“Action”).

2. The statements herein are true to the best of my personal knowledge, information and belief based on the books and records of G&R and information provided by its attorneys and staff. G&R’s time and expense records are prepared and maintained in the ordinary course of business.

3. At all times relevant hereto, G&R served as additional counsel for California State Teachers’ Retirement System (“CalSTRS”), Richard Dennis, and Fund Liquidation Holdings LLC (“FLH”). This Court appointed Lowey Dannenberg, P.C. (“Lowey”) as Class Counsel for the Settlement Class in connection with each of the six Settlements in the above-captioned action. *See* ECF Nos. 159, 426, 428-29, 440, 457 (orders preliminarily approving each Settlement). Our firm was retained by Lowey to assist with briefing and arguing the overlapping appeals in this case and in *Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, No. 19-2719 (2d Cir.) (the “SIBOR Appeal”), which was dismissed on the same grounds that resulted in the initial dismissal and appeal

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<sup>1</sup> Goldstein & Russell ceased operating as such in 2023, after its work on this matter had concluded. The calculations set forth are based on G&R’s rates as of December 2022. G&R continues to exist and maintains accounts for the purpose of, *inter alia*, collecting receivables in ongoing matters.

<sup>2</sup> Unless otherwise noted, capitalized terms not defined herein have the same meaning as in the Settlement Agreements with: JPMorgan Chase & Co. (ECF No. 151-1); NatWest Markets Plc (f/k/a The Royal Bank of Scotland plc) (ECF No. 384-1); Deutsche Bank AG and DB Group Services (UK) Ltd. (ECF No. 384-2); Credit Suisse Group AG and Credit Suisse AG (ECF No. 391-1); NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (ECF No. 432-1); and TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (collectively, “TP ICAP”), Gottex Brokers SA (“Gottex”), and Velcor SA (“Velcor” and, together with TP ICAP and Gottex, the “Settling Brokers”) (ECF No. 454-1).

in this Action. That simultaneous retention tied G&R's compensation for reviving each case on appeal to the total amount of attorneys' fees ultimately awarded in each case. Under its terms, Lowey agreed to pay G&R, in each case, a contingent fee consisting of 10% of the first \$5 million awarded in fees, plus 3% of any remaining fees. Those agreed terms reflected the fact that G&R could potentially rescue both cases—and create significant value for the class and its counsel in both cases—by prevailing before the Second Circuit in whichever case was heard first.

4. I am one of the attorneys who oversaw my firm's involvement in the Action. G&R's time and expense records (including, where necessary, backup documentation) have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform with directions from Class Counsel and/or my firm's practice. Accordingly, the time reflected in G&R's fee compensable lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary to prosecute the Action and achieve the Settlements before the Court. In addition, these fees and expenses are often charged by G&R to its fee-paying clients.

5. The services G&R performed on behalf of the putative class in connection with the prosecution of the litigation include but are not limited to the following:

- Reviewing and drafting appellate filings.
- Creating the overall appellate strategy and briefing and arguing the overlapping *SIBOR* Appeal.
- Negotiating a joint motion to hold the appeal in this matter in abeyance pending the outcome of the *SIBOR* Appeal.

- Negotiating a voluntary remand with the defendants based on the plaintiffs' position having prevailed in the *SIBOR* Appeal.
- Drafting a successful motion for remand from the Second Circuit.

6. Set forth below in ¶ 7 is a summary reflecting the amount of time G&R's attorneys and professional support staff worked on the Action from the inception of the case to June 30, 2023, the timekeeper's applicable billing rate, and the corresponding lodestar calculations of that work based on G&R billing rates as of the December 2022. The time and lodestar incurred preparing the Fee and Expense Application have been excluded. In addition, G&R's lodestar is limited to time entries that specifically recorded work on the appeal in this Action and not the *SIBOR* Appeal; to the extent the appeals presented overlapping issues, all time for research, drafting, and designing the combined appellate strategy was recorded in the *SIBOR* Appeal. The schedule was prepared based upon daily time records maintained by G&R's attorneys and professional support staff in the ordinary course of business. Each timekeeper listed below was a full-time employee of the firm.

7. G&R's total fee compensable time for which Class Counsel seeks an award of attorneys' fees is summarized below.

<b>Timekeeper Name</b>	<b>Position</b>	<b>Hourly Rate</b>	<b>Total Hours from inception through 6/30/2023</b>	<b>Total Lodestar from inception through 6/30/2023</b>
Eric F. Citron	Partner	\$1,375	34.80	\$ 47,850

8. At all times relevant hereto, G&R's understanding has been that its compensation was governed by its agreement with Lowey, and that Lowey was obligated to compensate G&R solely according to the terms of that agreement. Notably, while the agreement governs the relationship between Lowey and G&R, it has no effect whatsoever on the overall amount of fees that class counsel may seek or is seeking here. G&R's fee agreement with Lowey in the *SIBOR*

matter was disclosed to the *SIBOR* court and was adhered to in that case based on the fee awarded by the court.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on August 9, 2023.

/s/Eric F. Citron

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

FUND LIQUIDATION HOLDINGS LLC, as assignee and successor-in-interest to SONTERRA CAPITAL MASTER FUND LTD., FRONTPOINT EUROPEAN FUND, L.P., FRONTPOINT FINANCIAL SERVICES FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP ENHANCED FUND, L.P., FRONTPOINT HEALTHCARE FLAGSHIP FUND, L.P., FRONTPOINT HEALTHCARE HORIZONS FUND, L.P., FRONTPOINT FINANCIAL HORIZONS FUND, L.P., FRONTPOINT UTILITY AND ENERGY FUND L.P., HUNTER GLOBAL INVESTORS FUND I, L.P., HUNTER GLOBAL INVESTORS OFFSHORE FUND LTD., HUNTER GLOBAL INVESTORS SRI FUND LTD., HG HOLDINGS LTD., HG HOLDINGS II LTD., RICHARD DENNIS, and the CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM on behalf of themselves and all others similarly situated,

Plaintiffs,

- against -

CREDIT SUISSE GROUP AG, CREDIT SUISSE AG, JPMORGAN CHASE & CO., NATWEST MARKETS PLC, UBS AG, DEUTSCHE BANK AG, DB GROUP SERVICES UK LIMITED, TP ICAP PLC, TULLETT PREBON AMERICAS CORP., TULLETT PREBON (USA) INC., TULLETT PREBON FINANCIAL SERVICES LLC, TULLETT PREBON (EUROPE) LIMITED, COSMOREX AG, ICAP EUROPE LIMITED, ICAP SECURITIES USA LLC, NEX GROUP LIMITED, INTERCAPITAL CAPITAL MARKETS LLC, GOTTEX BROKERS SA, VELCOR SA AND JOHN DOE NOS. 1-50,

Defendants.

Docket No. 15-cv-00871  
(SHS)

**MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION  
FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES  
AND PLAINTIFFS' REQUEST FOR INCENTIVE AWARDS**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

ARGUMENT ..... 3

I. THE ATTORNEYS’ FEE REQUEST IS FAIR AND REASONABLE ..... 3

    A. The Negotiated Sliding Fee Scale on which Class Counsel’s Request is Based  
    Supports the Proposed Fee Award ..... 3

    B. The Risks Faced by Class Counsel in this Complex Action Support the Fee Award 4

    C. Plaintiffs’ Counsel Invested Substantial Time, Labor, and Resources ..... 10

        1. The Initial Investigation and Filing of the Complaint ..... 10

        2. Amended Pleadings, Motions to Dismiss, and Appeal Work ..... 11

        3. Settlement Negotiations ..... 13

        4. Development of the Distribution Plan and Class Notice Administration ..... 15

    D. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request ..... 15

    E. The Fee Request Is Supported by the Remaining Goldberger Factors ..... 19

        1. Class Counsel Provided High-Quality Representation ..... 19

        2. Class Counsel’s Fee Request is Within the Range Used Under the Second  
        Circuit’s Preferred Percentage-Based Methodology ..... 20

        3. Public Policy Supports the Fee Request ..... 22

II. THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES IS REASONABLE  
AND SHOULD BE GRANTED ..... 23

III. PLAINTIFFS’ REQUESTED INCENTIVE AWARDS ARE REASONABLE AND  
SHOULD BE GRANTED ..... 24

CONCLUSION ..... 25

**TABLE OF AUTHORITIES****Cases**

<i>Alaska Elec. Pension Fund v. Bank of Am. Corp.</i> , No. 14-cv-7126 (JMF), 2018 WL 6250657 (S.D.N.Y. Nov. 29, 2018).....	21, 25
<i>Anwar v. Fairfield Greenwich Ltd.</i> , No. 09-cv-118 (VM), 2012 WL 1981505 (S.D.N.Y. June 1, 2012) .....	24
<i>Arbor Hill Concerned Citizens Neighborhood Ass’n v. City. of Albany &amp; Albany County. Bd. of Elections</i> , 522 F.3d 182 (2d Cir. 2008).....	3
<i>Beckman v. Keybank, N.A.</i> , 293 F.R.D. 467 (S.D.N.Y. 2013).....	24
<i>Berlinsky v. Alcatel Alsthom Compagnie Générale D’Electricité</i> , 970 F. Supp. 348 (S.D.N.Y. 1997).....	6
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980) .....	3
<i>Carlson v. Xerox Corp.</i> , 355 F. App’x 523 (2d Cir. 2009).....	17
<i>Dial Corp. v. News Corp.</i> , 317 F.R.D. 426 (S.D.N.Y. 2016).....	24, 25
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174 (W.D.N.Y. 2005).....	8
<i>Fund Liquidation Holdings LLC v. Bank of America Corp.</i> , 991 F.3d 370 (2d Cir. 2021).....	6, 13
<i>Gelboim v. Bank of Am. Corp.</i> , 823 F.3d 759 (2d Cir. 2016).....	6
<i>Goldberger v. Integrated Res., Inc.</i> , 209 F.3d 43 (2d Cir. 2000).....	passim
<i>Grice v. Pepsi Beverages Co.</i> , 363 F. Supp. 3d 401 (S.D.N.Y. 2019).....	3, 17, 20
<i>Guevoura Fund Ltd. v. Sillerman</i> , No. 1:15-cv-07192-CM, 2019 WL 6889901 (S.D.N.Y. Dec. 18, 2019).....	23, 24
<i>In re “Agent Orange” Prod. Liab. Litig.</i> , 818 F.2d 216 (2d Cir. 1987).....	18



*In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775 (JG)(VVP),  
2015 WL 5918273 (S.D.N.Y. Oct. 9, 2015) ..... 25

*In re Amaranth Nat. Gas Commodities Litig.*,  
No. 07 Civ. 6377 (SAS), 2012 WL 2149094 (S.D.N.Y. June 11, 2012) ..... 21

*In re AOL Time Warner, Inc. Sec. and “ERISA” Litig.*,  
No. 02-cv-5575 (SWK), 2006 WL 903236 (S.D.N.Y. Apr. 6, 2006) ..... 8

*In re Arakis Energy Corp. Sec. Litig.*,  
No. 95 Civ. 3431 (ARR), 2001 WL 1590512 (E.D.N.Y. Oct. 31, 2001)..... 23

*In re Citigroup Inc. Bond Litig.*,  
988 F. Supp. 2d 371 (S.D.N.Y. 2013) ..... 5

*In re Citigroup Inc. Secs. Litig.*,  
965 F. Supp. 2d 369 (S.D.N.Y. 2013) ..... 17

*In re Colgate-Palmolive Co. ERISA Litig.*,  
36 F. Supp. 3d 344 (S.D.N.Y. 2014) ..... 16, 22, 23

*In re Credit Default Swaps Antitrust Litig.*,  
No. 13-md-2476 (DLC), 2016 WL 2731524, (S.D.N.Y. Apr. 26, 2016)..... 3, 4, 17, 23

*In re Fab Universal Corp. S’holder Derivative Litig.*,  
148 F. Supp. 3d 277 (S.D.N.Y. 2015) ..... 17

*In re Facebook, Inc., IPO Sec. & Derivative Litig.*,  
343 F. Supp. 3d 394 (S.D.N.Y. 2018) ..... 7

*In re Foreign Exchange Benchmark Rates Antitrust Litig.*,  
No. 13-cv-7789 (LGS), 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018)..... 17

*In re Gen. Motors LLC Ignition Switch Litig.*,  
No. 14-MC-2543 (JMF), 2020 WL 7481292 (S.D.N.Y. Dec. 18, 2020) ..... 20, 24

*In re Graña y Montero S.A.A. Sec. Litig.*,  
No. 17-cv-01105 (LD)(HST), 2021 WL 4173684 (E.D.N.Y. Aug. 13, 2021) ..... 6

*In re Graña y Montero S.A.A. Sec. Litig.*, No. 17-cv-01105 (LD)(HST),  
No. 17-cv-1105 (LDH)(ST), 2021 WL 4173170 (E.D.N.Y. Sept. 14, 2021) ..... 6

*In re GSE Bonds Antitrust Litig.*,  
414 F. Supp. 3d 686 (S.D.N.Y. 2019) ..... 7

*In re GSE Bonds Antitrust Litig.*,  
No. 19-cv-1704 (JSR), 2020 WL 3250593 (S.D.N.Y. June 16, 2020) ..... 10, 17

*In re J.P. Morgan Stable Value Fund ERISA Litig.*,  
 No. 12-CV-2548 (VSB), 2019 WL 4734396 (S.D.N.Y. Sept. 23, 2019) ..... 21

*In re LIBOR-Based Fin. Instruments Antitrust Litig.*,  
 327 F.R.D. 483 (S.D.N.Y. 2018)..... 7, 8

*In re LIBOR-Based Fin. Instruments Antitrust Litig.*,  
 935 F. Supp. 2d 666 (S.D.N.Y. 2013)..... 5

*In re Merrill Lynch Tyco Research Sec. Litig.*,  
 249 F.R.D. 124 (S.D.N.Y. 2008)..... 19

*In re NASDAQ Market-Makers Antitrust Litig.*,  
 187 F.R.D. 465 (S.D.N.Y. 1998)..... 8, 20

*In re Nortel Networks Corp. Sec. Litig.*,  
 539 F.3d 129 (2d Cir. 2008)..... 4

*In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*,  
 991 F. Supp. 2d 437 (E.D.N.Y. 2014)..... 5

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 No. 10-cv-3617, 2014 WL 3500655 (S.D.N.Y. July 15, 2014) ..... 5

*In re Priceline.com, Inc. Sec. Litig.*,  
 No. 3:00-cv-1884 (AVC), 2007 WL 2115592 (D. Conn. July 20, 2007) ..... 21

*In re Sumitomo Copper Litig.*,  
 189 F.R.D. 274 (S.D.N.Y. 1999)..... 9

*In re Sumitomo Copper Litig.*,  
 74 F. Supp. 2d 393 (S.D.N.Y.)..... 21

*In re Visa Check/Mastermoney Antitrust Litig.*,  
 192 F.R.D. 68 (E.D.N.Y. 2000) ..... 8

*In re Warner Commc’ns Sec. Litig.*,  
 618 F. Supp. 735 (S.D.N.Y. 1985)..... 7

*In re Warner Commc’ns Secs Litig.*,  
 618 F. Supp. 735 (S.D.N.Y. 1985)..... 20

*LeBlanc-Sternberg v. Fletcher*,  
 143 F.3d 748 (2d Cir. 1998)..... 16

*Maley v. Del Global Tech. Corp.*,  
 186 F. Supp. 2d 358 (S.D.N.Y. 2002)..... 17, 20, 23

*Meredith Corp. v. SESAC, LLC*,  
87 F. Supp. 3d 650 (S.D.N.Y. 2015)..... 5, 20, 23, 24

*Pillsbury Co. v. Conboy*,  
459 U.S. 248 (1983) ..... 22

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*,  
396 F.3d 96 (2d Cir. 2005)..... 3, 9, 17

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Center for Litigation and Courts and The Huntington National Bank, *2021 Antitrust Annual Report: Class Actions in Federal Court* (April 2022)..... 22

MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) ..... 3

Theodore Eisenberg et. al., *Attorneys’ Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937 (2017) ..... 22

William B. Rubenstein, 5 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 15:78 (6th ed. 2023)  
..... 22

William B. Rubenstein, 5 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 17:1 (6th ed. 2023)  
..... 24

Pursuant to Federal Rules of Civil Procedure 23(h), Class Counsel<sup>1</sup> respectfully submit this memorandum in support of their motion for an attorneys' fee award of \$19,237,500, 26.01% of the \$73,950,000 Settlement Fund created by Plaintiffs'<sup>2</sup> Settlements with Settling Defendants, and for a payment of \$342,926.76 for litigation costs and expenses incurred in prosecuting this Action, plus interest on the awards at the same rate as earned by the Settlement Fund. Plaintiffs also seek a total of \$90,000 as Incentive Awards for their efforts in representing the Settlement Class.

### **INTRODUCTION**

Class Counsel diligently and effectively implemented a comprehensive litigation strategy that, among other things, allowed them to overcome the dismissal of Plaintiffs' claims (twice) and obtain \$73,950,000 in Settlements. Class Counsel, assisted by Supporting Counsel,<sup>3</sup> (a) investigated the nature and impact of the alleged market manipulation, (b) developed comprehensive pleadings containing serious, supported allegations concerning Defendants' alleged misconduct, (c) presented strong arguments in opposition to numerous motions to dismiss, (d) persuaded Defendants and the Second Circuit to remand this Action back to this Court for further proceedings after the Action had been dismissed, and (e) successfully negotiated with each

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<sup>1</sup> Unless otherwise defined, capitalized terms have the same meaning as in the Stipulations and Agreements of Settlement with (1) JPMorgan Chase & Co. ("JPMorgan"); (2) NatWest Markets plc (f/k/a The Royal Bank of Scotland plc) ("RBS"); (3) Deutsche Bank AG and DB Group Services (UK) Ltd. (collectively, "Deutsche Bank"); (4) Credit Suisse Group AG and Credit Suisse AG (collectively, "Credit Suisse"); (5) NEX Group plc, NEX International Limited (f/k/a ICAP plc), ICAP Capital Markets LLC (n/k/a Intercapital Capital Markets LLC), ICAP Securities USA LLC, and ICAP Europe Limited (collectively, "ICAP"), and (6) TP ICAP plc (f/k/a Tullett Prebon plc and n/k/a TP ICAP Finance plc), Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, and Cosmorex AG (together, "TP ICAP"), Gottex Brokers SA ("Gottex"), and Velcor SA ("Velcor" and, collectively with TP ICAP and Gottex, the "Settling Brokers"). ECF Nos. 151-1, 384-1, 384-2, 391-1, 432-1, and 454-1. JPMorgan, RBS, Deutsche Bank, Credit Suisse, ICAP, and the Settling Brokers are referred to as "Settling Defendants".

<sup>2</sup> Plaintiffs are California State Teachers' Retirement System ("CalSTRS"), Richard Dennis, and Fund Liquidation Holdings LLC ("FLH"). Unless noted, ECF citations are to the docket and internal citations and quotations are omitted.

<sup>3</sup> "Supporting Counsel" refers to Lovell Stewart Halebian Jacobson LLP, Berman Tabacco, Kirby McInerney LLP, Glancy Prongay & Murray LLP, and appellate counsel Goldstein & Russell, P.C ("Goldstein & Russell"). "Plaintiffs' Counsel" refers to Class Counsel and Supporting Counsel.

of the Settling Defendants to achieve this fantastic result. This prosecution's success is derived directly from the time and effort Class Counsel and Supporting Counsel invested to pursue claims against Defendants for their alleged manipulation of Swiss Franc LIBOR-Based Derivatives.

CalSTRS, Class Counsel, and Berman Tabacco executed a retainer prior to CalSTRS' addition as a Plaintiff that included a graduated fee schedule on which attorneys' fees would be sought. The proposed fee comes directly from that schedule. This *ex ante* fee agreement with a highly sophisticated client is entitled to a rebuttable presumption of correctness. *See* Part I.A, *infra*. Here, the risks involved in litigating an action of this complexity and magnitude, combined with the 21,000 hours of time and labor invested to prosecute this matter confirm the reasonableness of that negotiated fee, as does the lodestar cross-check. *See* Parts I.B-D, *infra*. The collective lodestar of \$15,608,925.10 means the fee requests reflects a modest multiplier of 1.23. The remaining *Goldberger* factors—the quality of counsel, size of the fee in relationship to the settlement, and the public policy implications—also support awarding the fee request. *See* Part I.D, *infra*.

Plaintiffs' Counsel also seek reimbursement of \$342,926.76 for their reasonable out-of-pocket litigation costs and expenses incurred from the Action's inception through June 30, 2023. *See* Part II, *infra*; Declarations of Vincent Briganti ("Briganti Fee Decl."), Benjamin M. Jaccarino ("Jaccarino Decl.") and Todd A. Seaver ("Seaver Decl.") (filed herewith).<sup>4</sup> Plaintiffs seek Incentive Awards for their efforts representing the Class. *See* Part III, *infra*.

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<sup>4</sup> In addition, accompanying this motion are declarations from David Kovel ("Kovel Decl.") and Brian P. Murray ("Murray Decl.") and Eric F. Citron ("Citron Decl.") detailing their firms' hours and lodestar working on this case. Their firms did not incur any expenses.

## ARGUMENT

### **I. THE ATTORNEYS' FEE REQUEST IS FAIR AND REASONABLE**

Lawyers that secure a common fund 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 Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019); *In re Credit Default Swaps Antitrust Litig.* (“*CDS Litig.*”), No. 13-md-2476 (DLC), 2016 WL 2731524, at \*16 (S.D.N.Y. Apr. 26, 2016). Courts “may award attorneys’ fees in common fund cases under either the ‘lodestar’ method or the ‘percentage of the fund’ method,” although “[t]he trend in this Circuit is toward the percentage method.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). The percentage method is 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.” *Grice*, 363 F. Supp. 3d at 406; MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) (percentage method “encourage[s] early settlements by not penalizing efficient counsel, [] ensuring that competent counsel [are] willing to undertake risky, complex, and novel litigation.”).

Courts assess a fee’s reasonableness using six factors: “(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation [ ]; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.” *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

#### **A. The Negotiated Sliding Fee Scale on which Class Counsel’s Request is Based Supports the Proposed Fee Award**

Court-awarded attorneys’ fees should reflect “what a reasonable, paying client would be willing to pay” for counsel’s services. *Arbor Hill Concerned Citizens Neighborhood Ass’n v. City of Albany & Albany County Bd. of Elections*, 522 F.3d 182, 184 (2d Cir. 2008) *see also Goldberger*, 209 F.3d at 52 (“market rates . . . are the ideal proxy for [class counsel’s]

compensation.”). Courts give great weight to negotiated fee agreements because they typically reflect actual market rates. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) (“In many cases, the agreed-upon fee will offer the best indication of a market rate.”). If a “sophisticated benefits fund with fiduciary obligations to its members and [ ] a sizeable stake in the litigation” negotiates an *ex ante* fee agreement, courts recognize that a “rebuttable ‘presumption of correctness’” should apply to those terms. *CDS Litig.*, 2016 WL 2731524, at \*16.

The retainer executed between Class Counsel and CalSTRS meets this standard. CalSTRS is the second largest pension fund in the United States, with more than 980,000 members and beneficiaries, and an investment portfolio currently valued at \$309.3 billion. *See* Declaration of Brian Bartow dated July 13, 2023 (“Bartow Decl.”) ¶ 4. In addition to negotiating the fee schedule, CalSTRS has been an active and engaged plaintiff since joining the Action in 2017, supervised Class Counsel’s work, and supports both the motion for final approval and the requested attorneys’ fee award. *See id.* ¶¶ 10-21. The CalSTRS agreement provides Class Counsel may seek a 28% fee on the first \$25 million recovered in the Action, 25% on the next \$175 million recovered and lower percentages for additional recoveries. *See id.* ¶ 7. The agreement further caps such fees at 3.5 times Plaintiffs’ Counsel’s total lodestar. *See id.* The attorneys’ fee request of 26.01% (\$19,237,500) reflects the agreed fee scale and even standing alone, supports the reasonableness of the proposed award. Bartow Decl. ¶ 19. But as set forth below, it does *not* stand alone. The risks that Class Counsel faced, the time and effort they expended, and the quality of the results all demonstrate that CalSTRS knew what it was doing and the fee that it negotiated is indeed reasonable.

#### **B. The Risks Faced by Class Counsel in this Complex Action Support the Fee Award**

The risks involved in pursuing a class action are a crucial factor in calculating a fee award. *Goldberger*, 209 F.3d at 54 (“risk of success” historically labeled as “‘perhaps the foremost’ factor to be considered” in awarding fees); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust*

*Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014) (“The most important *Goldberger* factor is often the case’s risk”). Risks are “measured as of when the case is filed.” *Goldberger*, 209 F.3d at 55.

When a large, complex action is coupled with significant litigation risks, a greater fee award is warranted. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) (“the magnitude and complexity of the litigation also weigh in favor of a significant award”). Such cases require a greater investment by counsel, of effort, expertise, and resources, to competently litigate the class claims. Class actions involving antitrust and commodities claims stand 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); *In re Platinum & Palladium Commodities Litig.*, No. 10-cv-3617, 2014 WL 3500655, at \*12 (S.D.N.Y. July 15, 2014) (commodities cases are “complex and expensive” to litigate). Specific to this Action, there were a number of risks, including:

**Risk of Personal Jurisdiction Defenses:** The potential assertion of personal jurisdiction defenses by numerous foreign-based Defendants posed an immediate risk to the prosecution of the claims. This risk materialized when those Defendants challenged personal jurisdiction in their motions to dismiss the First Amended Class Action Complaint (“FAC”), Second Amended Class Action Complaint (“SAC”) and Third Amended Complaint (“TAC”), and claims against DB Group Services (UK) Ltd. and BlueCrest Capital Management LLP were dismissed from the FAC on this ground. Declaration of Vincent Briganti dated August 9, 2023 (“August 2023 Briganti Decl.”) ¶¶ 21, 27, 29-30, 42 (filed herewith).

**Risk of Pleading and Merits Defenses:** At the outset of this Action, it was unclear whether a private right of action was available under antitrust laws for the alleged misconduct, or whether Plaintiffs had antitrust standing. *See, e.g., In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 935 F. Supp. 2d 666, 688 (S.D.N.Y. 2013) (“*LIBOR I*”) (dismissing antitrust claims). The Second



Circuit's decision in *Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 771-75 (2d Cir. 2016), vacated the prior consensus that private plaintiffs did not have antitrust claims for benchmark rate manipulation. But that decision came more than a year after Class Counsel began this litigation.

*Gelboim* did not mitigate other risks relating to antitrust standing, Article III standing, extraterritoriality, and the inherent difficulty of litigating against some of the world's largest financial institutions. Some of these additional risks came to fruition when the Court granted Defendants' motion to dismiss the FAC and SAC. *See* August 2023 Briganti Decl. ¶¶ 27, 36. Even after the parties moved for and the Second Circuit granted the motion to remand this case in light of its opinion in *Fund Liquidation Holdings LLC v. Bank of America Corp.*, 991 F.3d 370 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 757 (2022), which resolved the Article III issue that led this Court to dismiss the SAC, UBS AG ("UBS") continues to seek dismissal of the TAC on Article III and other grounds. *Id.* ¶ 42, 44.

**Risk Related to Discovery, Class Certification, and Establishing Liability:** Plaintiffs' risks would only increase as the litigation advances. Discovery would have been hotly contested and costly. In addition to the ordinary yet substantial difficulties of litigating discovery against highly skilled counsel with well-resourced clients, many Defendants are located abroad. *See, e.g., In re Graña y Montero S.A.A. Sec. Litig.*, No. 17-cv-01105 (LD)(HST), 2021 WL 4173684, at \*17 (E.D.N.Y. Aug. 13, 2021), *report and recommendation adopted*, No. 17-cv-1105 (LDH)(ST), 2021 WL 4173170 (E.D.N.Y. Sept. 14, 2021) (finding risk of litigation, especially the difficulties of obtaining discovery from foreign defendants and third-parties, as a factor in favor of awarding the requested attorneys' fees); *Berlinsky v. Alcatel Alsthom Compagnie Générale D'Electricité*, 970 F. Supp. 348, 352 (S.D.N.Y. 1997) (finding increased risk due to defendant's foreign status as a factor in deciding attorney's fees). Furthermore, given that the Class Period is from January

2001-December 2011, Plaintiffs' Counsel could potentially find that relevant witnesses are unavailable, memories are faded, and relevant documents are inaccessible, lost, or destroyed.

Using data and documents obtained during discovery, Plaintiffs' Counsel would have to engage experts to construct a sophisticated class-wide impact and damages model that accounted for different types of derivatives, the direction and timing of the manipulation of Swiss franc LIBOR, and the duration of the effects of the manipulated Swiss franc LIBOR rate. This complex work would be the subject of vigorous attack by Defendants and their experts. A battle of experts heightens the risk as "it is virtually impossible to predict with any certainty which testimony would be credited, and ultimately, which damages would be found to have been caused by actionable, rather than the myriad nonactionable factors." *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744-45 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986); *see also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 410 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) (experts "tend[] to increase both the cost and duration of litigation").

Defendants would likely use the complexity of the financial products in the market, the sophistication of their alleged misconduct, the temporal breadth of the alleged conspiracy, and the alleged market movements on various days to argue that a litigation class cannot be certified on these claims. *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 494 (S.D.N.Y. 2018) (stating that "the certainty of maintaining a class action is by no means guaranteed" and noting that maintaining the action as a class requires proving the 16-bank conspiracy that was alleged); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019) ("GSE")(the risk of maintaining a class through trial "weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated"); *In re AOL Time*

*Warner, Inc. Sec. and "ERISA" Litig.*, No. 02-cv-5575 (SWK), 2006 WL 903236, at \*12 (S.D.N.Y. Apr. 6, 2006) (“[T]he process of class certification would have subjected Plaintiffs to considerably more risk than the unopposed certification that was ordered for the sole purpose of the Settlement.”). Even if a litigation class were to be certified, that certification could be challenged on appeal, or at another stage in the litigation. *See, e.g., In re Visa Check/Mastermoney Antitrust Litig.*, 192 F.R.D. 68, 89 (E.D.N.Y. 2000), *aff'd sub nom.*, 280 F.3d 124 (2d Cir. 2001) (“If factual or legal underpinnings of the plaintiffs’ successful class certification motion are undermined once they are tested . . . , a modification of the order, or perhaps decertification, might then be appropriate.”); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (“While plaintiffs might indeed prevail [on class certification], the risk that the case might be not certified is not illusory and weighs in favor of the Class Settlement.”). Class Counsel would continue to bear the risk of maintaining the class through trial and appeal.

Even if they succeeded in certifying a class, Class Counsel would still need to overcome the risk of establishing Defendants’ liability. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. at 494 (“[A]s to liability, establishing the existence and extent of a conspiracy will necessarily be a complex task, and many of the hurdles that plaintiffs have overcome at the pleading stage will raise substantially more difficult issues at the proof stage.”); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) (“*NASDAQ III*”) (discussing the difficulties of proving antitrust liability where plaintiffs had to prove, among other things, a complex conspiracy involving a larger number of defendants, a common motive, actions against defendants’ financial interest and/or evidence of coercion). Such work would require, among other things, evidence that uses technical financial language and industry jargon with which a factfinder is likely unfamiliar, and expert witnesses to address complex topics. Defendants would

likely counter with expert opinions of their own, increasing the challenge of proving liability.

**Risk of Establishing Damages:** Even if Plaintiffs were to certify a litigation class *and* demonstrate liability, they would still need to prove actual damages at trial. There is a substantial risk that a jury might accept one or more of Defendants’ damages arguments and award far less than the funds secured by the Settlements, or even nothing at all. “[T]he 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.” *Wal-Mart Stores, Inc.*, 396 F.3d at 118; *accord In re Sumitomo Copper Litig.*, 189 F.R.D. 274, 283 (S.D.N.Y. 1999) (“These [ ] settlements are outstanding in light of the substantial risk that a jury might award only a modest judgment or find no damages at all.”). A successful *Daubert* challenge or effective cross-examination at trial could result in a reduced verdict despite proving liability. Even where regulators have secured a guilty plea, civil juries have found no damages. *See, e.g., Special Verdict on Indirect Purchases, In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 07 MDL 01827 (N.D. Cal. Sept. 3, 2013), ECF No. 8562.

**Risks Due to the Magnitude and Complexity of the Claims:** This case involves an alleged conspiracy among multiple banks and interdealer brokers to fix Swiss franc LIBOR prices over an 11-year period through multiple means, including, *inter alia*: (1) making false Swiss franc LIBOR panel submissions; (2) colluding to increase the “bid-ask spread” on transactions in Swiss Franc LIBOR-Based Derivatives, and (3) sharing proprietary information. ECF No. 185 (SAC) ¶¶ 14, 65, 154, 155, 270-71. The work required to understand the inner workings of an alleged cartel with this level of sophistication and number of participants was “extraordinary” given its “complexity and scope” and required Class Counsel to master the properties of complex financial instruments and markets. *See In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL

3250593, at \*4 (S.D.N.Y. June 16, 2020) (finding “complexity [is] present [where] plaintiffs claimed that the defendants colluded in the GSE Bond market over more than seven years, involving thousands of bond issuances, and implicating sixteen defendants”). Over the course of the eight years of litigation, the parties have produced over 460 docket entries, including three amended complaints and three motions to dismiss with briefing totaling over 700 pages (not including related exhibits, declarations, and supplemental law letters). The nature, duration, and size of the case, complexity of the financial instruments, and the sophistication and depth of the conspiracy, together with the other substantial risks Class Counsel encountered in prosecuting this Action, weigh heavily in favor of approving the requested fee.

### **C. Plaintiffs’ Counsel Invested Substantial Time, Labor, and Resources**

Plaintiffs’ Counsel have devoted 21,000 hours of attorney and staff time since the inception of the case to prosecute this Action. *See* 2023 August Briganti Decl.; Briganti Fee Decl.; Jaccarino Decl., Seaver Decl.; Kovel Decl.; Murray Decl.; Citron Decl. This time does not include any time associated with preparing this motion. Class Counsel contributed the majority of those hours (14,567 hours). Briganti Fee Decl. ¶¶ 7-8. Below is a summary of the work performed and the resources devoted to this prosecution.

#### **1. The Initial Investigation and Filing of the Complaint**

Class Counsel launched a comprehensive, multifaceted investigation after public disclosure of settlements, fines and penalties paid by UBS, RBS, JPMorgan and Credit Suisse to government regulators. Lowey assembled a team of lawyers to review all publicly available information related to the alleged misconduct, identify market data and other information concerning Swiss Franc LIBOR-Based Derivatives, and consult with experts and clients. August 2023 Briganti Decl. ¶ 11. As a result of their investigation, on February 5, 2015, Class Counsel filed the initial class action complaint against Credit Suisse Group AG, JPMorgan, RBS, and UBS

on behalf of a class of Swiss Franc LIBOR-Based Derivatives investors. *Id.* ¶ 17. This complaint alleged that Defendants unlawfully conspired to fix and restrain trade in, and intentionally manipulated Swiss franc LIBOR and the prices of Swiss Franc LIBOR-Based Derivatives during the period of at least January 1, 2005 through at least December 31, 2009, violating the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*, the Clayton Antitrust Act, 15 U.S.C. §§ 15-16, *et seq.* the Commodity Exchange Act, 7 U.S.C. §§ 1, *et seq.* (“CEA”), the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, *et seq.*, and common law unjust enrichment. *Id.*, ¶ 17.

## 2. Amended Pleadings, Motions to Dismiss, and Appeal Work

Class Counsel, assisted by Plaintiffs’ Counsel, continued their investigation of the underlying allegations and, on June 19, 2015, filed the FAC, which joined additional Plaintiffs and Defendants to the Action. *Id.*, ¶ 18. On August 18, 2015, Defendants filed two motions to dismiss the FAC for, *inter alia*: lack of personal jurisdiction grounds, failure to state a claim and lack of subject matter jurisdiction. *Id.*, ¶ 21. To support these motions, Defendants filed three briefs in support and 10 declarations containing over 600 pages of exhibits. *Id.* On August 20, 2015, Plaintiffs sought jurisdictional discovery, which the Court denied. *Id.*, ¶ 22. On October 19, 2015, Plaintiffs opposed Defendants’ motions to dismiss, filing three briefs totaling 106 pages. *Id.*, ¶ 23. On November 18, 2015, Defendants collectively filed three reply briefs to support their motions. *Id.*, ¶ 24.

Over the next two years, Class Counsel continued its research and investigation. They also submitted 11 letters totaling 62 pages alerting the Court to supplemental authorities related to the pending motions to dismiss and opposing arguments advanced in letters submitted by Defendants. *Id.*, ¶ 25. On August 2, 2017, the Court set oral argument on the motions to dismiss for August 14. *Id.*, ¶ 26. In the days before the hearing, Class Counsel prepared and refined their arguments, incorporating relevant case law that had developed while the motion was pending. At around the

same, Plaintiffs' Counsel obtained and reviewed a substantial volume of valuable cooperation materials produced by JPMorgan as part of a proposed settlement. *See* Part I.C.3, *infra*.

Following the Court's "without prejudice" dismissal of the FAC on September 25, 2017, Class Counsel worked diligently to address each of the pleading deficiencies identified by the Court and bolster Plaintiffs' allegation using the JPMorgan cooperation materials. August 2023 Briganti Decl. ¶ 28. On December 8, 2017, Plaintiffs filed the SAC, which added Plaintiffs Richard Dennis and CalSTRS and other Defendants<sup>5</sup> allegedly involved in the manipulation. *Id.* The Original Defendants<sup>6</sup> moved to dismiss the SAC on February 7, 2018 on various grounds, including Plaintiffs' lack of capacity to sue and Article III standing, lack of personal jurisdiction grounds, and failure to state a claim. *Id.*, ¶ 29. The Broker Defendants filed their joint motion to dismiss on April 6, 2018. *Id.*, ¶ 30. Plaintiffs opposed these motions on April 16, 2018, and June 4, 2018, respectively, in briefs totaling 155 pages. *Id.*, ¶¶ 31, 33. The Defendants filed extensive reply memoranda further supporting their motions. *Id.*, ¶ 32, 34. Defendants' motions to dismiss the SAC comprised six memoranda that were collectively almost 250 pages, 14 declarations and over 300 pages of exhibits.

Over the next year, Class Counsel continued its legal research and investigation into the novel issues raised in this Action. Class Counsel submitted 8 letters totaling 37 pages alerting the Court to supplemental authorities related to the pending motions to dismiss and opposing arguments advanced in letters submitted by Defendants. *Id.*, ¶ 35.

On September 16, 2019, the Court granted Defendants' motions to dismiss the SAC. *Id.*, ¶ 36. The Court held that Plaintiff Sonterra did not have Article III standing to initiate the case

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<sup>5</sup> TP ICAP plc, Tullett Prebon Americas Corp., Tullett Prebon (USA) Inc., Tullett Prebon Financial Services LLC, Tullett Prebon (Europe) Limited, Cosmorex AG, ICAP Europe Limited, ICAP Securities USA LLC, NEX Group plc, and Intercapital Capital Markets LLC, Velcor SA, and Gottex Brokers SA (collectively, the "Broker Defendants").

<sup>6</sup> The Original Defendants are Credit Suisse, RBS, UBS, and Deutsche Bank.

because it did not exist at the time of filing. Further, the Court held that substitution of a new class representative with standing to sue could not cure the lack of subject matter jurisdiction. *Id.*

On October 16, 2019, Plaintiffs filed a Notice of Appeal of the Court's September 16, 2019 decision (the "Appeal"). *Id.*, ¶ 37. On November 27, 2019, Class Counsel and appellate counsel Goldstein & Russell, on behalf of Plaintiffs, filed a motion to hold the appeal in abeyance and to remove the Appeal from the Second Circuit's expedited calendar until the Second Circuit resolved an appeal in which Class Counsel and Goldstein & Russell were already involved and which addressed issues similar the issues central to Plaintiffs' appeal. *See Fund Liquidation Holdings LLC v. Bank of Am. Corp.*, No. 19-2719 (2d Cir.) (the "SIBOR Appeal"). After the Second Circuit issued its opinion in the SIBOR Appeal, *Fund Liquidation Holdings LLC v. Bank of America Corp.*, 991 F.3d at 370 (holding that the district court had subject matter jurisdiction over the action because FLH was the real party in interest, had standing at all relevant times and may step into the dissolved entities' shoes), the parties jointly sought to have the Appeal in this Action remanded, which the Second Circuit granted on September 21, 2021. ¶¶ 39-40. This remand was the successful culmination of a procedural strategy designed by Class Counsel and Goldstein & Russell.

On November 23, 2022, Class Counsel filed Plaintiffs' Third Amended Complaint ("TAC"), augmented in part from settlement cooperation materials produced by RBS and Deutsche Bank. *Id.*, ¶ 41. Defendants again moved to dismiss the TAC, and Plaintiffs filed their opposition. *Id.*, ¶¶ 42-43. That motion was fully briefed on April 27, 2023 and remains *sub judice*. *Id.*, ¶ 44.

### **3. Settlement Negotiations**

Class Counsel engaged in hard-fought negotiations with each of the Settling Defendants, each of whom steadfastly denied any liability and maintained each had meritorious defenses. In the Fall of 2016, Plaintiffs and JPMorgan discussed the possibility of settlement. *Id.*, ¶ 46. Those



negotiations lasted over seven months and resulted in drafting a term sheet and then an executed agreement on June 2, 2017. *Id.* Pursuant to its settlement, JPMorgan provided cooperation materials that Class Counsel used to bolster Plaintiffs' SAC.

Negotiations with RBS took place over several years, starting initially with a mediation in August 2018, resuming again in April 2020 and continuing until June 2, 2021. *Id.*, ¶¶ 54-55. On February 1, 2021, RBS and Class Counsel signed a term sheet and executed the RBS Settlement Agreement on June 2, 2021, which included an agreement from RBS to provide cooperation materials. The negotiations with Deutsche Bank occurred over several months starting in September 2021. After significant discussions over the settlement consideration and the scope of cooperation materials to be provided, Deutsche Bank and Class Counsel signed a term sheet on December 16, 2021 and executed the Deutsche Bank Settlement Agreement on April 18, 2022. *Id.*, ¶ 64.

Settlement negotiations with Credit Suisse began in August 2021. After months of discussions over the key terms, including the consideration and scope of cooperation materials, the parties executed in January 2022 and signed the stipulation agreement on July 13, 2022. *Id.*, ¶¶ 66-67. Settlement negotiations between Plaintiffs and ICAP began in approximately March 2022 and continued until the ICAP Agreement was executed on March 13, 2023. *Id.*, ¶ 72. Lastly, settlement negotiations between Plaintiffs and the Settling Brokers began in September 2022 and continued until the Settling Brokers Agreement was executed on May 10, 2023. *Id.*, ¶ 79.

A substantial amount Class Counsel's legal work associated with the Settlements involved drafting term sheets, negotiating and drafting the final terms of each settlement agreement, and preparing the motions for preliminary approval of the Settlements. *Id.*, ¶¶ 52-53, 59, 64-65, 69, 77, 83.

#### **4. Development of the Distribution Plan and Class Notice Administration**

Class Counsel consulted with experts to develop a Distribution Plan that was simple for Class Members to participate and also administratively efficient. August 2023 Briganti Decl. ¶ 87; ECF No. 384-7. Using the data collected from the analysis of transactions volumes and the potential damages in the Swiss franc LIBOR-Based Derivatives market, the Distribution Plan allocates the Net Settlement Fund *pro rata* based on an estimate of the impact of Defendants' alleged manipulation on Swiss Franc LIBOR-Based Derivatives. ECF No. 384-7 at 9.

Class Counsel worked with the Settlement Administrator, Epiq Class Action and Claims Solutions, Inc. ("Epiq") to develop a comprehensive Class Notice Plan for Court approval that provided the best notice practicable for each of the six Settlements. *Id.*, ¶ 85. Lowey also worked with Epiq to ensure that the Distribution Plan was implemented correctly and that the correct information was requested from Class Members seeking to file a claim. *Id.*, ¶ 92.

After the Court preliminarily approved the six Settlements and the Class Notice Plan, Class Counsel coordinated with Epiq to implement the various forms of Class Notice and to respond to inquiries from potential Class Members regarding the Settlements. Once the Class Notice plan was implemented, Class Counsel prepared Plaintiffs' motion for final approval of the Settlements.

The amount of time and effort invested in prosecuting this Action, as described above, demonstrates that the first *Goldberger* supports the reasonableness of Class Counsel's fee request.

#### **D. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request**

In light of the substantial efforts Plaintiffs' Counsel have undertaken in this action, as described above, the resulting lodestar reasonably reflects the quality and amount of attorney resources dedicated to the Action. 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." *In re*

*Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014).<sup>7</sup> Based on the lodestar in this case, awarding the requested fee would not result in a windfall.

Plaintiffs' Counsel spent 21,000 hours<sup>8</sup> litigating the Action from 2015 through June 30, 2023, resulting in a total lodestar amount of \$15.6 million. August 2023 Briganti Decl. ¶ 102. The number of hours spent on this Action are reasonable, particularly in light of the level of independent investigation conducted by Class Counsel and Plaintiffs' Counsel to develop this case; the number and scope of Defendants' motions to dismiss, and the time and effort invested in negotiating the Settlements and developing the Distribution and Class Notice Plans. Class Counsel actively managed the case to ensure that resources were adequately and appropriately utilized, audited all time and expenses, and communicated with Supporting Counsel about the reasonableness of their time and expenses. *See* August 2023 Briganti Decl. ¶ 101.

The billing rates used to develop the lodestar are also reasonable. The hourly billing rates for attorneys working on this case ranged from \$325 to \$1,395. *See* Briganti Fee Decl. ¶ 7 (schedule listing attorney rates from \$325-\$1,295); Jaccarino Decl. ¶ 7 (schedule listing attorney rates from \$400-\$1,210); Seaver Decl. ¶ 7 (schedule listing attorney rates from \$500-\$1,170); Kovel Decl. ¶ 7 (schedule listing attorney rates from \$750-\$1,200); Murray Decl. ¶ 7 (schedule listing attorney rates from \$650-\$975); Citron Decl. (hourly rate of \$1,375). Rates in the same range have been approved as reflective of New York market rates for work of comparable size and complexity. *See, e.g., In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (LGS), 2018 WL

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<sup>7</sup> Lodestar is calculated by “multipl[y]ing the reasonable hours billed by a reasonable hourly rate.” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 347. Courts use “prevailing market rates” and current rates, rather than historical 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.

<sup>8</sup> Class Counsel audited the time and lodestar submitted by Supporting Counsel and, at the direction of Class Counsel, Supporting Counsel did not include time spent working on this motion.

5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to \$1,375 and associate rates of \$350 to \$700), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *In re Foreign Exchange*, No. 13-cv-7789 (LGS) (S.D.N.Y.), ECF No. 939 (Jan. 12, 2018).

Courts compare the resulting award to the reasonable time and labor expended to confirm that the fee award is reasonable. *Grice*, 363 F. Supp. 3d at 406. Once the lodestar figure is determined, courts typically enhance it by a positive multiplier "to reflect consideration of a number of factors, including the contingent nature of success and the quality of the attorney's work." *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002).

Courts in the Second Circuit routinely approve fee awards that result in multiplier between 2 and 6. *See, e.g., Wal-Mart Stores, Inc.*, 396 F.3d at 123 (upholding a multiplier of 3.5 as reasonable and observing that "multipliers of between 3 and 4.5 have become common"); *Carlson v. Xerox Corp.*, 355 F. App'x 523, 526 (2d Cir. 2009) ("the resulting multiplier would be 3.59, still below the 3.6 average and in line with the 3.1 median for similar cases"); *In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d 277, 283 (S.D.N.Y. 2015) ("In shareholder [class] litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk").

Here, the proposed fee award of 26.01% (\$19,237,500) represents a multiplier of 1.23 and is below the range awarded by courts in this District in complex litigation. *See, e.g., GSE*, 2020 WL 3250593, at \*5 (awarding \$77.3 million in fees, representing a 4.09 multiplier on the lodestar); *CDS Litig.*, 2016 WL 2731524, at \*18 (approving fees totaling over \$253 million, which was "equivalent to a lodestar multiple of just over 6"); *In re Citigroup Inc. Secs. Litig.*, 965 F. Supp. 2d 369 (S.D.N.Y. 2013) (awarding \$70.8 million fee, representing a 2.8 multiplier). Accordingly, the results of a lodestar cross-check further supports Class Counsel's fee request.

Class Counsel proposes to allocate the proposed fee award among Plaintiffs' Counsel in proportion to their contributions to the case.<sup>9</sup> Among Plaintiffs' Counsel, only Goldstein & Russell has a fee sharing agreement with Class Counsel. Goldstein & Russell was specifically engaged to assist with pursuing the appeal in this Action and in the *SIBOR* Appeal, which involved the same underlying issue for review—*i.e.*, the dismissal of the complaint based on the district court's determination that it lacked subject matter jurisdiction over a case initiated in the name of a dissolved plaintiff. The fee agreement with Goldstein & Russell, memorialized in a letter dated April 27, 2021, accordingly covers both cases and provides that Goldstein & Russell “would represent the plaintiffs in these matters on a full-contingent basis. For each case, our contingent fee is 10% of the first \$5,000,000 in total fees awarded by the court in that case, plus 3% of any amount beyond that. ‘Total fees awarded’ includes fees related to settlements concluded before the appeal insofar as they were unapproved by the court at the time of our retention.” Based on the settlements achieved to date, Goldstein & Russell's contingent fee award calculates to \$927,125 in this Action if the full attorneys' fee request is granted.

Pursuant to the successful strategy that Class Counsel and Goldstein & Russell designed, the appeal of this Action was held in abeyance pending the decision in the *SIBOR* Appeal. In light of the comprehensive nature of the Second Circuit's opinion in the *SIBOR* Appeal, the parties in this Action mutually agreed to seek a remand of the appeal in this Action. This represented a fully successful result in the appeal of this Action, but had the unintentional impact of depressing the amount of work Goldstein & Russell recorded specific to this Action (totaling \$47,850) compared to what Class Counsel and Goldstein & Russell had anticipated based on their experience in similar cases. Goldstein & Russell's advocacy during the appellate proceedings was critical to enabling

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<sup>9</sup> See, e.g., *In re “Agent Orange” Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987) (recognizing class counsel may distribute a fee award in “some relationship to the services rendered”).

the Settlements received in this Action. Importantly, the fee sharing agreement with Goldstein & Russell also does not in any way change the overall fee being requested by Plaintiffs' Counsel.

**E. The Fee Request Is Supported by the Remaining Goldberger Factors**

**1. Class Counsel Provided High-Quality Representation**

“[T]he quality of representation is best measured by results,” *Goldberger*, 209 F.3d at 55, which are evaluated by “the recovery obtained and the backgrounds of the lawyers” involved in the suit. *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008).

**Results Obtained:** The Settlements are extraordinary, providing the Class with an immediate, substantial recovery. Based on Plaintiffs' damages analysis, the Settlements recover between 7.7% and 8.5% of the estimated class wide damages. August 2023 Briganti Decl. ¶ 88.

Moreover, the size of the Settlement Fund may grow as Class Counsel continues to prosecute UBS. In negotiating the Settlements, Class Counsel secured significant cooperation discovery from Defendants that will aid the prosecution of claims in this Action. *See* Settlement Agreements. This cooperation was an essential component of the Settlement Agreements, requested to enhance Class Counsel's ability to further prosecute the Action.

The Settlement Class consists of numerous institutional investors with the sophistication and resources to object to the Settlements or opt out to pursue claims on their own. While the deadlines to object or opt out have not passed, it is noteworthy that so far no objections have been lodged and no Class Members have opted out of the Settlements. *See* Declaration of Cameron R. Azari on behalf of Epiq Regarding Implementation of Notice Program ¶¶ 29, 31. The Class's reaction provides another indication of the incredible results achieved.

**Background of Lawyers Involved:** Class Counsel have decades of experience prosecuting class action cases, including some of the largest class action recoveries under the commodities and

antitrust laws.<sup>10</sup> This includes specific expertise in benchmark manipulation as demonstrated by Class Counsel’s current tenure as lead counsel in cases alleging anticompetitive and manipulative conduct for several “IBOR” rates. August 2023 Briganti Decl. ¶ 45. Supporting Counsel contributed their critical insights and expertise in supporting Plaintiffs’ claims.

Another consideration for assessing the quality of the representation is “[t]he quality of the opposing counsel.” *See Maley*, 186 F. Supp. 2d at 373. Counsel representing Settling Defendants are among the top law firms in the country, and their expertise and experience ensured that Settling Defendants had formidable representation. *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”).<sup>11</sup> The fact that Class Counsel prosecuted this Action for more than eight years against numerous formidable opponents and recovered of \$73,950,000 is further confirmation of the quality of representation provided.

## **2. Class Counsel’s Fee Request is Within the Range Used Under the Second Circuit’s Preferred Percentage-Based Methodology**

The reasonableness of the requested fee is confirmed by using comparable cases applying the “percentage method” of fee calculation as guideposts. *Grice*, 363 F. Supp. 3d at 406. The requested attorneys fee award represents 26.01% of the Settlement Fund. For settlements involving the most complex claims, including antitrust, securities, RICO and CEA class actions, courts in this District routinely grant fee requests in the range and typically above 30%. *See, e.g., In re Warner Commc’ns Secs Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) (“courts in this Circuit and elsewhere have awarded fees in the 20%–50% range in [complex] class action”). Fee awards in

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<sup>10</sup> *See* Briganti Fee Decl. Ex. A (Lowey’s firm resume).

<sup>11</sup> *See also 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.”); *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MC-2543 (JMF), 2020 WL 7481292, at \*2 (S.D.N.Y. Dec. 18, 2020) (litigating against sophisticated opposing counsel with a well-funded defendant are “the hallmarks of a challenging case.”).

the range of 30% have been granted in numerous complex class actions in this Circuit where the settlement amount is around \$75 million. *See, e.g., In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-CV-2548 (VSB), 2019 WL 4734396, at \*2 (S.D.N.Y. Sept. 23, 2019) (awarding one-third fee from \$75 million settlement fund); *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-1884 (AVC), 2007 WL 2115592, at \*5 (D. Conn. July 20, 2007) (granting fee request of 30% of the \$80 million settlement fund, over the objection of a public pension fund); *In re Amaranth Nat. Gas Commodities Litig.*, No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at \*2 (S.D.N.Y. June 11, 2012) (awarding a 30% fee from a \$77.1 million settlement fund).

In complex cases asserting claims of market manipulation, courts have granted fee awards of at least 25% or more for similar (or greater) recoveries. *See, e.g., Order, In re JPMorgan Precious Metals Spoofing Litigation*, No. 1:18 Civ. 11856 (GHW) (S.D.N.Y. July 7, 2022), ECF No. 114 (awarding 33 1/3% of the \$60 million gross settlement fund); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, No. 14-cv-7126 (JMF), 2018 WL 6250657, at \*3 (S.D.N.Y. Nov. 29, 2018) (awarding 26% of the net settlement fund from a \$504.5 million settlement involving the manipulation of ISDAfix); *Order, In re Nat. Gas Commodities Litig.*, No. 03 Civ. 6186 (VM) (S.D.N.Y. May 26, 2006), ECF No. 445 (awarding attorneys' fee of one-third of gross common fund of \$72,762,500), Revised Order (Jun. 22, 2007), ECF No. 507 (awarding one-third of \$28,087,500 gross settlement as attorneys' fees); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y.) (Pollack, J.) (approving attorneys' fees that equaled 27.5% of \$116.6 million settlement and that represented a lodestar multiplier of 2.5).

Empirical studies underscore the reasonableness of the requested fee. A survey of antitrust class settlements found that, between 2009 and 2021, the median attorneys' fees award was 30% for settlements ranging from \$50 million to \$99 million. *See* Center for Litigation and Courts and



The Huntington National Bank, *2021 Antitrust Annual Report: Class Actions in Federal Court* (April 2022) at 27-28;<sup>12</sup> *see also* Theodore Eisenberg et. al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937, 952 (2017) (the median and average percentages awarded for attorneys' fees in antitrust recoveries between 2009-2013 were 30% and 27%, respectively); William B. Rubenstein, 5 *NEWBERG AND RUBENSTEIN ON CLASS ACTIONS* § 15:78 (6th ed. 2023) (mean percentage for attorneys' fees in Second Circuit class actions from 2009 to 2013 was 28%). In sum, when all of the metrics and authorities above are considered, the fee request is demonstrably within the range of reasonable fee awards granted by courts in this District.

### 3. Public Policy Supports the Fee Request

Had Class Counsel not prosecuted this Action, the class of investors in Swiss Franc LIBOR Products would have been left without recompense for their losses. Despite the government investigations, many investors harmed by the conspiracy would not have received any money at all but for this Action. *See, e.g., In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 352 (“providing lawyers with sufficient incentive to bring common fund cases . . . serve[s] the public interest”) (citations omitted). Moreover, public policy encourages enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) (“This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws.”). Awarding a reasonable percentage of the common fund further ensures that Class Counsel retains the ability and incentive to pursue antitrust violations at their own expense even when 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

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<sup>12</sup> Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4117930](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4117930).

public interest.”). Benchmark rate manipulation claims are difficult to litigate. Awarding a reasonable fee will encourage other counsel to further investigate and bring to light misconduct in financial markets, which will promote more scrupulous industry practices, increased supervision to prevent misconduct, and ultimately lead to a fairer and more efficient market for all participants.

## **II. THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES IS REASONABLE AND SHOULD BE GRANTED**

Attorneys that obtain “a common settlement fund for a class are entitled to reimbursement of [reasonable] expenses that they advance to a class.” *Meredith Corp.*, 87 F. Supp. 3d at 671; *accord In re Arakis Energy Corp. Sec. Litig.*, No. 95 Civ. 3431 (ARR), 2001 WL 1590512, at \*17 n.12 (E.D.N.Y. Oct. 31, 2001). Such costs are “compensable if they are of the type normally billed by attorneys to paying clients.” *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at \*22 (S.D.N.Y. Dec. 18, 2019); *accord Maley*, 186 F. Supp. 2d at 369 (“the costs of litigation should be spread among the [common] fund’s beneficiaries”).

As detailed in declarations filed herewith, Plaintiffs’ Counsel incurred litigation expenses in this Action totaling \$342,926.76. August 2023 Briganti Decl. ¶¶ 104-05; Briganti Fee Decl. ¶ 10; Jaccarino Decl. ¶ 10; Seaver Decl. ¶ 10. Approximately 72% or \$247,922.52 of these costs were spent on expert work. Courts routinely approve disbursements for expert expenses incurred to prosecute the case. *See, e.g., CDS Litig.*, 2016 WL 2731524, at \*18 (approving \$10 million in expenses where “[m]ost of these expenses were incurred in connection with retention of experts”); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353. The expert work was critical in assisting Class Counsel with the identification of Defendants’ alleged manipulation of Swiss franc LIBOR, assessing the impact of the misconduct on Plaintiffs and the Settlement Class, and developing the Distribution Plan. Plaintiffs’ Counsel incurred \$39,711.70 in data, legal, and financial computer research costs. Briganti Fee Decl. ¶ 10; Jaccarino Decl. ¶ 10; Seaver Decl. ¶ 10.

Other case-related expenses include charges for travel, court filing fees, document hosting/production and discovery, mediation, process servers, in-house photocopying, telephone usage, and mailing/express shipping. Briganti Fee Decl. ¶ 10; Jaccarino Decl. ¶ 10; Seaver Decl. ¶ 10. These costs are considered reasonable and necessary expenses and appropriately paid from the common fund. *See Meredith Corp.*, 87 F. Supp. 3d at 671; *Guevoura Fund Ltd.*, 2019 WL 6889901, at \*22.

### **III. PLAINTIFFS' REQUESTED INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE GRANTED**

Plaintiffs respectfully request Incentive Awards totaling \$90,000, to be shared equally among CalSTRS, Richard Dennis, and FLH for their service as class representatives in this Action. Incentive Awards are granted at the Court's discretion to "compensate class representatives for their services to the class and simultaneously serve to incentivize them to perform this function." William B. Rubenstein, 5 NEWBERG AND RUBENSTEIN ON CLASS ACTIONS § 17:1 (6th ed. 2023); *see also In re Gen. Motors LLC*, 2020 WL 7481292, at \*4 ("In the Second Circuit, Plaintiff incentive awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs."). In deciding whether to grant such awards, a court considers "the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (*e.g.*, factual expertise), any other burdens sustained by that plaintiff . . . and, of course, the ultimate recovery." *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016); *accord Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv-118 (VM), 2012 WL 1981505, at \*3 (S.D.N.Y. June 1, 2012); *Beckman v. Keybank, N.A.*, 293 F.R.D. 467, 483 (S.D.N.Y. 2013).

Plaintiffs were essential to the successful prosecution of this case. They willingly took on the risk of participating knowing that benchmark rate manipulation suits are difficult to litigate. Plaintiffs provided access to their data and their knowledge of the market and market conditions. They reviewed their individual allegations in the complaints to confirm the accuracy and provided feedback on the characterization of the claims. Plaintiffs' Counsel communicated with Plaintiffs, including during settlement negotiations, and each Plaintiff signed off on the Settlements.

The requested awards represent 0.12% of the Settlement Fund and are on par with awards made in other actions. *See, e.g., In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, No. 05-md-1720(MKB)(JO), ECF No. 7823 (E.D.N.Y. Dec. 16, 2019) (awarding class representatives between \$53,600 and \$208,000 for out-of-pocket expenses and as a service award); *Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at \*4 (granting 0.1% of the Settlement fund, \$500,000, to eight plaintiffs as incentive awards); *Dial Corp.*, 317 F.R.D. at 438-39 (awarding 0.12% of the \$244 million settlement fund (\$300,000) to six class representatives); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775 (JG)(VVP), 2015 WL 5918273, at \*6 (S.D.N.Y. Oct. 9, 2015) (granting \$540,000 in incentive awards, representing 0.06% of the total \$900 million in settlements, to six class representatives); *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD), ECF No. 724 (S.D.N.Y. Nov. 10, 2016) (awarding \$580,000 in incentive awards to plaintiffs, representing 1% of the settlement fund). The Incentive Awards should be granted in light of their reasonable size and Plaintiffs' efforts in this case.

### **CONCLUSION**

For the foregoing reasons, Class Counsel respectfully request the Court approve their motion for attorneys' fees and payment of litigation costs and expenses, and Plaintiffs' request for Incentive Awards, in the amounts set forth above.

Dated: August 9, 2023  
White Plains, New York

**LOWEY DANNENBERG, P.C.**

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