

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

JAMES CONTANT, *et al.*,

*Plaintiffs,*

v.

BANK OF AMERICA  
CORPORATION, *et al.*,

*Defendants.*

No. 17-cv-3139-LGS

(related to No. 13-cv-7789-LGS)

**DECLARATION OF MICHAEL DELL'ANGELO IN SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENTS AND  
CERTIFICATIONS OF THE PROPOSED SETTLEMENT CLASSES FOR  
SETTLEMENT PURPOSES**

Pursuant to 28 U.S.C. § 1746, I, Michael Dell'Angelo, declare as follows:

1. I am a Managing Shareholder in the law firm of Berger Montague PC. My firm serves as attorneys of record for Plaintiffs in this matter and was previously designated as Settlement Class Counsel with respect to the Citigroup and MUFG Settlements. *See* ECF No. 297 (the "Citigroup/MUFG Preliminary Approval Order").

2. I have been actively involved in prosecuting this action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called upon and sworn as a witness, I could competently testify thereto.

3. I submit this Declaration in support of Plaintiffs' Motion for Preliminary Approval of the Standard Chartered Bank ("SC") Settlement (the "SC Settlement"), the Société Générale ("SG") Settlement (the "SG Settlement"), and the "Group Settlement" with Defendants Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Inc. ("Bank of America"); Barclays Bank PLC and Barclays Capital Inc. ("Barclays"); BNP Paribas (identified in the Complaint as BNP Paribas Group), BNP Paribas US Wholesale Holdings Corp., previously known as BNP Paribas North America, Inc., and BNP Paribas Securities Corp., which now includes BNP Paribas Prime Brokerage, Inc. ("BNP Paribas"); Credit Suisse AG and Credit Suisse Securities (USA) LLC ("Credit Suisse"); Deutsche Bank AG ("Deutsche Bank"); The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (now known as Goldman Sachs & Co. LLC) ("Goldman Sachs"); HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc. ("HSBC"); JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. ("JPMorgan"); Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc ("Morgan Stanley"); RBC Capital Markets, LLC ("RBC"); The Royal Bank of Scotland PLC (now known as NatWest Markets PLC) and RBS Securities Inc.

(now known as NatWest Markets Securities Inc.) (“RBS”); UBS AG, UBS Group AG, and UBS Securities LLC (“UBS”) (collectively, (“Group Settling Defendants”) (together with SC and SG, “New Settling Defendants”).

4. Attached as Exhibit A is a true and correct copy of the proposed Stipulation and Agreement of Settlement with SC.

5. Attached as Exhibit B is a true and correct copy of the proposed Stipulation and Agreement of Settlement with SG.

6. Attached as Exhibit C is a true and correct copy of the proposed Stipulation and Agreement of Settlement with Group Settling Defendants.

7. Attached as Exhibit D is a proposed postcard Notice to be disseminated to the members of the Settlement Classes.

8. Attached as Exhibit E is a proposed Long-Form Notice to be disseminated to the members of the Settlement Classes.

9. Attached as Exhibit F is a true and correct copy of the Declaration of Dr. Janet S. Netz (“Netz Decl.”) concerning Plaintiffs’ proposed method of allocating the Net Settlement Fund.

10. Attached as Exhibit G is a true and correct copy of the Declaration of Jeanne C. Finegan, Apr, Concerning Ability to Provide Adequate Notice to Settlement Class Members Through Direct Notice Methods and Proposed Multi-Media Notice Program (the “Notice Plan”).

11. Attached as Exhibit H is a true and correct excerpt of the October 26, 2018, Trial Transcript in the criminal action *USA v. Usher et al.*, No. 1:17-cr-00019 (S.D.N.Y.), ECF No. 240, in which the jury renders its not guilty verdict.

12. Attached as Exhibit I is a true and correct excerpt of the October 25, 2018, Trial Transcript in the criminal action *USA v. Usher et al.*, No. 1:17-cr-00019 (S.D.N.Y.), ECF No. 239, in which the Department of Justice and defendants present their closing arguments.

13. As attorney of record for the Plaintiffs, and with additional counsel representing Plaintiffs in this action (collectively, “Class Counsel”), we have undertaken extensive settlement negotiations with counsel for SC. Those settlement discussions began in May 2019, and culminated in the SC Settlement signed on November 4, 2019, after six months of vigorous, arm’s-length negotiations by the parties that included frank discussions of the relative strengths and weaknesses of the parties’ claims and defenses. Plaintiffs were informed throughout the settlement negotiations by the expert analyses described below, as well as Class Counsel’s investigation of the alleged conspiracy and its effects, including discovery obtained from Defendants, publicly available news articles, press releases and other reports, and researching the applicable law.

14. I, along with Class Counsel, also undertook extensive settlement negotiations with counsel for Defendant SG. Those negotiations began on May 15, 2019, and spanned three months of arm’s-length negotiations and exchanges of draft settlement agreements. The parties reached a settlement agreement in principle on August 13, 2019, but continued to exchange draft settlement agreements throughout the following weeks before culminating in a signed settlement agreement on September 10, 2019. The agreed-upon cooperation guaranteed that Plaintiffs would obtain discovery from SG, which is particularly valuable as SG is based in France.

15. For a substantial period of Plaintiffs’ settlement negotiations with SG, and at the time the SG Settlement was finalized, SG was dismissed from the case. Although Plaintiffs could have sought to appeal that order or filed a motion for leave to file an amended complaint adding jurisdictional allegations regarding SG, the success of such efforts would have been far from

certain. Thus, absent the SG Settlement, there is no guarantee that Plaintiffs would have been able to recover any funds—or obtain any discovery materials—from SG.

16. Finally, I, along with Class Counsel, also undertook extensive settlement negotiations with counsel for the Group Settling Defendants beginning in November 2019. The parties reached an agreement in principle on February 19, 2020, and thereafter exchanged draft settlement agreements culminating in a signed settlement agreement on April 24, 2020. *Id.* Critically, shortly prior to the commencement of the parties' Group Settlement negotiations, on September 3, 2019, the Court in the related direct-purchaser action *FOREX* issued an order denying the *FOREX* plaintiffs' motion to certify their proposed classes pursuant to Fed. R. Civ. P. 23(b)(3). *See FOREX*, 2019 WL 4171032, at \*1 (S.D.N.Y. Sept. 3, 2019) (the "*FOREX* Class Order"). In addition, the deadline for fact discovery and for the parties to file pre-motion letters regarding summary judgment and class certification motions was imminent. The impending risks and expenses associated with class certification, which were heightened in light of the Court's *FOREX* Class Order, and potential summary judgment motion(s) were significant factors that Class Counsel and I considered in determining a reasonable settlement amount with the Group Settling Defendants.

17. During the settlement negotiations with New Settling Defendants, Class Counsel considered the analyses of industry expert Dr. Carol Osler to evaluate the volume of retail FX transactions relative to the volume of spot FX transactions as a whole. I, along with Class Counsel and the Plaintiffs, took into consideration the substance of Dr. Osler's analyses, the complexities of this Action, and the relative strengths and weaknesses of each side's litigation position in reaching the terms of the Settlements proposed here. Class Counsel and Dr. Osler considered a number of sources in estimating the size of the Classes at issue here as compared to the direct

purchaser class in the related action *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13-cv-7789-LGS (“*FOREX*”), including retail estimates from the Triennial Bank Survey of the Bank for International Settlements (“BIS”), the Federal Reserve Bank of Cleveland, Dr. Osler’s own academic research, and other industry data and sources. These sources indicated that the daily average volume of retail FX trading relative to the overall direct purchaser FX Instrument market at issue in *FOREX* is likely between 10 and 30 percent. Additionally, because the proposed Settlement Classes at issue here are limited to the eight states of New York, Arizona, California, Florida, Illinois, Massachusetts, Minnesota, and North Carolina, the estimate was further reduced to account for the total size of these Classes. According to the U.S. Census Bureau’s Population Estimates, the populations of the eight states at issue in this Action account for 37.7 percent of the overall U.S. population.

18. Applying the market share estimates prepared by Dr. Osler, Class Counsel took into consideration the settlement amounts with SC, SG, and Group Settling Defendants approved by the Court in *FOREX*.

19. The *FOREX* plaintiffs settled with SC for \$17,200,000. *FOREX* ECF No. 822-5. Applying the more conservative retail FX market share estimate of 10 percent and the 37.7 percent population estimate to the SC *FOREX* settlement results in a *pro-rata* indirect amount of \$648,440. Applying the high-end 30 percent retail FX market share estimate and the 37.7 percent population estimate to the SC \$17.2 million *FOREX* settlement results in a *pro-rata* indirect amount of \$1,945,320. The \$1,720,000 SC Settlement here is therefore at the high end of the *pro-rata* range of reasonableness based on the Court-approved direct-purchaser settlements in *FOREX*.

20. In *FOREX*, the SG settlement provided for a payment of \$18 million for both the Direct and the Exchange-Only Settlement Classes. *See FOREX* ECF No. 822-4. Applying the same

state population and retail FX market share estimates described above, the retail FX market share portion of the of \$18 million *FOREX* SG settlement is between \$678,600 (using the 10% estimate) and \$2,035,800 (using the 30% estimate). Therefore, even though SG was dismissed from the action when the settlement was reached here, the SG Settlement amount of \$975,000 is still well within the *pro-rata* range of reasonableness based on the *FOREX* settlement where SG was not dismissed when it settled with the plaintiffs in that action.

21. The *FOREX* litigation is ongoing as to Credit Suisse, but all eleven other Group Settling Defendants entered into settlements with the *FOREX* plaintiffs totaling \$1,862,575,000. *See FOREX* ECF Nos. 481, 822, 877. Applying the more conservative retail FX market share estimate of 10 percent and the 37.7 percent population estimate to the Group Settling Defendants' *FOREX* total settlement amount results in a *pro-rata* indirect amount of \$70,219,078. Applying the high-end 30 percent retail FX market share estimate and the 37.7 percent population estimate to the Group Settling Defendants' \$1,862,575,000 *FOREX* settlement total results in a *pro-rata* indirect amount of \$210,657,233. *Id.* The \$10,000,000 Group Settlement here is therefore 14.2 percent of the low end of the *pro-rata* range of reasonableness based on the Court-approved direct-purchaser settlements in *FOREX*, and 4.8 percent of the high-end estimate. *See id.* However, the *FOREX* settlements were reached before the Court denied class certification. The denial of class certification in *FOREX*, in the judgement of Class Counsel, significantly increased the risks that Plaintiffs would not be able to certify a class in the instant case. Therefore, in the judgment of Class Counsel, the settlements in *FOREX* are a less valuable basis for comparison against the settlements in the instant case reached after the entry of the *FOREX* Class Order.

22. Plaintiffs' settlement negotiations with New Settling Defendants were also informed by the New Settling Defendants' settlements in the related Canadian action. *See*

*Mancinelli et al. v. Royal Bank of Canada et al.*, No. CV-15-536174 (Ontario S.C.J.); *Béland v. Banque Royale du Canada et al.*, No. 200-06-000189-152 (Quebec S.C.J.). The Canadian SC and SG settlement amounts were, respectively, \$900,000 CAD and \$1,800,000 CAD. The Canadian plaintiffs' settlements allocated 20 percent of the settlement proceeds to the indirect purchaser Canadian class members. Therefore, the Canadian indirect purchasers recovered \$180,000 CAD from the SC settlement (20% of \$900,000) and \$360,000 CAD from the SG settlement (20% of \$1,800,000). The exchange rate in July 2018 when the Canadian plaintiffs' proposed plan of allocation was approved was 0.768 CAD to 1 U.S. dollar ("USD").<sup>1</sup> Therefore, the Canadian indirect purchaser settlement amounts are approximately \$138,240 USD for SC, and \$276,480 USD for SG. Applying a population adjustment factor of 3.44 to those amounts to account for the larger population of the proposed Settlement Class states relative to the Canadian population,<sup>2</sup> a *pro-rata* estimate of a reasonable settlement amount in this matter based on the Canadian indirect purchaser settlement amounts is approximately \$475,546 for SC, and \$951,091 for SG. Therefore, the \$1,720,000 million SC Settlement here is more than three times greater than a *pro-rata* estimate based on the court-approved Canadian SC settlement, and the \$975,000 SG Settlement is slightly greater than the *pro-rata* estimate based on the court-approved Canadian SG settlement where SG was not dismissed when it settled with the plaintiffs in that action. Thus, the Canadian SC and SG settlements further confirm the reasonableness of the SC and SG Settlements here.

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<sup>1</sup> See Federal Reserve Bank of St. Louis, US Dollar to National Currency Spot Exchange Rate for Canada, available at <https://fred.stlouisfed.org/series/CCUSSP01CAM650N#0> (last visited May 22, 2020).

<sup>2</sup> The U.S. Census estimates that in 2013, the total population of Canada was 34.57 million, and the total population of the eight Settlement Class states was 118.98 million. See U.S. Census, Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2018, available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (last visited May 22, 2020); U.S. Census, Demographic Overview – Canada, available at <https://www.census.gov/data-tools/demo/idb/region.php?N=%20Results%20&T=13&A=separate&RT=0&Y=2013&R=-1&C=CA> (last visited May 22, 2020). Thus, the total population of the Settlement Class states is approximately 344.2% of the population of Canada.



23. The Canadian settlements with the ten Group Settling Defendants that were involved in the Canadian action totaled \$85,297,205 CAD. The Canadian plaintiffs' settlements allocated 20 percent of the settlement proceeds to the indirect purchaser Canadian class members. *Id.* Therefore, the Canadian indirect purchasers recovered \$17,059,441 CAD from the Group Settling Defendants' Canadian settlements (20% of \$85,297,205). Applying the 0.71 CAD to 1 USD exchange rate, the Canadian indirect purchaser settlement amounts are approximately \$12,112,203.11 USD for Group Settling Defendants. Applying a population adjustment factor of 3.44 to those amounts to account for the larger population of the proposed Settlement Class states relative to the Canadian population, a *pro-rata* estimate of a reasonable settlement amount in this matter based on the Canadian indirect purchaser settlement amounts is approximately \$41.7 million for New Settling Defendants. Therefore, the \$12,695,000 under the New Settlements here is approximately 24 percent of a *pro-rata* estimate based on the court-approved Canadian New Settling Defendants' settlements.

24. Notably, SG was dismissed as a Defendant in this action, but was not dismissed in the Canadian action. In addition, the increased risks presented by the *FOREX* Class Order was not present in the Canadian action. The Canadian New Settling Defendant settlements therefore further confirm the reasonableness of the Group Settlement here.

25. After diligent investigation and careful consideration of all relevant circumstances, I, along with Class Counsel, recommended to the Plaintiffs that it was in the best interests of the proposed Classes to enter into the proposed Settlements. Plaintiffs concurred with the recommendations of counsel, allowing for the finalization of the proposed SC, SG, and Group Settlements. Each of the proposed Settlement Class Representatives supports approval of the Settlements.

26. At the times the Settlements were reached, Plaintiffs had received all documents and substantial amounts of transactional data that a majority of the Defendants produced in *FOREX*, and had issued third-party subpoenas requesting transactional data from a number of retail foreign exchange dealers (“RFEDs”). The information gleaned from this discovery, as well as from the pleadings, motions, and court orders in *FOREX*, and the trial in the criminal action *USA v. Usher et al.*, No. 1:17-cr-00019 (S.D.N.Y.), helped Class Counsel to assess the potential damages, as well as the risks and likely defenses going forward. Class Counsel also attended depositions conducted in the related *FOREX* action, and had reviewed all public and governmental reports related to or exchanged during the *FOREX* litigation as part of our extensive factual and legal analysis of this Action.

27. Plaintiffs’ expert James Bibbings prepared an analysis estimating the total number of members of the Settlement Classes is 99,138. *See* Declaration of James Bibbings, ECF No. 274-4, ¶ 19. Class Counsel and Mr. Bibbings believe that these estimates are reliable. The transactional data and Settlement Class member contact information that Plaintiffs have received from the RFEDs described in Paragraph 29 below are consistent with and support this estimate of the size of the Settlement Classes. Therefore, the numerosity requirements are easily met.

28. In connection with the Citigroup/MUFG Preliminary Approval Motion, Class Counsel obtained preliminary estimates of claims administration costs from five well-respected potential claims administrators based on the Class size estimates set forth in the Bibbings Declaration. After carefully comparing bids and notice plan proposals from those five claims administrators, Plaintiffs selected Heffler Claims Group (“Heffler”) as the proposed Claims Administrator. The Court approved that selection in the Citigroup/MUFG Preliminary Approval Order. *Id.* ¶ 27. For a total Class size of 100,000, Heffler estimates that the total costs of publication

notice, direct-mail postcard and email notice, internet notice including advertising the Settlements on social media and websites, and administering the claims, will be \$229,794. Heffler's estimates reflect that using postcard notice results in a cost savings of between \$17,600 and \$75,500, depending on the total number of Class members.

29. As of the date of this Declaration, Plaintiffs have successfully obtained customer contact information and transactional data from the four largest RFEDs that purchased FX Instruments from Defendants and resold those FX Instruments during the Class Period to members of the Settlement Classes proposed here. Specifically, (1) Plaintiffs obtained a Court order compelling production of their FXDirectDealer, LLC ("FXDD") subpoena on April 18, 2019, ECF No. 254, and FXDD completed their production to Plaintiffs on December 2, 2019; (2) GAIN Capital, which operates the RFED website FOREX.com, produced their customer contact information and transactional data to Plaintiffs on March 11, 2020; (3) counsel for Oanda Corporation produced customer contact information and transactional data to Plaintiffs on May 19, 2020; and (4) Forex Capital Markets ("FXCM"), completed its production to Plaintiffs on May 7, 2020. Collectively, the former customers of these four RFEDs represent a substantial majority of all Settlement Class members.

30. As of May 22, 2020, Plaintiffs' litigation costs and expenses total \$1,634,659.21. Class Counsel anticipate incurring certain additional costs and expenses including data hosting charges, costs of shutting down Plaintiffs' document database, and attorney expenses related to claims administration and the final approval process.

31. The total amount of all invoices for claims administration work performed by Plaintiffs' expert econometrician Dr. Netz (and her consulting firm, appleEcon, LLC), is \$51,500.20 as of May 22, 2020. These invoices include work by Dr. Netz and her associates on the plan of

allocation and the Declaration of Janet S. Netz, Ph.D., attached as Exhibit F to this Declaration. Class Counsel anticipate additional expert costs related to claims administration, including the verification of claimant transactional volumes, determination of claim amounts, and related work for the claims process.

32. The Citigroup, MUFG Bank, SG, and SC Settlements each contained a provision providing that under certain circumstances, the release and termination provisions applied to each of these Defendants will be harmonized with the corresponding provisions applicable to one or more subsequent settlements. Citigroup Settlement § VIII(f); MUFG Bank Settlement § VIII(f); SG Settlement § VIII(f); SC Settlement § VIII(f). Pursuant to that provision, Plaintiffs and these Settling Defendants have agreed to harmonize the release and termination provisions of the Citigroup, MUFG Bank, SG, and SC Settlements with the corresponding provisions in the Group Settlement. Harmonizing the release provisions does not change the substance of the releases in the Citigroup, MUFG Bank, SG, and SC Settlements. However, doing so will avoid Class members potentially being confused by the different release language in the Settlements. The termination of any of the Settlements will also now be governed by the same provision so as to eliminate inconsistencies and avoid potential confusion.

33. Class Counsel and Kehoe Law Firm, P.C. entered into a fee sharing agreement that provides the Kehoe Law Firm, P.C. shall be entitled to receive 10 percent of the portion of attorneys' fees, as awarded by the Court, attributable to the Florida Class only. The portion of attorneys' fees attributable to the Florida Class will be calculated based on the total volume of Settlement funds awarded to Florida Class member claimants relative to the total claimant awards for all Classes. For example, if Florida Class members are awarded 20 percent of the claimant awards for all Classes, then the Kehoe Law Firm shall be entitled to 10 percent of 20 percent of

the total attorneys' fees awarded by the Court. Other than that agreement and the Settlement Agreements themselves, there are no additional agreements required to be identified under Rule 23(e)(3), as counsel of record have agreed to allocate the remaining attorneys' fees awarded based on their pro rata share of lodestar, and there no additional fee-sharing agreements subject to disclosure pursuant to S.D.N.Y. Local Civil Rule 23.1.

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

Executed on May 26, 2020, in Philadelphia, PA.

/s/ Michael Dell'Angelo  
Michael Dell'Angelo  
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SETTLEMENT COMMUNICATION  
SUBJECT TO FEDERAL RULE OF EVIDENCE 408

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

**JAMES CONTANT, SANDRA LAVENDER,  
VICTOR HERNANDEZ, MARTIN-HAN  
TRAN, FX PRIMUS LTD., CARLOS  
GONZALEZ, UGNIUS MATKUS, CHARLES  
G. HITCHCOCK III, JERRY JACOBSON,  
TINA PORTER, AND PAUL VERMILLION,  
on behalf of themselves and all others similarly  
situated,**

**Plaintiffs,**

**v.**

**BANK OF AMERICA CORPORATION;  
BANK OF AMERICA, N.A.; MERRILL  
LYNCH, PIERCE, FENNER & SMITH INC.;  
THE BANK OF TOKYO MITSUBISHI UFJ  
LTD.; BARCLAYS BANK PLC; BARCLAYS  
CAPITAL INC.; BNP PARIBAS GROUP; BNP  
PARIBAS NORTH AMERICA, INC.; BNP  
PARIBAS SECURITIES CORP.; BNP  
PARIBAS PRIME BROKERAGE, INC.;  
CITIGROUP INC.; CITIBANK, N.A.;  
CITICORP; CITIGROUP GLOBAL  
MARKETS INC.; CREDIT SUISSE AG;  
CREDIT SUISSE SECURITIES (USA) LLC;  
DEUTSCHE BANK AG; DEUTSCHE BANK  
SECURITIES INC.; THE GOLDMAN SACHS  
GROUP, INC.; GOLDMAN, SACHS & CO.;  
HSBC BANK PLC; HSBC NORTH AMERICA  
HOLDINGS, INC.; HSBC BANK USA, N.A.;  
HSBC SECURITIES (USA) INC.; JPMORGAN  
CHASE & CO.; JPMORGAN CHASE BANK,  
N.A.; MORGAN STANLEY; MORGAN  
STANLEY & CO., LLC; MORGAN STANLEY  
& CO. INTERNATIONAL PLC; RBC  
CAPITAL MARKETS LLC; THE ROYAL  
BANK OF SCOTLAND PLC; RBS  
SECURITIES INC.; STANDARD  
CHARTERED BANK; UBS AG; and UBS  
SECURITIES LLC;**

**Defendants.**

**Civil Action No. 17-cv-3139-LGS**

**STIPULATION AND AGREEMENT  
OF SETTLEMENT WITH  
STANDARD CHARTERED BANK**

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**I. RECITALS**

This Stipulation and Agreement of Settlement (“Settlement Agreement”) is made and entered into on November 4, 2019 (“Execution Date”), between Class Plaintiffs (as defined herein) for themselves individually and on behalf of each Class Member in the Action (as defined herein), and Defendant Standard Chartered Bank (“SC”), by and through Class Counsel and SC’s Counsel. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, on November 28, 2018, Class Plaintiffs filed the Second Consolidated Class Action Complaint;

WHEREAS, Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Classes against Defendants, including SC;

WHEREAS, Class Plaintiffs have alleged, among other things, that SC participated in an unlawful conspiracy to restrain trade, pursuant to which SC and its alleged co-conspirators, including the other Defendants, as well as unnamed co-conspirators, agreed, among other things, to fix prices in the foreign exchange (“FX”) market in violation of the antitrust and consumer protection laws of New York, Arizona, California, Florida, Illinois, Massachusetts, Minnesota, and North Carolina;

WHEREAS, Class Plaintiffs have contended that they and the Classes are entitled to actual damages and treble damages for loss or damage as a result of violations of the laws as alleged in the Second Consolidated Class Action Complaint, arising from SC’s (and the other Defendants’) alleged conduct;

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WHEREAS, SC has denied and continues to deny each and all of the claims and allegations of wrongdoing made by Class Plaintiffs in the Action and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Class Member, and SC agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by SC or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Class Counsel concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Classes to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by SC under this Settlement Agreement and the cooperation to be provided to Class Plaintiffs by SC under this Settlement Agreement, are obtained for the Classes; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Classes;

WHEREAS, SC, while continuing to deny that it is liable for the claims asserted against it in the Action, has nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the Second Consolidated Class Action Complaint as to SC and a release of claims as set forth herein;



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WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Counsel and SC's Counsel, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between SC and Class Plaintiffs, both for themselves individually and on behalf of the Classes;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and among Class Plaintiffs (for themselves individually and on behalf of the Classes and each member thereof) and SC, by and through Class Counsel and SC's Counsel, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed with prejudice as to SC and the other Released Parties only, without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

**II. DEFINITIONS**

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

(a) "Action" means *Contant et al. v. Bank of America Corporation, et al.*, No. 1:17-cv-03139-LGS, which is currently pending in the United States District Court for the Southern District of New York, including all actions consolidated thereunder or that may be consolidated thereunder in the future.

(b) "Alternative Judgment" means a Final Judgment and Order of Dismissal entered by the Court but in a form other than as proposed by Class Counsel and SC.

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- (c) “Arizona Plaintiff” means Plaintiff Sandra Lavender.
- (d) “Authorized Claimant” means any Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court in accordance with the terms of the Settlement Agreement.
- (e) “California Plaintiffs” means Plaintiffs Victor Hernandez and Martin-Han Tran.
- (f) “Claims Administrator” means Heffler Claims Group.
- (g) “Classes” means, collectively, the “New York Class,” “Arizona Class,” “California Class,” “Florida Class,” “Illinois Class,” “Massachusetts Class,” “Minnesota Class,” and “North Carolina Class”.
- (h) “Class Counsel” means Berger Montague PC, McCulley McCluer PLLC, Peiffer Rosca Wolf Abdullah Carr & Kane LLP, and Schneider Wallace Cottrell Konecky Wotkyns LLP.
- (i) “Class Member” means a Person who is a member of one of the Classes, as defined in paragraph II(g).
- (j) “Class Notice” means the notice plan created in consultation with the Claims Administrator to comply with the requirements of Fed. R. Civ. P. 23(c).
- (k) “Class Period” means the period of December 1, 2007 through the date the Court preliminarily approves the Settlement Agreement (inclusive).
- (l) “Class Plaintiffs” means James Contant, Sandra Lavender, Victor Hernandez, Martin-Han Tran, FX Primus Ltd., Carlos Gonzalez, Ugnius Matkus, Charles G. Hitchcock III, Jerry Jacobson, Tina Porter, and Paul Vermillion.
- (m) “Court” means the United States District Court for the Southern District of New York.

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(n) “Defendants” means Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Inc. (“Bank of America”); MUFG Bank, Ltd. (formerly known as The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (“MUFG Bank”); Barclays Bank PLC and Barclays Capital Inc. (“Barclays”); BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas Securities Corp., and BNP Prime Brokerage, Inc. (“BNP Paribas”); Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc. (“Citigroup”); Credit Suisse Group AG, Credit Suisse AG, and Credit Suisse Securities (USA) LLC (“Credit Suisse”); Deutsche Bank AG and Deutsche Bank Securities Inc. (“Deutsche Bank”); The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (“Goldman Sachs”); HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc. (“HSBC”); JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (“JPMorgan”); Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc (“Morgan Stanley”); RBC Capital Markets, LLC (“RBC”); The Royal Bank of Scotland Group PLC and RBS Securities Inc. (“RBS”); Société Générale; SC; and UBS AG, UBS Group AG, and UBS Securities LLC (“UBS”); and any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

(o) “Direct Settlement Class” refers to the class of direct purchasers who purchased an FX Instrument directly from one or more Defendants or co-conspirators, which was granted class certification for settlement purposes in *FOREX*, ECF No. 1105. The order granting class certification, *id.*, defines the Direct Settlement Class as (capitalized terms below have the meanings specified in (i) SC’s *FOREX* settlement, *FOREX* ECF No. 822-5, and (ii) SC’s Final Approval Order, *FOREX* ECF No. 1105):

All Persons who, between January 1, 2003 and December 15, 2015, entered into an FX Instrument directly with a Defendant, a direct or indirect parent, subsidiary, or division of

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a Defendant, a Released Defendant Party, or co-conspirator where such Persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted FX Instruments in the United States or its territories. Specifically excluded from the Direct Settlement Class are Defendants; Released Defendant Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Defendant Party, or co-conspirator; any entity in which any Defendant, Released Defendant Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Defendant Party, or co-conspirator and any person acting on their behalf; provided, however, that Investment Vehicles shall not be excluded from the definition of the Direct Settlement Class. Also excluded from the Direct Settlement Class are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this Action.

(p) “Escrow Agent” means Huntington National Bank.

(q) “ESI” means electronically stored information in the same form as was produced to the plaintiffs in *FOREX*.

(r) “Execution Date” means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.

(s) “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

(t) “Final Judgment and Order of Dismissal” means the order of the Court finally approving the settlement set forth in this Settlement Agreement and dismissing with prejudice the claims of Class Plaintiffs and Class Members against SC. The Final Judgment and Order of Dismissal shall become final when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind.

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- (u) “Florida Plaintiffs” means Plaintiffs FX Primus Ltd. and Carlos Gonzalez.
- (v) “FOREX” means *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, 1:13-cv-07789-LGS, which is currently pending in the United States District Court for the Southern District of New York.
- (w) “FX Benchmark Rates” means (i) the WM/Reuters fixing rates, including the 4:00 p.m. London closing spot rate; (ii) the European Central Bank (“ECB”) FX reference rates, including the ECB rate set at 1:15 p.m. London time; (iii) the Chicago Mercantile Exchange (“CME”) daily settlement rates, including the rate set at 2:00 p.m. Central Time; and (iv) any other FX benchmark, fixing, or reference rate.
- (x) “FX Instrument” means any FX spot, forward, swap, future, option, or any other FX transaction or instrument the trading or settlement value of which is related in any way to FX rates.
- (y) “FX Trading” means the trading of FX Instruments, regardless of the manner in which such trading occurs or is undertaken, or a decision to withhold bids and offers with respect to FX Instruments.
- (z) “Illinois Plaintiff” means Plaintiff Ugnius Matkus.
- (aa) “Massachusetts Plaintiff” means Plaintiff Charles G. Hitchcock III.
- (bb) “Minnesota Plaintiff” means Plaintiff Jerry Jacobson.
- (cc) “New York Plaintiff” means Plaintiff James Contant.
- (dd) “North Carolina Plaintiffs” means Plaintiffs Tina Porter and Paul Vermillion.
- (ee) “Parties” means SC and Class Plaintiffs.
- (ff) “Person” means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

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(gg) “Plan of Distribution” means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, taxes, and tax expenses, and such attorneys’ fees, costs, expenses, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court, Class Counsel shall submit for Court approval a Plan of Distribution for each of the Classes that will provide for the distribution of the applicable Net Settlement Fund. Each Plan of Distribution shall be devised and implemented with the assistance of the Claims Administrator.

(hh) “Preliminary Approval Order” means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement.

(ii) “Released Claims” means any and all manner of claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to all claims relating to: (i) communications related to FX Instruments, FX Trading, or FX Benchmark Rates, between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Action through chat rooms, instant messages, email, or other means;

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(ii) agreements, arrangements, or understandings related to FX Instruments, FX Trading, or FX Benchmark Rates, between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Action through chat rooms, instant messages, email, or other means; (iii) the sharing or exchange of customer information between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Action— including but not limited to customer identity, trading patterns, transactions, net positions or orders, stop losses or barrier options, pricing, or spreads related to FX Instruments, FX Trading, or FX Benchmark Rates; (iv) the establishment, calculation, manipulation, or use of the WM/Reuters fixing rates, including the 4:00 p.m. London closing spot rates, and trading that may impact such rates; (v) the establishment, calculation, manipulation, or use of the European Central Bank FX reference rates, including the ECB rate set at 1:15 p.m. London time; (vi) the establishment, calculation, manipulation, or use of the CME daily settlement rates; (vii) the establishment, calculation, or use of any other FX benchmarks, including benchmark fixing rates, benchmark settlement rates, or benchmark reference rates; (viii) the establishment, calculation, communication, manipulation, or use of the price, spread, or rate of any FX Instrument; and (ix) the exchange of customer information or confidential information in the possession of SC. With respect to any and all Released Claims, the Parties stipulate and agree that, by operation of the Final Judgment and Order of Dismissal, upon the Effective Date, Releasing Parties shall have expressly waived and Class Members shall be deemed to have waived the provisions, rights, and benefits of Cal. Civ. Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

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and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

(jj) “Released Party” or “Released Parties” means SC and each of its past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties do not include any of the other Defendants.

(kk) “Releasing Parties” means individually and collectively Class Plaintiffs and each Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, beneficiaries, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund.

(ll) “Second Consolidated Class Action Complaint” or “SCCAC” means the Second Consolidated Class Action Complaint filed in the Action on November 28, 2018 at ECF No. 183.

(mm) “Settlement Agreement” means this Stipulation and Agreement of Settlement.

(nn) “Settlement Amount” means \$1,720,000

(oo) “SC” means Standard Chartered Bank.

(pp) “SC’s Claims” means claims that any Released Party may have against a Releasing Party or Class Counsel relating to the institution, prosecution, or settlement of the Action, except



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for claims to enforce any of the terms of this Settlement Agreement.

(qq) "SC's Counsel" means Sidley Austin LLP.

**III. SETTLEMENT CLASSES**

(a) The Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and subject to Court approval, the following settlement classes shall be certified as to SC:

(i) **New York Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in New York and/or while domiciled in New York, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the New York Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the New York Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(ii) **Arizona Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Arizona and/or while domiciled in Arizona, by entering into an FX Instrument with a member of

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the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Arizona Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Arizona Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(iii) **California Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in California by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the California Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the California Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser

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were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(iv) **Florida Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Florida and/or while domiciled in Florida, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Florida Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Florida Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(v) **Illinois Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Illinois and/or while domiciled in Illinois, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Illinois Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a

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controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Illinois Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(vi) **Massachusetts Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Massachusetts and/or while domiciled in Massachusetts, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Massachusetts Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Massachusetts Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(vii) **Minnesota Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Minnesota

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and/or while domiciled in Minnesota, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Minnesota Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Minnesota Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(viii) **North Carolina Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in North Carolina, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the North Carolina Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded

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from the North Carolina Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(b) The Parties' agreement as to certification of the Classes is solely for purposes of effectuating a settlement and for no other purpose. SC retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification, if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Classes becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Classes, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

**IV. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. This includes SC serving notice on those entities required to receive notice pursuant to 28 U.S.C. §1715. In the event that the Parties are

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required under this Settlement Agreement to have a mediator resolve a dispute, the Parties shall agree upon a mediator.

**V. PRELIMINARY APPROVAL**

(a) Within ninety (90) days following the Execution Date as agreed to by the Parties, Class Counsel shall submit to the Court, and SC shall not oppose, a motion requesting entry of the Preliminary Approval Order. That motion shall:

(i) seek certification of the Classes solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);

(ii) request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;

(iii) seek the appointment of New York Plaintiff as representative of the New York Class, California Plaintiffs as representatives of the California Class, Florida Plaintiffs as representatives of the Florida Class, Illinois Plaintiff as representative of the Illinois Class, Massachusetts Plaintiff as representative of the Massachusetts Class, Minnesota Plaintiff as representative of the Minnesota Class, North Carolina Plaintiffs as representatives of the North Carolina Class, and Class Counsel as interim Lead Class Counsel for all Classes pursuant to Fed. R. Civ. P. 23(g);

(iv) explain that Class Plaintiffs will submit a separate application, seeking approval of the form, and method of dissemination, of notice to the Classes, which shall apprise each member of a Class of his, her, or its right to exclude themselves from, or object to, the settlement;

(v) seek appointment of Heffler Claims Group as Claims Administrator;

(vi) seek appointment of Huntington National Bank as Escrow Agent;

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(vii) stay all proceedings in the Action against SC until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement; and

(viii) attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions *ex ante* without prejudice to their rights, claims, or defenses.

(b) Class Counsel, in consultation with the Claims Administrator, shall develop a Class Notice to apprise members of the Classes of his, her, their, or its right to exclude themselves from, or object to, the settlement.

(c) If preliminary approval of the Settlement Agreement is entered by the Court, Class Plaintiffs shall seek, and SC shall support, entry of a Final Judgment and Order of Dismissal that:

(i) certifies the Classes pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the settlement;

(ii) approves finally the settlement set forth in this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms;

(iii) finds that the Class Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Settlement Agreement and the Fairness Hearing and meets the requirements of due process and the Federal Rules of Civil Procedure;

(iv) directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs. Such dismissal shall not affect, in any way, the right of Class Plaintiffs or Class Members to



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pursue claims, if any, outside the scope of the Released Claims;

(v) orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party;

(vi) retains with the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and

(vii) determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to SC shall be final and entered forthwith.

**VI. EFFECTIVE DATE OF SETTLEMENT**

(a) The “Effective Date” of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

(i) SC’s contributions to the Settlement Fund have been made pursuant to this Settlement Agreement;

(ii) entry of the Preliminary Approval Order;

(iii) entry of an order approving Class Notice;

(iv) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;

(v) no Party has exercised his, her, or its rights to terminate this Settlement Agreement;

(vi) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final, or, in the event that the Court enters an Alternative Judgment and neither Class Plaintiffs nor SC elects to terminate this Settlement

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Agreement, such Alternative Judgment becomes final.

(b) Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

**VII. CLAIMS ADMINISTRATOR**

(a) Heffler Claims Group will be the Claims Administrator to assist with the settlement claims process as set forth herein consistent with the Court's Order granting preliminary approval of the settlements with Citigroup and MUFG. *See* ECF No. 297, ¶22.

(b) The Claims Administrator shall, in consultation with Class Counsel: (i) effectuate the notice plan approved by the Court, (ii) administer and calculate the claims submitted by Class Members, and (iii) oversee distribution of the Net Settlement Fund to Authorized Claimants in accordance with the Plan of Distribution. The Claims Administrator shall also be responsible, within five (5) business days of the deadline set by the Court for the filing of requests for exclusion, for supplying to Class Counsel and SC's Counsel a complete list of Persons who have timely requested exclusion from the Classes. The Claims Administrator shall also supply Class Counsel and SC's Counsel information it possesses relating to the calculation of the likely percentage of the Net Settlement Fund that the Persons who timely submitted requests for exclusion would have received had they not opted out of the Classes, including but not limited to the total volume of FX Trading within the Classes and by those who have requested exclusion from the Classes, the volume of FX Trading within the Classes and by those who requested exclusion from the Classes adjusted for discounts and multipliers applicable under the Plan of Distribution, and the estimated recovery of those who requested exclusion had they remained in the Classes, to the extent such

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information is available. SC shall have the right, at its own expense, to request information from the Claims Administrator to conduct a reasonable audit of all such information.

**VIII. SCOPE AND EFFECT OF SETTLEMENT**

(a) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against SC; (ii) any and all Released Claims as against all Released Parties; and (iii) any and all of SC's Claims as against all Releasing Parties.

(b) Upon the Effective Date of settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever waived, released, relinquished, and discharged (1) all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim and release form, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

(c) Upon the Effective Date of settlement, each of the Released Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have fully, finally, and forever released and discharged (1) Class Plaintiffs, Class Counsel, and each and all Class Members from each and every one of SC's Claims, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting any of SC's Claims; and (iii) agrees and covenants not to sue on the basis of any of SC's Claims, or to assist any third party in commencing

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or maintaining any such suit related to any of SC's Claims.

(d) The releases provided in this Settlement Agreement shall become effective immediately upon occurrence of the Effective Date without the need for any further action, notice, condition, or event.

(e) As an express and material condition of this Settlement Agreement, the Court shall enter an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

(f) If Class Plaintiffs reach one or more other settlements with other defendants in this Action (the "Other Settlements") prior to the dissemination of notice to members of the Classes concerning this settlement, the class definition, release, and termination provisions applied to SC shall be no less favorable than the corresponding provisions applicable to one or more of the Other Settlements. Upon the Effective Date of the settlement, members of the Settlement Classes and the Releasing Parties agree to exclude from the dollar amount of any and all judgments for monetary relief collectible against any Non-Settling Defendant in this Action in an amount equal to the amount of such judgment attributable to FX instruments transacted with SC (including treble damages, punitive damages, antitrust damages, or the like) that are, or that are alleged by Class Plaintiffs to be, indirect purchases from SC and further agree not to attempt to collect this excluded dollar amount from any and all judgments for monetary relief against any Non-Settling Defendants ("Judgment Reduction Agreement"). The Non-Settling Defendants and their Affiliates are intended third-party beneficiaries of this Judgment Reduction Agreement exempting such Non-Settling Defendants from joint and several liability from SC's FX instrument transactions in this

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Action. It is not intended that this Judgment Reduction Agreement shall have any effect on the Court's ruling on any motion to certify any class in the Action, or that any party may cite or refer to this Settlement Agreement in the Action, including any appeal therefrom, except to enforce the terms of the Judgment Reduction Agreement.

**IX. FEE AND EXPENSE APPLICATION**

(a) Class Counsel will submit an application or applications (the "Fee and Expense Application") to the Court for an award from the Settlement Fund of: (i) attorneys' fees; (ii) reimbursement of litigation expenses, plus interest, incurred in connection with the prosecution of the Action; and/or (iii) service awards for Class Plaintiffs in conjunction with their representation of the Classes. SC will take no position regarding the Fee and Expense Application. Attorneys' fees, expenses, and interest as are awarded by the Court ("Fee and Expense Award") to Class Counsel shall be paid from the Settlement Fund to Class Counsel on the date that is five (5) business days following the Effective Date.

(b) Notwithstanding any other provision of this Settlement Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or the settlement of the Action, or affect the finality or binding nature of any of the releases granted hereunder. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys' fees or expenses to Class Counsel.

**X. THE SETTLEMENT FUND**

(a) The "Settlement Fund" shall be established as an escrow account to be maintained

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and administered by the Escrow Agent, subject to approval by the Court. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Class Counsel. Counsel for the Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

(b) SC shall cause the Settlement Amount payment of \$1,720,000 to be transferred to the Escrow Agent within twenty (20) business days following entry of the Preliminary Approval Order, provided that within ten (10) days following entry of the Preliminary Approval Order, Class Counsel shall provide SC with such information as SC may require to complete the wire transfer. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. Class Counsel may pay from the Settlement Fund, without further approval from SC or the Court, the costs and expenses reasonably and actually incurred up to the sum of \$100,000 in connection with preparing and distributing Class Notice and the administration of the settlement, including, without limitation, locating members of the Class, soliciting Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms. All costs and expenses incurred in connection with providing Class Notice and the administration of the settlement in excess of \$100,000 shall be paid from the Settlement Fund, subject to approval from the Court.

(c) In the event that the court does not grant final approval, then the Settlement Amount, plus any accrued interest, shall be returned to SC, less the amounts expended for administration and notice expenses up to \$100,000.

(d) The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government

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or an agency thereof, including a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”); or (b) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

(e) All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

(f) The Settlement Fund shall be applied as follows:

(i) to pay the Fee and Expense Award, if and to the extent allowed by the Court;

(ii) to pay all the costs and expenses reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement, including, without limitation, locating members of the Classes, soliciting Class Members’ claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms;

(iii) to pay the Taxes and tax expenses described in Section XII below;

(iv) to pay any other Court-approved fees and expenses; and

(v) to distribute the balance of the Settlement Fund (the “Net Settlement Fund”) to Authorized Claimants for each Class as allowed by the Court pursuant to the Class Distribution Order.

(g) With the object of reducing the costs of Class Notice, Class Counsel shall use their

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reasonable best efforts to coordinate the provision of Class Notice pertaining to this Settlement Agreement with the provision of notice for any Other Settlements that may be reached.

(h) As set forth above, SC shall be responsible for paying the total Settlement Amount of \$1,720,000. SC shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any attorneys' fees and expenses or any Taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court.

**XI. ADMINISTRATION OF THE SETTLEMENT**

(a) Consistent with the Court's Order at EFC No. 297, paragraph 22, the Parties have agreed that Heffler Claims Group shall be the Claims Administrator for Class Notice, allocation, distribution of funds, and other settlement administration responsibilities. All fees and costs associated with Class Notice, allocation, distribution of funds, and other settlement administration costs incurred by the Claims Administrator shall be paid out of the Settlement Fund.

(b) Any Class Member who does not submit a valid proof of claim and release form will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

(c) The Claims Administrator shall process this settlement based upon proofs of claim submitted in connection with the settlement, and, after entry of the Class Distribution Order, distribute the Net Settlement Fund in accordance with the Class Distribution Order. Except for their obligation to fund the settlement or cause it to be funded as detailed in this Settlement



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Agreement, SC shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund. Class Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Class Counsel reasonably deems to be formal or technical defects in any proofs of claim submitted, including, without limitation, failure to submit a document by the submission deadline, in the interests of achieving substantial justice.

(d) For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(i) Each Class Member, at a time determined by the Court, shall be required to submit a proof of claim and release form (as shall be approved by the Court) which, inter alia, releases all Released Claims against all Released Parties, is signed under penalty of perjury by an authorized Person, and is supported by such documents or proof as Class Counsel and the Claims Administrator, in their discretion, may deem acceptable;

(ii) All proofs of claim must be submitted by the date specified in the Preliminary Approval Order and the Notice Order, unless such period is extended by order of the Court. Any Class Member who fails to submit a proof of claim and release form by such date shall be forever barred from receiving any payment pursuant to this Settlement Agreement (unless, by order of the Court, a later submitted proof of claim and release form by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims. Provided that it is received before the motion for

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the Class Distribution Order is filed, a proof of claim and release form shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the proof of claim and release form shall be deemed to have been submitted when actually received by the Claims Administrator. Notwithstanding the foregoing, Class Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the proceeds of Settlement Funds is not materially delayed. Class Counsel shall have no liability for failing to accept any late-submitted claims;

(iii) Each proof of claim and release form shall be submitted to and reviewed by the Claims Administrator who shall determine whether the proof of claim and release form is in accordance with this Settlement Agreement and any applicable orders of the Court, and the extent, if any, to which each claim shall be allowed, subject to review by the Court. The Claims Administrator will review each approved proof of claim and release form and determine, in accordance with the Plan of Distribution, the amount to be distributed to that claimant. The Released Parties shall not have any role in, or responsibility or liability to any Person for, the solicitation, review, or evaluation of proofs of claim;

(iv) Proofs of claim that do not meet the submission requirements may be rejected. Prior to rejection of a proof of claim and release form, the Claims Administrator shall communicate with the claimant in order to remedy the curable deficiencies in the proofs of claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose proofs of claim it proposes to reject, in whole or in part,

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setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected may seek review by the Court as provided below;

(v) If any claimant whose claim has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation. If a dispute concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court; and

(vi) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to SC's Counsel, for approval by the Court in the Class Distribution Order.

(e) Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed to be directed to SC or any of the Released Parties, and no discovery shall be allowed on the merits of the Action or settlement in connection with processing of the proofs of claim.

(f) Payment pursuant to this Settlement Agreement and the Plan of Distribution shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved shall be barred from any participation in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and

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the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

(g) All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

(h) The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the account of, Authorized Claimants, as the case may be, only after the Effective Date and after: (i) all timely claims have been processed and evaluated by the Claims Administrator, and, where requested, by the Settlement Administrator, and all claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all timely objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iv) all fees and costs of administration have been paid.

(i) Class Counsel will apply to the Court for an order (the "Class Distribution Order") approving the Claims Administrator's determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Authorized Claimants, as the case may be.

(j) Class Plaintiffs and Class Members shall look solely to the Settlement Fund as

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full, final, and complete satisfaction of all Released Claims. Except as set forth herein, SC shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and SC shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Class Plaintiffs, by any Class Member, or by any Releasing Parties, including but not limited to by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Plaintiffs and Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

(k) SC shall not have a reversionary interest in the Net Settlement Fund. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Claims Administrator shall, if logistically feasible and economically justifiable, reallocate such balances among Authorized Claimants in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is de minimis and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Class Counsel, subject to Court approval.

**XII. TAXES**

(a) The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1, and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to SC, as provided in paragraph XIII(c), if the settlement does not become effective for

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any reason, including by reason of a termination of this Settlement Agreement pursuant to paragraphs XIII(a) or XIII(b).

(b) For the purpose of § 468B of the Code and the Treasury regulations thereunder, Class Counsel shall be designated as the “administrator” of the Settlement Fund. Class Counsel shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns shall be consistent with this Section XII and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively “Taxes”), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

(d) Neither the Parties nor their counsel shall have any responsibility for or liability

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whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

**XIII. TERMINATION OF SETTLEMENT**

(a) This settlement is contingent upon Court approval. If the Court fails to grant final approval the settlement in any material respect, the settlement will be subject to termination by the party adversely affected by such failure. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application and/or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement or settlement.

(b) As set forth in Section VII(b) above, the Claims Administrator shall provide Class Counsel and SC's Counsel a list of those persons, if any, who have filed a request to be excluded from the Classes, together with all such requests for exclusion, within five (5) business days of the deadline set by the Court for the filing of requests for exclusion. Simultaneously herewith, the Parties are executing a supplemental agreement setting forth an opt-out threshold which provides SC with the right to terminate the Settlement Agreement if the Persons requesting exclusion would have been eligible to receive, but for their exclusion, a material percentage of distributions from

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the Net Settlement Fund. The Parties will keep the terms of the supplemental agreement confidential, except if compelled by judicial process to disclose the supplemental agreement.

(c) Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of November 4, 2019, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of SC, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award, less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable from the Settlement Fund (not to exceed \$100,000 without the prior approval of the Court)) shall be returned to SC within ten (10) business days from the date of the event causing such termination. At the request of SC's Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to SC.

(d) No Party hereto or its counsel shall directly, or indirectly, solicit or encourage any Person to request exclusion from the Class.

**XIV. CONFIRMATORY DISCOVERY AND COOPERATION OBLIGATIONS**

(a) In consideration for the dismissal of Class Plaintiffs' and the Class Members' claims against SC in the Action and the release of the Released Claims, subject to any order from the Court, SC agrees to provide reasonable cooperation, including confirmatory discovery, as provided below, to the benefit of Class Plaintiffs and the Class Members, relating to all forms and types of Released Claims, provided, however, that SC's obligations with respect to cooperation,



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including the timing and substance of cooperation, shall be subject to such limitations as are ordered by the Court.

(b) All cooperation and confirmatory discovery shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. SC's cooperation obligations shall apply only to Releasing Parties who act with, by or through Class Counsel pursuant to this Settlement Agreement. Notwithstanding any other provision in this Settlement Agreement, with respect to the production of documents set forth in this section, SC will produce such documents only to the extent not prohibited by any order of the Court, or any law, regulation, policy, or other rule of any governmental body protecting disclosure. In addition, SC may assert, where applicable, the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, the bank regulatory or examination privilege, obligations under applicable data privacy or bank secrecy laws or regulations, and/or any other applicable privilege or protection with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Settlement Agreement. Notwithstanding the foregoing, SC shall not withhold any documents and ESI from Class Plaintiffs that were produced by SC to the plaintiffs in *FOREX*, subject to any applicable data privacy or bank secrecy laws or regulations in effect at the time of the production to Class Plaintiffs. To the extent a production to Class Plaintiffs differs from SC's production in *FOREX*, SC shall identify the categories of data or information not produced and identify the applicable data privacy or bank secrecy laws or regulation under which the data or information was withheld. If Plaintiffs determine that they require the data or information withheld by SC on data privacy or bank secrecy grounds, SC agrees to work cooperatively and in good faith with Plaintiffs to produce such data or information, to the extent permissible under applicable data privacy and bank secrecy laws or regulations. For any

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documents withheld from production to Class Plaintiffs pursuant to this Settlement Agreement, if directed by a mediator, SC shall create a privilege log describing withheld documents in sufficient detail so as to explain the nature of the privilege asserted or the basis of any law, regulation, policy, or other rule of any governmental body protecting disclosure of such documents. This privilege log shall be produced to Class Plaintiffs only upon direction of a mediator if a dispute arises, and after production of the privilege log, the Parties will make a good faith effort to resolve the dispute. In the event of a disagreement between SC and Class Counsel regarding a claim of privilege or work product, the Parties will seek resolution of such disputes from a mediator, with SC retaining the right to seek a ruling from the Court with respect to the applicability of privilege or work product. If any document protected by the attorney-client privilege, attorney work-product doctrine, the common interest doctrine, the joint defense privilege, the bank regulatory or examination privilege, and/or any other applicable privilege or protection, or by any law, regulation, policy, or other rule of any governmental body protecting disclosure of such documents is accidentally or inadvertently produced, the document shall promptly be returned to SC, and its production shall in no way be construed to have waived any privilege or protection attached to such document. The confidentiality of any documents, declarations, affidavits, deposition testimony, and information provided to Class Plaintiffs pursuant to this provision shall be covered by the protective order in effect in the Action, or if no protective order is in effect, any such documents, declarations, affidavits, deposition testimony, and information shall be maintained as confidential and available only to Class Counsel and SC's Counsel. None of the cooperation provisions are intended to, nor do they, waive any applicable privilege or protection. SC's Counsel will meet with Class Counsel as is reasonably necessary to discuss any applicable domestic or foreign privilege or protection. The information provided by SC's Counsel in connection with oral

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presentations may be utilized by Class Plaintiffs or Class Counsel to assist in the prosecution of the Action or any action related to any Released Claim, but not for the prosecution of any action or proceeding against any Released Party nor for any other purpose whatsoever. The Parties expressly agree that any use of the information provided in connection with the confirmatory discovery and cooperation obligations, including without limitation oral presentations, may be used directly or indirectly by Class Plaintiffs or Class Counsel solely in connection with the prosecution of the Action or any action related to any Released Claim, but not for the prosecution of any action or proceeding against any Released Party nor for any other purpose whatsoever. Such information may not be used in connection with the prosecution of any claims that are not Released Claims.

(c) Subject to the foregoing paragraph, SC will provide Class Plaintiffs and Class Members the following cooperation and confirmatory discovery but in all events limited to the subject matter of the Released Claims:

(i) **Preliminary Approval:** SC shall cooperate in connection with Class Counsel's preparation of the motion for preliminary approval and any related documents.

(ii) **Proffer:** Beginning within thirty (30) days of the entry of the Preliminary Approval Order and following a request by Class Counsel, SC's Counsel will meet with Class Counsel at a mutually agreeable time and place to provide an attorney proffer concerning the facts and circumstances alleged in the SCCAC to the extent they relate to SC, which shall include, if requested by Class Plaintiffs, SC's understanding of the expected testimony of former or current SC employees concerning the facts and circumstances alleged in the SCCAC.

(iii) **Production of Transaction Data:** As soon as possible after the Execution

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Date, SC shall produce to Plaintiffs, subject to any applicable data privacy or bank secrecy laws or regulations, the transactional data produced to counsel for the plaintiffs in *FOREX*. See *FOREX*, ECF No. 481-1 at 42-52. SC will meet and confer with Plaintiffs about reasonably available additional data relevant to Plaintiffs' claims.

(iv) **Production of Documents Produced in *FOREX* and to Governmental Bodies:** To the extent permitted by law, which shall be determined in SC's sole discretion after a good faith consultation with Plaintiffs regarding SC's determination, SC shall produce to Plaintiffs all documents and other materials that SC has produced in connection with U.S. governmental investigations into SC's FX conduct, and in connection with the related action *FOREX*. For the avoidance of doubt, SC will not produce any document that reflects a communication with a U.S. government agency and/or regulator that constitutes confidential supervisory information.

(v) **Production of Additional Documents:** After the entry of the Preliminary Approval Order, while the Action or any action related to any Released Claims remains pending, upon Plaintiffs' counsel's written request and explanation, SC will confer with Plaintiffs' counsel in good faith concerning reasonable requests for the production of additional documents.

(vi) **Cooperation Regarding Authentication:** With respect to any production of documents arising from SC's obligations under this Settlement Agreement, SC will cooperate in providing declarations to authenticate documents Plaintiffs may seek to introduce as evidence at proceedings in this matter. SC will not unreasonably withhold consent to such requests as Plaintiffs may make to produce a limited number of witnesses at trial, subject to SC's ability to control those witnesses and the witnesses' availability.

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Upon the request of class counsel, SC shall make two witnesses available for depositions and testimony at trial (again, subject to SC's ability to control those witnesses and the witnesses' availability). The foregoing is without prejudice to Plaintiffs' election to seek additional witnesses without SC's cooperation

(vii) **Continuation, Scope, and Termination of SC's Obligation:** SC's obligations to cooperate under the Settlement Agreement are continuing until and shall terminate upon the earlier of: (a) the date when Final Judgment has been rendered, with no remaining rights of appeal, in the Action against all Defendants; or (b) four (4) years after the Court enters the Preliminary Approval Order.

(d) In the event of a disagreement between SC and Class Counsel with respect to this paragraph, the Parties will seek resolution from a mediator if necessary.

**XV. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS**

All rights of any Class Member against other former, current, or future defendants or coconspirators, or any other Person other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Class Plaintiffs and the Class Members except as provided for in Paragraph VIII(f) hereof.

**XVI. MISCELLANEOUS**

(a) The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Class Plaintiffs and/or any Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Class Plaintiffs and SC agree not to assert in any judicial proceeding that the Action was brought by Class Plaintiffs or defended by SC in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P.

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11. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after extensive negotiations between experienced legal counsel.

(b) The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

(c) The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

(d) For the purpose of construing or interpreting this Settlement Agreement, Class Plaintiffs and SC agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

(e) This Settlement Agreement shall constitute the entire agreement between Class Plaintiffs and SC pertaining to the settlement of the Action against SC and supersedes any and all prior and contemporaneous undertakings of Class Plaintiffs and SC in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Class Members.

(f) This Settlement Agreement may be modified or amended only by a writing executed by Class Plaintiffs, through Class Counsel, and SC, through SC's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and

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modifications may be made without notice to the Classes unless notice is required by law or by the Court.

(g) Nothing in this Settlement Agreement constitutes an admission by SC as to the merits of the allegations made in the Action, the validity of any defenses that could be asserted by SC, or the appropriateness of certification of any class other than the Classes under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of SC to: (i) challenge the Court's certification of any class, including any of the Classes, in the Action should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

(h) All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(i) Except as provided herein, SC, Class Plaintiffs, their respective counsel, and the Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

(j) This Settlement Agreement makes no determination as to which Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed.

(k) The proposed Plan of Distribution is not a necessary term of this Settlement Agreement and it is not a condition of this Settlement Agreement that any particular Plan of Distribution be approved. The Released Parties will take no position with respect to the proposed

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Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a particular Plan of Distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

(l) This Settlement Agreement may be executed in counterparts by Class Plaintiffs and SC, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

(m) Class Plaintiffs and SC acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Class Plaintiffs and SC and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Class Plaintiffs and SC and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

(n) Each of the undersigned attorneys represents that he is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized



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representatives, have agreed to this Settlement Agreement as of the date first herein written above.

*On behalf of Class Plaintiffs and the Classes:*



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Michael Kane  
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*Counsel for Class Plaintiffs*

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*On behalf of Standard Chartered Bank:*



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

**JAMES CONTANT, SANDRA LAVENDER,  
VICTOR HERNANDEZ, MARTIN-HAN TRAN, FX  
PRIMUS LTD., CARLOS GONZALEZ, UGNIUS  
MATKUS, CHARLES G. HITCHCOCK III, JERRY  
JACOBSON, TINA PORTER, and PAUL  
VERMILLION, on behalf of themselves and all  
others similarly situated,  
Plaintiffs,**

**v.**

**BANK OF AMERICA CORPORATION; BANK OF  
AMERICA, N.A.; MERRILL LYNCH, PIERCE,  
FENNER & SMITH INC.; THE BANK OF TOKYO  
MITSUBISHI UFJ LTD.; BARCLAYS BANK PLC;  
BARCLAYS CAPITAL INC.; BNP PARIBAS  
GROUP; BNP PARIBAS NORTH AMERICA, INC.;  
BNP PARIBAS SECURITIES CORP.; BNP  
PARIBAS PRIME BROKERAGE, INC.;  
CITIGROUP INC.; CITIBANK, N.A.; CITICORP;  
CITIGROUP GLOBAL MARKETS INC.; CREDIT  
SUISSE GROUP AG; CREDIT SUISSE AG;  
CREDIT SUISSE SECURITIES (USA) LLC;  
DEUTSCHE BANK AG; DEUTSCHE BANK  
SECURITIES INC.; THE GOLDMAN SACHS  
GROUP, INC.; GOLDMAN, SACHS & CO.; HSBC  
HOLDINGS PLC; HSBC BANK PLC; HSBC  
NORTH AMERICA HOLDINGS, INC.; HSBC  
BANK USA, N.A.; HSBC SECURITIES (USA) INC.;  
JPMORGAN CHASE & CO.; JPMORGAN CHASE  
BANK, N.A.; MORGAN STANLEY; MORGAN  
STANLEY & CO., LLC; MORGAN STANLEY &  
CO. INTERNATIONAL PLC; RBC CAPITAL  
MARKETS LLC; ROYAL BANK OF SCOTLAND  
GROUP PLC; RBS SECURITIES INC.; SOCIÉTÉ  
GÉNÉRALE S.A.; STANDARD CHARTERED  
BANK; UBS AG; UBS GROUP AG; and UBS  
SECURITIES LLC;  
Defendants.**

**Civil Action No. 1:17-cv-03139-LGS**

**STIPULATION AND  
AGREEMENT OF  
SETTLEMENT WITH  
SOCIÉTÉ GÉNÉRALE**

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**I. RECITALS**

This Stipulation and Agreement of Settlement (“Settlement Agreement”) is made and entered into on September 10, 2019 (“Execution Date”), between Class Plaintiffs (as defined herein) for themselves individually and on behalf of each Class Member in the Action (as defined herein), and Defendant Société Générale (“SG”), by and through Class Counsel and SG’s Counsel. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, on November 28, 2018, Class Plaintiffs filed the Second Consolidated Class Action Complaint;

WHEREAS, Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Classes against Defendants, including SG;

WHEREAS, Class Plaintiffs have alleged, among other things, that SG participated in an unlawful conspiracy to restrain trade, pursuant to which SG and its alleged co-conspirators, including the other Defendants, as well as unnamed co-conspirators, agreed, among other things, to fix prices in the foreign exchange (“FX”) market in violation of the antitrust and consumer protection laws of New York, Arizona, California, Florida, Illinois, Massachusetts, Minnesota, and North Carolina;

WHEREAS, Class Plaintiffs have contended that they and the Classes are entitled to actual damages and treble damages for loss or damage as a result of violations of the laws as alleged in the Second Consolidated Class Action Complaint, arising from SG’s (and the other Defendants’) alleged conduct;

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WHEREAS, SG has denied and continues to deny each and all of the claims and allegations of wrongdoing made by Class Plaintiffs in the Action and all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Class Member, and SG agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by SG or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Class Counsel concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Classes to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by SG under this Settlement Agreement and the cooperation to be provided to Class Plaintiffs by SG under this Settlement Agreement, are obtained for the Classes; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Classes;

WHEREAS, SG, while continuing to deny that it is liable for the claims asserted against it in the Action, has nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain

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complete dismissal of the Second Consolidated Class Action Complaint as to SG and a release of claims as set forth herein;

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Counsel and SG's Counsel, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between SG and Class Plaintiffs, both for themselves individually and on behalf of the Classes;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and among Class Plaintiffs (for themselves individually and on behalf of the Classes and each member thereof) and SG, by and through Class Counsel and SG's Counsel, that, subject to the approval of the Court, the Action be settled, compromised, and dismissed with prejudice as to SG and the other Released Parties only, without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

**II. DEFINITIONS**

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

(a) "Action" means *Contant et al. v. Bank of America Corporation, et al.*, No. 1:17-cv-03139-LGS, which is currently pending in the United States District Court for the Southern District of New York, including all actions consolidated thereunder or that may be consolidated thereunder in the future.

(b) "Alternative Judgment" means a Final Judgment and Order of Dismissal entered by the Court but in a form other than as proposed by Class Counsel and SG.

(c) "Arizona Plaintiff" means Plaintiff Sandra Lavender.

(d) "Authorized Claimant" means any Class Member who will be entitled to a

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distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court in accordance with the terms of the Settlement Agreement.

- (e) “California Plaintiffs” means Plaintiffs Victor Hernandez and Martin-Han Tran.
- (f) “Claims Administrator” means Heffler Claims Group.
- (g) “Classes” means, collectively, the “New York Class,” “Arizona Class,” “California Class,” “Florida Class,” “Illinois Class,” “Massachusetts Class,” “Minnesota Class,” and “North Carolina Class”.
- (h) “Class Counsel” means Berger Montague PC, McCulley McCluer PLLC, Peiffer Rosca Wolf Abdullah Carr & Kane LLP, and Schneider Wallace Cottrell Konecky Wotkyns LLP.
- (i) “Class Member” means a Person who is a member of one of the Classes, as defined in paragraph II(j).
- (j) “Class Notice” means the notice plan created in consultation with the Claims Administrator to comply with the requirements of Fed. R. Civ. P. 23(c).
- (k) “Class Period” means the period of December 1, 2007 through the date the Court preliminarily approves the Settlement Agreement (inclusive).
- (l) “Class Plaintiffs” means James Contant, Sandra Lavender, Victor Hernandez, Martin-Han Tran, FX Primus Ltd., Carlos Gonzalez, Ugnius Matkus, Charles G. Hitchcock III, Jerry Jacobson, Tina Porter, and Paul Vermillion.
- (m) “Court” means the United States District Court for the Southern District of New York.
- (n) “Defendants” means Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Inc. (“Bank of America”); MUFG Bank, Ltd. (formerly known as The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (“MUFG Bank”); Barclays Bank PLC and

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Barclays Capital Inc. (“Barclays”); BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas Securities Corp., and BNP Prime Brokerage, Inc. (“BNP Paribas”); Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc. (“Citigroup”); Credit Suisse Group AG, Credit Suisse AG, and Credit Suisse Securities (USA) LLC (“Credit Suisse”); Deutsche Bank AG and Deutsche Bank Securities Inc. (“Deutsche Bank”); The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (“Goldman Sachs”); HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc. (“HSBC”); JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (“JPMorgan”); Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc (“Morgan Stanley”); RBC Capital Markets, LLC (“RBC”); The Royal Bank of Scotland Group PLC and RBS Securities Inc. (“RBS”); SG; Standard Chartered Bank (“Standard Chartered”); and UBS AG, UBS Group AG, and UBS Securities LLC (“UBS”); and any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

(o) “Direct Settlement Class” refers to the class of direct purchasers who purchased an FX Instrument directly from one or more Defendants or co-conspirators, which was granted class certification for settlement purposes in FOREX, ECF No. 1100. The order granting class certification, *id.*, defines the Direct Settlement Class as (capitalized terms below have the meanings specified in (i) SG’s FOREX settlement, FOREX ECF No. 822-4, and (ii) SG’s Final Approval Order, FOREX ECF No. 1100):

All Persons who, between January 1, 2003 and December 15, 2015, entered into an FX Instrument directly with a Defendant, a direct or indirect parent, subsidiary, or division of a Defendant, a Released Defendant Party, or co-conspirator where such Persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted FX Instruments in the United States or its territories. Specifically excluded from the Direct Settlement Class are Defendants; Released Defendant Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Defendant Party, or co-conspirator; any entity in which any Defendant, Released Defendant Party, or



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co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Defendant Party, or co-conspirator and any person acting on their behalf; provided, however, that Investment Vehicles shall not be excluded from the definition of the Direct Settlement Class. Also excluded from the Direct Settlement Class are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this Action.

(p) “Escrow Agent” means Huntington National Bank.

(q) “ESI” means electronically stored information in the same form as was produced to the plaintiffs in FOREX.

(r) “Execution Date” means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.

(s) “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant to Fed. R. Civ. P. 23.

(t) “Final Judgment and Order of Dismissal” means the order of the Court finally approving the settlement set forth in this Settlement Agreement and dismissing with prejudice the claims of Class Plaintiffs and Class Members against SG. The Final Judgment and Order of Dismissal shall become final when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind.

(u) “Florida Plaintiffs” means Plaintiffs FX Primus Ltd. and Carlos Gonzalez.

(v) “FOREX” means In re Foreign Exchange Benchmark Rates Antitrust Litigation, 1:13-cv-07789-LGS, which is currently pending in the United States District Court for the

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Southern District of New York.

(w) “FX Benchmark Rates” means (i) the WM/Reuters fixing rates, including the 4:00 p.m. London closing spot rate; (ii) the European Central Bank (“ECB”) FX reference rates, including the ECB rate set at 1:15 p.m. London time; (iii) the Chicago Mercantile Exchange (“CME”) daily settlement rates, including the rate set at 2:00 p.m. Central Time; and (iv) any other FX benchmark, fixing, or reference rate.

(x) “FX Instrument” means any FX spot, forward, swap, future, option, or any other FX transaction or instrument the trading or settlement value of which is related in any way to FX rates.

(y) “FX Trading” means the trading of FX Instruments, regardless of the manner in which such trading occurs or is undertaken, or a decision to withhold bids and offers with respect to FX Instruments.

(z) “Illinois Plaintiff” means Plaintiff Ugnius Matkus.

(aa) “Massachusetts Plaintiff” means Plaintiff Charles G. Hitchcock III.

(bb) “Minnesota Plaintiff” means Plaintiff Jerry Jacobson.

(cc) “New York Plaintiff” means Plaintiff James Contant.

(dd) “North Carolina Plaintiffs” means Plaintiffs Tina Porter and Paul Vermillion.

(ee) “Parties” means SG and Class Plaintiffs.

(ff) “Person” means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

(gg) “Plan of Distribution” means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, taxes, and tax expenses, and such

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attorneys' fees, costs, expenses, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court, Class Counsel shall submit for Court approval a Plan of Distribution for each of the Classes that will provide for the distribution of the applicable Net Settlement Fund. Each Plan of Distribution shall be devised and implemented with the assistance of the Claims Administrator.

(hh) "Preliminary Approval Order" means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement.

(ii) "Released Claims" means any and all manner of claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action, or any amended complaint or pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to all claims relating to: (i) communications related to FX Instruments, FX Trading, or FX Benchmark Rates, between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Action through chat rooms, instant messages, email, or other means; (ii) agreements, arrangements, or understandings related to FX Instruments, FX Trading, or FX Benchmark Rates, between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Action through chat rooms, instant messages, email, or other means;

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(iii) the sharing or exchange of customer information between a Released Party and any other FX dealer or any other participant in the conspiracy alleged in the Action— including but not limited to customer identity, trading patterns, transactions, net positions or orders, stop losses or barrier options, pricing, or spreads related to FX Instruments, FX Trading, or FX Benchmark Rates; (iv) the establishment, calculation, manipulation, or use of the WM/Reuters fixing rates, including the 4:00 p.m. London closing spot rates, and trading that may impact such rates; (v) the establishment, calculation, manipulation, or use of the European Central Bank FX reference rates, including the ECB rate set at 1:15 p.m. London time; (vi) the establishment, calculation, manipulation, or use of the CME daily settlement rates; (vii) the establishment, calculation, or use of any other FX benchmarks, including benchmark fixing rates, benchmark settlement rates, or benchmark reference rates; (viii) the establishment, calculation, communication, manipulation, or use of the price, spread, or rate of any FX Instrument; and (ix) the exchange of customer information or confidential information in the possession of SG. With respect to any and all Released Claims, the Parties stipulate and agree that, by operation of the Final Judgment and Order of Dismissal, upon the Effective Date, Releasing Parties shall have expressly waived and Class Members shall be deemed to have waived the provisions, rights, and benefits of Cal. Civ. Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

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(jj) “Released Party” or “Released Parties” means SG and each of its past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, predecessors, successors, and each of their respective officers, directors, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns. Released Parties do not include any of the other Defendants.

(kk) “Releasing Parties” means individually and collectively Class Plaintiffs and each Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, beneficiaries, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund.

(ll) “Second Consolidated Class Action Complaint” or “SCCAC” means the Second Consolidated Class Action Complaint filed in the Action on November 28, 2018 at ECF No. 183.

(mm) “Settlement Agreement” means this Stipulation and Agreement of Settlement.

(nn) “Settlement Amount” means \$975,000.

(oo) “SG” means Société Générale.

(pp) “SG’s Claims” means claims that any Released Party may have against a Releasing Party or Class Counsel relating to the institution, prosecution, or settlement of the Action, except for claims to enforce any of the terms of this Settlement Agreement.

(qq) “SG’s Counsel” means Linklaters LLP.

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**III. SETTLEMENT CLASSES**

(a) The Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and subject to Court approval, the following settlement classes shall be certified as to SG:

(i) **New York Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in New York and/or while domiciled in New York, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the New York Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the New York Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(ii) **Arizona Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Arizona and/or while domiciled in Arizona, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Arizona Class

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are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Arizona Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(iii) **California Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in California by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the California Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the California Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

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(iv) **Florida Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Florida and/or while domiciled in Florida, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Florida Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Florida Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(v) **Illinois Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Illinois and/or while domiciled in Illinois, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Illinois Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial



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officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Illinois Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(vi) **Massachusetts Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Massachusetts and/or while domiciled in Massachusetts, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Massachusetts Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Massachusetts Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(vii) **Minnesota Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Minnesota and/or while domiciled in Minnesota, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX

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Instrument directly with a Defendant or co-conspirator. Excluded from the Minnesota Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the Minnesota Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(viii) **North Carolina Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in North Carolina, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the North Carolina Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff; and any juror assigned to this Action. Also excluded from the North Carolina Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct

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purchase was made and the purchase was made with the foreign desk of a Defendant.

(b) The Parties' agreement as to certification of the Classes is solely for purposes of effectuating a settlement and for no other purpose. SG retains all of its objections, arguments, and defenses with respect to class certification, and reserves all rights to contest class certification, if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Classes becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Classes, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

**IV. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

The Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. This includes SG serving notice on those entities required to receive notice pursuant to 28 U.S.C. §1715. In the event that the Parties are required under this Settlement Agreement to have a mediator resolve a dispute, the Parties shall agree upon a mediator.

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**V. PRELIMINARY APPROVAL**

(a) Within ninety (90) days following the Execution Date as agreed to by the Parties, Class Counsel shall submit to the Court, and SG shall not oppose, a motion requesting entry of the Preliminary Approval Order. That motion shall:

(i) seek certification of the Classes solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);

(ii) request preliminary approval of the settlement set forth in this Settlement Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;

(iii) seek the appointment of New York Plaintiff as representative of the New York Class, California Plaintiffs as representatives of the California Class, Florida Plaintiffs as representatives of the Florida Class, Illinois Plaintiff as representative of the Illinois Class, Massachusetts Plaintiff as representative of the Massachusetts Class, Minnesota Plaintiff as representative of the Minnesota Class, North Carolina Plaintiffs as representatives of the North Carolina Class, and Class Counsel as interim Lead Class Counsel for all Classes pursuant to Fed. R. Civ. P. 23(g);

(iv) explain that Class Plaintiffs will submit a separate application, seeking approval of the form, and method of dissemination, of notice to the Classes, which shall apprise each member of a Class of his, her, or its right to exclude themselves from, or object to, the settlement;

(v) seek appointment of a Claims Administrator;

(vi) seek appointment of an Escrow Agent;

(vii) stay all proceedings in the Action against SG until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement; and

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(viii) attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if final approval of the settlement is not obtained, the settlement is null and void, and the Parties will revert to their positions ex ante without prejudice to their rights, claims, or defenses.

(b) Class Counsel, in consultation with the Claims Administrator, shall develop a Class Notice to apprise each member of a Class of his, her, or its right to exclude themselves from, or object to, the settlement.

(c) If preliminary approval of the Settlement Agreement is entered by the Court, Class Plaintiffs shall seek, and SG shall support, entry of a Final Judgment and Order of Dismissal that:

(i) certifies the Classes pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the settlement;

(ii) approves finally the settlement set forth in this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms;

(iii) finds that the Class Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Settlement Agreement and the Fairness Hearing and meets the requirements of due process and the Federal Rules of Civil Procedure;

(iv) directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs. Such dismissal shall not affect, in any way, the right of Class Plaintiffs or Class Members to pursue claims, if any, outside the scope of the Released Claims;

(v) orders that the Releasing Parties are permanently enjoined and barred from

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instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party;

(vi) retains with the Court exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of the settlement; and

(vii) determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to SG shall be final and entered forthwith.

**VI. EFFECTIVE DATE OF SETTLEMENT**

(a) The “Effective Date” of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

(i) SG’s contributions to the Settlement Fund have been made pursuant to this Settlement Agreement;

(ii) entry of the Preliminary Approval Order;

(iii) entry of an order approving Class Notice;

(iv) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;

(v) no Party has exercised his, her, or its rights to terminate this Settlement Agreement;

(vi) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final, or, in the event that the Court enters an Alternative Judgment and neither Class Plaintiffs nor SG elects to terminate this Settlement Agreement, such Alternative Judgment becomes final.

(b) Notwithstanding any other provision herein, any proceeding or order, or motion for

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reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude the Effective Date.

**VII. CLAIMS ADMINISTRATOR**

(a) Heffler Claims Group will be the Claims Administrator to assist with the settlement claims process as set forth herein consistent with the Court's Order granting preliminary approval of the settlements with Citigroup and MUFG. *See* ECF No. 297, ¶22.

(b) The Claims Administrator shall, in consultation with Class Counsel: (i) effectuate the notice plan approved by the Court, (ii) administer and calculate the claims submitted by Class Members, and (iii) oversee distribution of the Net Settlement Fund to Authorized Claimants in accordance with the Plan of Distribution. The Claims Administrator shall also be responsible, within five (5) business days of the deadline set by the Court for the filing of requests for exclusion, for supplying to Class Counsel and SG's Counsel a complete list of Persons who have timely requested exclusion from the Classes. The Claims Administrator shall also supply Class Counsel and SG's Counsel information it possesses relating to the calculation of the likely percentage of the Net Settlement Fund that the Persons who timely submitted requests for exclusion would have received had they not opted out of the Classes, including but not limited to the total volume of FX Trading within the Classes and by those who have requested exclusion from the Classes, the volume of FX Trading within the Classes and by those who requested exclusion from the Classes adjusted for discounts and multipliers applicable under the Plan of Distribution, and the estimated recovery of those who requested exclusion had they remained in the Classes, to the extent such information is available. SG shall have the right, at its own expense, to request information from the Claims Administrator to conduct a reasonable audit of all such information.

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**VIII. SCOPE AND EFFECT OF SETTLEMENT**

(a) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against SG; (ii) any and all Released Claims as against all Released Parties; and (iii) any and all of SG's Claims as against all Releasing Parties.

(b) Upon the Effective Date of settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever waived, released, relinquished, and discharged (1) all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim and release form, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

(c) Upon the Effective Date of settlement, each of the Released Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have fully, finally, and forever released and discharged (1) Class Plaintiffs, Class Counsel, and each and all Class Members from each and every one of SG's Claims, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting any of SG's Claims; and (iii) agrees and covenants not to sue on the basis of any of SG's Claims, or to assist any third party in commencing or maintaining any such suit related to any of SG's Claims.

(d) The releases provided in this Settlement Agreement shall become effective



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immediately upon occurrence of the Effective Date without the need for any further action, notice, condition, or event.

(e) As an express and material condition of this Settlement Agreement, the Court shall enter an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

(f) If Class Plaintiffs reach one or more other settlements with other defendants in this Action (the “Other Settlements”) prior to the dissemination of notice to members of the Classes concerning this settlement, the class definition, release, and termination provisions applied to SG shall be no less favorable than the corresponding provisions applicable to one or more of the Other Settlements. Upon the Effective Date of the settlement, members of the Settlement Classes and the Releasing Parties agree to exclude from the dollar amount of any and all judgments for monetary relief collectible against any Non-Settling Defendant in this Action in an amount equal to the amount of such judgment attributable to FX instruments transacted with SG (including treble damages, punitive damages, antitrust damages, or the like) that are, or that are alleged by Class Plaintiffs, indirect purchases from SG and further agree not to attempt to collect this excluded dollar amount from any and all judgments for monetary relief against any Non-Settling Defendants (“Judgment Reduction Agreement”). The Non-Settling Defendants and their Affiliates are intended third-party beneficiaries of this Judgment Reduction Agreement exempting such Non-Settling Defendants from joint and several liability from SG's FX instrument transactions in this Action. It is not intended that this Judgment Reduction Agreement shall have any effect on the Court's ruling on any motion to certify any class in the Action, or that any party may cite or refer

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to this Settlement Agreement in the Action, including any appeal therefrom, except to enforce the terms of the Judgment Reduction Agreement.

**IX. FEE AND EXPENSE APPLICATION**

(a) Class Counsel will submit an application or applications (the “Fee and Expense Application”) to the Court for an award from the Settlement Fund of: (i) attorneys’ fees; (ii) reimbursement of litigation expenses, plus interest, incurred in connection with the prosecution of the Action; and/or (iii) service awards for Class Plaintiffs in conjunction with their representation of the Classes. SG will take no position regarding the Fee and Expense Application. Attorneys’ fees, expenses, and interest as are awarded by the Court (“Fee and Expense Award”) to Class Counsel shall be paid from the Settlement Fund to Class Counsel on the date that is five (5) business days following the Effective Date.

(b) Notwithstanding any other provision of this Settlement Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or the settlement of the Action, or affect the finality or binding nature of any of the releases granted hereunder. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys’ fees or expenses to Class Counsel.

**X. THE SETTLEMENT FUND**

(a) The “Settlement Fund” shall be established as an escrow account to be maintained and administered by the Escrow Agent, subject to approval by the Court. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court’s continuing

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supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Class Counsel. Counsel for the Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

(b) SG shall cause the Settlement Amount payment of \$975,000 to be transferred to the Escrow Agent within fifteen (15) business days following entry of the Preliminary Approval Order, provided that within ten (10) days following entry of the Preliminary Approval Order, Class Counsel shall provide SG with such information as SG may require to complete the wire transfer. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. Class Counsel may pay from the Settlement Fund, without further approval from SG or the Court, the costs and expenses reasonably and actually incurred up to the sum of \$100,000 in connection with preparing and distributing Class Notice and the administration of the settlement, including, without limitation, locating members of the Class, soliciting Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms. All costs and expenses incurred in connection with providing Class Notice and the administration of the settlement in excess of \$100,000 shall be paid from the Settlement Fund, subject to approval from the Court.

(c) In the event that the court does not grant final approval, then the Settlement Amount, plus any accrued interest, shall be returned to SG, less the amounts expended to give notice up to \$100,000.

(d) The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC"); or (b) secured by instruments

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backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

(e) All funds held by the Escrow Agent shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

(f) The Settlement Fund shall be applied as follows:

- (i) to pay the Fee and Expense Award, if and to the extent allowed by the Court;
- (ii) to pay all the costs and expenses reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement, including, without limitation, locating members of the Classes, soliciting Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms;
- (iii) to pay the Taxes and tax expenses described in paragraph (e) hereof;
- (iv) to pay any other Court-approved fees and expenses; and
- (v) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants for each Class as allowed by the Court pursuant to the Class Distribution Order.

(g) With the object of *reducing* the costs of Class Notice, Class Counsel shall use their reasonable best efforts to coordinate the provision of Class Notice pertaining to this Settlement Agreement with the provision of notice for any Other Settlements that may be reached.

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(h) As set forth above, SG shall be responsible for paying the total Settlement Amount of \$975,000. SG shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any attorneys' fees and expenses or any Taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court.

**XI. ADMINISTRATION OF THE SETTLEMENT**

(a) The Parties have agreed that Heffler Claims Group shall be the Claims Administrator for Class Notice, allocation, distribution of funds, and other settlement administration responsibilities. All fees and costs associated with Class Notice, allocation, distribution of funds, and other settlement administration costs incurred by the Claims Administrator shall be paid out of the Settlement Fund.

(b) Any Class Member who does not submit a valid proof of claim and release form will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

(c) The Claims Administrator shall process this settlement based upon proofs of claim submitted in connection with the settlement, and, after entry of the Class Distribution Order, distribute the Net Settlement Fund in accordance with the Class Distribution Order. Except for their obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, SG shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund. Class Counsel shall have the right, but not

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the obligation, to advise the Claims Administrator to waive what Class Counsel reasonably deems to be formal or technical defects in any proofs of claim submitted, including, without limitation, failure to submit a document by the submission deadline, in the interests of achieving substantial justice.

(d) For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(i) Each Class Member, at a time determined by the Court, shall be required to submit a proof of claim and release form (as shall be approved by the Court) which, inter alia, releases all Released Claims against all Released Parties, is signed under penalty of perjury by an authorized Person, and is supported by such documents or proof as Class Counsel and the Claims Administrator, in their discretion, may deem acceptable;

(ii) All proofs of claim must be submitted by the date specified in the Preliminary Approval Order and the Notice Order, unless such period is extended by order of the Court. Any Class Member who fails to submit a proof of claim and release form by such date shall be forever barred from receiving any payment pursuant to this Settlement Agreement (unless, by order of the Court, a later submitted proof of claim and release form by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a proof of claim and release form shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope

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and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the proof of claim and release form shall be deemed to have been submitted when actually received by the Claims Administrator. Notwithstanding the foregoing, Class Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the proceeds of Settlement Funds is not materially delayed. Class Counsel shall have no liability for failing to accept any late-submitted claims;

(iii) Each proof of claim and release form shall be submitted to and reviewed by the Claims Administrator who shall determine whether the proof of claim and release form is in accordance with this Settlement Agreement and any applicable orders of the Court, and the extent, if any, to which each claim shall be allowed, subject to review by the Court. The Claims Administrator will review each approved proof of claim and release form and determine, in accordance with the Plan of Distribution, the amount to be distributed to that claimant. The Released Parties shall not have any role in, or responsibility or liability to any Person for, the solicitation, review, or evaluation of proofs of claim;

(iv) Proofs of claim that do not meet the submission requirements may be rejected. Prior to rejection of a proof of claim and release form, the Claims Administrator shall communicate with the claimant in order to remedy the curable deficiencies in the proofs of claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose proofs of claim it proposes to reject, in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected may seek review by the Court as provided below;

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(v) If any claimant whose claim has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation. If a dispute concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court; and

(vi) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to SG's Counsel, for approval by the Court in the Class Distribution Order.

(e) Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed to be directed to SG or any of the Released Parties, and no discovery shall be allowed on the merits of the Action or settlement in connection with processing of the proofs of claim.

(f) Payment pursuant to this Settlement Agreement and the Plan of Distribution shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved shall be barred from any participation in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.



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(g) All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

(h) The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the account of, Authorized Claimants, as the case may be, only after the Effective Date and after: (i) all timely claims have been processed and evaluated by the Claims Administrator, and, where requested, by the Settlement Administrator, and all claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all timely objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iv) all fees and costs of administration have been paid.

(i) Class Counsel will apply to the Court for an order (the “Class Distribution Order”) approving the Claims Administrator’s determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Authorized Claimants, as the case may be.

(j) Class Plaintiffs and Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth herein, SG shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid

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any amount of money, and SG shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Class Plaintiffs, by any Class Member, or by any Releasing Parties, including but not limited to by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Plaintiffs and Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

(k) SG shall not have a reversionary interest in the Net Settlement Fund. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Claims Administrator shall, if logistically feasible and economically justifiable, reallocate such balances among Authorized Claimants in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is de minimis and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Class Counsel, subject to Court approval.

**XII. TAXES**

(a) The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1, and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to SG, as provided in paragraph XIII(c), if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to paragraphs XIII(a) or XIII(b).

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(b) For the purpose of § 468B of the Code and the Treasury regulations thereunder, Class Counsel shall be designated as the “administrator” of the Settlement Fund. Class Counsel shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns shall be consistent with this paragraph XII and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively “Taxes”), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

(d) Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or Settlement Administrator, or any of their respective designees or agents, in

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connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

**XIII. TERMINATION OF SETTLEMENT**

(a) This settlement is contingent upon Court approval. If the Court fails to approve the settlement in any material respect, the settlement will be subject to termination by the party adversely affected by such failure. Notwithstanding this paragraph, the Court's determination as to the Fee and Expense Application and/or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement or settlement.

(b) As set forth in VII(b) above, the Claims Administrator shall provide Class Counsel and SG's Counsel a list of those persons, if any, who have filed a request to be excluded from the Classes, together with all such requests for exclusion, within five (5) business days of the deadline set by the Court for the filing of requests for exclusion. Simultaneously herewith, the Parties are executing a supplemental agreement setting forth an opt-out threshold which provides SG with the right to terminate the Settlement Agreement if the Persons requesting exclusion would have been eligible to receive, but for their exclusion, a material percentage of distributions from the Net Settlement Fund. The Parties will keep the terms of the supplemental agreement confidential, except if compelled by judicial process to disclose the supplemental agreement.

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(c) Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of August 13, 2019, and, except as otherwise expressly provided herein, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of SG, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award, less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable from the Settlement Fund (not to exceed \$100,000 without the prior approval of the Court)) shall be returned to SG within ten (10) business days from the date of the event causing such termination. At the request of SG's Counsel, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to SG.

(d) No Party hereto or its counsel shall directly, or indirectly, solicit or encourage any Person to request exclusion from the Class.

**XIV. CONFIRMATORY DISCOVERY AND COOPERATION OBLIGATIONS**

(a) In consideration for the dismissal of Class Plaintiffs' and the Class Members' claims against SG in the Action and the release of the Released Claims, subject to any order from the Court, SG agrees to provide reasonable cooperation, including confirmatory discovery, as provided below, to the benefit of Class Plaintiffs and the Class Members, relating to all forms and types of Released Claims, provided, however, that SG's obligations with respect to cooperation, including the timing and substance of cooperation, shall be subject to such limitations as are ordered by the Court.

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(b) All cooperation and confirmatory discovery shall be coordinated in such a manner so that all unnecessary duplication and expense is avoided. SG's cooperation obligations shall apply only to Releasing Parties who act with, by or through Class Counsel pursuant to this Settlement Agreement. Notwithstanding any other provision in this Settlement Agreement, with respect to the production of documents set forth in this section, SG will produce such documents only to the extent not prohibited by any order of the Court, or any law, regulation, policy, or other rule of any governmental body protecting disclosure. In addition, SG may assert, where applicable, the work-product doctrine, the attorney-client privilege, the common interest privilege, the joint defense privilege, the bank regulatory or examination privilege, obligations under applicable data privacy or bank secrecy laws or regulations, and/or any other applicable privilege or protection with respect to any documents, interviews, declarations and/or affidavits, depositions, testimony, material, and/or information requested under this Settlement Agreement. Notwithstanding the foregoing, SG shall not withhold any documents and ESI from Class Plaintiffs that were produced by SG to the plaintiffs in FOREX, subject to any applicable data privacy or bank secrecy laws or regulations in effect at the time of the production to Class Plaintiffs. To the extent a production to Class Plaintiffs differs from SG's production in FOREX, SG shall identify the categories of data or information not produced and identify the applicable data privacy or bank secrecy laws or regulation under which the data or information was withheld. If Plaintiffs determine that they require the data or information withheld by SG on data privacy or bank secrecy grounds, SG agrees to work cooperatively and in good faith with Plaintiffs to produce such data or information, to the extent permissible under applicable data privacy and bank secrecy laws or regulations. For any documents withheld from production of documents to Class Plaintiffs pursuant to this Settlement Agreement, if directed by a mediator, SG shall create a privilege log describing withheld

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documents in sufficient detail so as to explain the nature of the privilege asserted or the basis of any law, regulation, policy, or other rule of any governmental body protecting disclosure of such documents. This privilege log shall be produced to Class Plaintiffs only upon direction of a mediator if a dispute arises, and after production of the privilege log, the Parties will make a good faith effort to resolve the dispute. In the event of a disagreement between SG and Class Counsel regarding a claim of privilege or work product, the Parties will seek resolution of such disputes from a mediator, with SG retaining the right to seek a ruling from the Court with respect to the applicability of privilege or work product. If any document protected by the attorney-client privilege, attorney work-product doctrine, the common interest doctrine, the joint defense privilege, the bank regulatory or examination privilege, and/or any other applicable privilege or protection, or by any law, regulation, policy, or other rule of any governmental body protecting disclosure of such documents is accidentally or inadvertently produced, the document shall promptly be returned to SG, and its production shall in no way be construed to have waived any privilege or protection attached to such document. The confidentiality of any documents, declarations, affidavits, deposition testimony, and information provided to Class Plaintiffs pursuant to this provision shall be covered by the protective order in effect in the Action, or if no protective order is in effect, any such documents, declarations, affidavits, deposition testimony, and information shall be maintained as confidential and available only to Class Counsel and SG's Counsel. None of the cooperation provisions are intended to, nor do they, waive any applicable privilege or protection. SG's Counsel will meet with Class Counsel as is reasonably necessary to discuss any applicable domestic or foreign privilege or protection. The information provided by SG's Counsel in connection with oral presentations may be utilized by Class Plaintiffs or Class Counsel to assist in the prosecution of the Action or any action related to any Released Claim, but

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not for the prosecution of any action or proceeding against any Released Party nor for any other purpose whatsoever. The Parties expressly agree that any use of the information provided in connection with the confirmatory discovery and cooperation obligations, including without limitation oral presentations, may be used directly or indirectly by Class Plaintiffs or Class Counsel solely in connection with the prosecution of the Action or any action related to any Released Claim, but not for the prosecution of any action or proceeding against any Released Party nor for any other purpose whatsoever. Such information may not be used in connection with the prosecution of any claims that are not Released Claims.

(c) Subject to the foregoing paragraph, SG will provide Class Plaintiffs and Class Members the following cooperation and confirmatory discovery but in all events limited to the subject matter of the Released Claims:

(i) **Preliminary Approval:** SG shall cooperate in connection with Class Counsel's preparation of the motion for preliminary approval and any related documents.

(ii) **Proffer:** Beginning within thirty (30) days of the entry of the Preliminary Approval Order and following a request by Class Counsel, SG's Counsel will meet with Class Counsel at a mutually agreeable time and place to provide an attorney proffer concerning the facts and circumstances alleged in the SCCAC, which shall include, if requested by Class Plaintiffs, SG's understanding of the expected testimony of former or current SG employees concerning the facts and circumstances alleged in the SCCAC.

(iii) **Production of Transaction Data:** As soon as possible after the Execution Date, SG shall produce to Plaintiffs, subject to any applicable data privacy or bank secrecy laws or regulations, the transactional data produced to counsel for the plaintiffs in FOREX. See FOREX ECF No. 481-1 at 42-52. SG will meet and confer with Plaintiffs about



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reasonably available additional data relevant to Plaintiffs' claims.

(iv) **Production of Documents Produced to Governmental Bodies:** Within fifteen (15) business days after the Execution Date, SG shall produce to Plaintiffs, subject to any applicable data privacy or bank secrecy laws or regulations, all documents and ESI that SG produced to regulators that have been produced pursuant to SG's settlement agreement in FOREX and all documents and ESI that have been produced to counsel for the plaintiffs in FOREX pursuant to SG's settlement agreement in that action.

(v) **Production of Additional Documents:** After the entry of the Preliminary Approval Order, while the Action or any action related to any Released Claims remains pending, at Class Counsel's written request and explanation, SG will confer with Class Counsel in good faith concerning reasonable requests for the production of additional documents.

(vi) **Cooperation Regarding Authentication:** With respect to any production of documents arising from SG's obligations under this Settlement Agreement, SG will cooperate in providing declarations to authenticate documents Plaintiffs may seek to introduce as evidence at proceedings in this matter. SG shall also comply in good faith with its obligations to make witnesses available to testify at trial for the purpose of authenticating documents, pursuant to any valid trial subpoenas issued by the Class Plaintiffs in accordance with the requirements of Rule 45 of the Federal Rules of Civil Procedure and any other applicable rules or orders.

(vii) **Continuation, Scope, and Termination of SG's Obligation:** SG's obligations to cooperate under the Settlement Agreement are continuing until and shall terminate upon the earlier of: (X) the date when Final Judgment has been rendered, with

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no remaining rights of appeal, in the Action against all Defendants; or (Y) four (4) years after the Court enters the Preliminary Approval Order.

(d) In the event of a disagreement between SG and Class Counsel with respect to this paragraph, the Parties will seek resolution from a mediator if necessary.

**XV. RESERVATION OF CLASS MEMBERS' RIGHTS AGAINST OTHER DEFENDANTS**

All rights of any Class Member against other former, current, or future defendants or coconspirators, or any other Person other than the Released Parties, with respect to any of the Released Claims are specifically reserved by Class Plaintiffs and the Class Members excepts as provided for in Paragraph VIII(f) hereof.

**XVI. MISCELLANEOUS**

(a) The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Class Plaintiffs and/or any Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Class Plaintiffs and SG agree not to assert in any judicial proceeding that the Action was brought by Class Plaintiffs or defended by SG in bad faith or without a reasonable basis. The Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after extensive negotiations between experienced legal counsel.

(b) The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

(c) The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain

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jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

(d) For the purpose of construing or interpreting this Settlement Agreement, Class Plaintiffs and SG agree that it is to be deemed to have been drafted equally by all Parties hereto and shall not be construed strictly for or against any Party.

(e) This Settlement Agreement shall constitute the entire agreement between Class Plaintiffs and SG pertaining to the settlement of the Action against SG and supersedes any and all prior and contemporaneous undertakings of Class Plaintiffs and SG in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties hereto including any Class Members.

(f) This Settlement Agreement may be modified or amended only by a writing executed by Class Plaintiffs, through Class Counsel, and SG, through SG's Counsel, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Classes unless notice is required by law or by the Court.

(g) Nothing in this Settlement Agreement constitutes an admission by SG as to the merits of the allegations made in the Action, the validity of any defenses that could be asserted by SG, or the appropriateness of certification of any class other than the Classes under Fed. R. Civ. P. 23 solely for settlement purposes. This Settlement Agreement is without prejudice to the rights of SG to: (i) challenge the Court's certification of any class, including any of the Classes, in the

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Action should the Settlement Agreement not be approved or implemented for any reason; and/or (ii) oppose any certification or request for certification in any other proposed or certified class action.

(h) All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(i) Except as provided herein, SG, Class Plaintiffs, their respective counsel, and the Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

(j) This Settlement Agreement makes no determination as to which Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed.

(k) The proposed Plan of Distribution is not a necessary term of this Settlement Agreement and it is not a condition of this Settlement Agreement that any particular Plan of Distribution be approved. The Released Parties will take no position with respect to the proposed Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Parties and any decision by the Court concerning a particular Plan of Distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

(l) This Settlement Agreement may be executed in counterparts by Class Plaintiffs and SG, and a facsimile or .pdf signature shall be deemed an original signature for purposes of

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executing this Settlement Agreement.

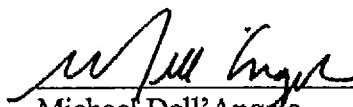
(m) Class Plaintiffs and SG acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Class Plaintiffs and SG and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Class Plaintiffs and SG and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

(n) Each of the undersigned attorneys represents that he is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use their best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

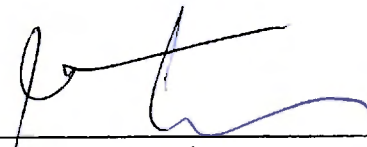
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*On behalf of Class Plaintiffs and the Classes:*



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*On behalf of Class Plaintiffs and the Classes:*



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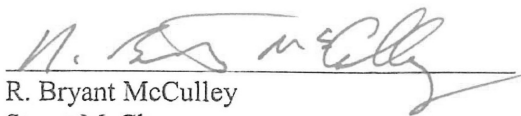


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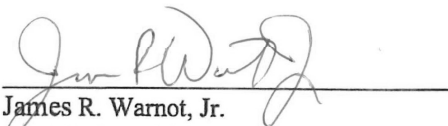
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*Counsel for Defendant Société Générale*



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

<p><b>JAMES CONTANT, SANDRA LAVENDER, VICTOR HERNANDEZ, MARTIN-HAN TRAN, FX PRIMUS LTD., CARLOS GONZALEZ, UGNIUS MATKUS, CHARLES G. HITCHCOCK III, JERRY JACOBSON, TINA PORTER, and PAUL VERMILLION, on behalf of themselves and all others similarly situated,</b></p> <p><b>Plaintiffs,</b></p> <p><b>v.</b></p> <p><b>BANK OF AMERICA CORPORATION; BANK OF AMERICA, N.A.; MERRILL LYNCH, PIERCE, FENNER &amp; SMITH INC.; THE BANK OF TOKYO MITSUBISHI UFJ LTD.; BARCLAYS BANK PLC; BARCLAYS CAPITAL INC.; BNP PARIBAS GROUP; BNP PARIBAS NORTH AMERICA, INC.; BNP PARIBAS SECURITIES CORP.; BNP PARIBAS PRIME BROKERAGE, INC.; CITIGROUP INC.; CITIBANK, N.A.; CITICORP; CITIGROUP GLOBAL MARKETS INC.; CREDIT SUISSE GROUP AG; CREDIT SUISSE AG; CREDIT SUISSE SECURITIES (USA) LLC; DEUTSCHE BANK AG; DEUTSCHE BANK SECURITIES INC.; THE GOLDMAN SACHS GROUP, INC.; GOLDMAN, SACHS &amp; CO.; HSBC HOLDINGS PLC; HSBC BANK PLC; HSBC NORTH AMERICA HOLDINGS, INC.; HSBC BANK USA, N.A.; HSBC SECURITIES (USA) INC.; JPMORGAN CHASE &amp; CO.; JPMORGAN CHASE BANK, N.A.; MORGAN STANLEY; MORGAN STANLEY &amp; CO., LLC; MORGAN STANLEY &amp; CO. INTERNATIONAL PLC; RBC CAPITAL MARKETS LLC; ROYAL BANK OF SCOTLAND GROUP PLC; RBS SECURITIES INC.; SOCIÉTÉ GÉNÉRALE S.A.; STANDARD CHARTERED BANK; UBS AG; UBS GROUP AG; and UBS SECURITIES LLC,</b></p> <p><b>Defendants.</b></p>	<p><b>Civil Action No. 1:17-cv-03139-LGS</b></p> <p><b>STIPULATION AND AGREEMENT OF SETTLEMENT WITH SETTLING DEFENDANTS</b></p>
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**I. RECITALS**

This Stipulation and Agreement of Settlement (“Settlement Agreement”) is made and entered into on April 24, 2020 (“Execution Date”), between Class Plaintiffs (as defined herein) for themselves individually and on behalf of each Class Member in the Action (as defined herein), and Defendants Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Bank of America”); Barclays Bank PLC and Barclays Capital Inc. (“Barclays”); BNP Paribas (identified in the Complaint as BNP Paribas Group), BNP Paribas US Wholesale Holdings Corp., previously known as BNP Paribas North America, Inc., and BNP Paribas Securities Corp., which now includes BNP Paribas Prime Brokerage, Inc. (“BNP Paribas”); Credit Suisse AG and Credit Suisse Securities (USA) LLC (“Credit Suisse”); Deutsche Bank AG (“Deutsche Bank”); The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (now known as Goldman Sachs & Co. LLC) (“Goldman Sachs”); HSBC Bank plc, HSBC North America Holdings, Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc. (“HSBC”); JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (“JPMorgan”); Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc (“Morgan Stanley”); RBC Capital Markets, LLC (“RBC”); The Royal Bank of Scotland plc (now known as NatWest Markets Plc) and RBS Securities Inc. (now known as NatWest Markets Securities Inc.) (“RBS”); UBS AG, UBS Group AG, and UBS Securities LLC (“UBS”) (collectively, “Settling Defendants”) (together with Class Plaintiffs, “Settling Parties”), by and through their respective counsel. This Settlement Agreement is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

WHEREAS, Class Plaintiffs are prosecuting the Action on their own behalf and on behalf of the Settlement Classes against Settling Defendants;

WHEREAS, Class Plaintiffs have alleged, among other things, that Settling Defendants participated in an unlawful conspiracy to restrain trade, pursuant to which Settling Defendants and their alleged co-conspirators, including the other Defendants, as well as unnamed co-conspirators, agreed, among other things, to fix prices in the foreign exchange (“FX”) market in violation of the antitrust, unfair competition, and consumer protection laws of New York, Arizona, California, Florida, Illinois, Massachusetts, Minnesota, and North Carolina;

WHEREAS, Class Plaintiffs have contended that they and the Settlement Classes are entitled to actual damages and treble damages for loss or damage as a result of violations of the laws as alleged in the Second Consolidated Class Action Complaint, arising from Settling Defendants’ (and the other Defendants’) alleged conduct;

WHEREAS, Defendants’ motion to dismiss Class Plaintiffs’ Consolidated Class Action Complaint for failure to state a claim was granted on March 15, 2018, and Class Plaintiffs’ Second Consolidated Class Action Complaint was filed on November 28, 2018;

WHEREAS, Settling Defendants have denied and continue to deny each and all of the claims and allegations of wrongdoing made by Class Plaintiffs in the Action and all charges of wrongdoing or liability against Settling Defendants arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action;

WHEREAS, Class Plaintiffs, for themselves individually and on behalf of each Class Member, and Settling Defendants agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Settling Defendants or of the truth of any of the claims or allegations alleged in the Action;

WHEREAS, Class Counsel concluded, after due investigation and after carefully

considering the relevant circumstances, including, without limitation, the claims asserted in the Action, the legal and factual defenses thereto, and the applicable law, that: (1) it is in the best interests of the Settlement Classes to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein, including the value of the Settlement Amount to be paid by Settling Defendants under this Settlement Agreement, are obtained for the Settlement Classes; and (2) the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate and in the best interests of the Settlement Classes;

WHEREAS, Settling Defendants, while continuing to deny that they are liable for the claims asserted against them in the Action, have nevertheless agreed to enter into this Settlement Agreement to avoid the further risk, expense, inconvenience, and distraction of burdensome and protracted litigation, and thereby to put fully to rest this controversy, to avoid the risks inherent in complex litigation, and to obtain complete dismissal of the Second Consolidated Class Action Complaint and a release of claims as set forth herein;

WHEREAS, this Settlement Agreement is the product of arm's-length negotiations between Class Counsel and counsel for the respective Settling Defendants, and this Settlement Agreement embodies all of the terms and conditions of the settlement agreed upon between Settling Defendants and Class Plaintiffs, both for themselves individually and on behalf of the Settlement Classes;

NOW, THEREFORE, in consideration of the covenants, terms, and releases in this Settlement Agreement, it is agreed, by and among Class Plaintiffs (for themselves individually and on behalf of the Settlement Classes and each member thereof) and Settling Defendants, by and through Class Counsel and Settling Defendants' respective counsel, that, subject to the approval of the Court, the Action be settled, compromised, and dismissed with prejudice as to Settling

Defendants, Deutsche Bank Securities Inc., and other Released Parties, without costs, except as stated herein, and releases be extended, as set forth in this Settlement Agreement.

## **II. DEFINITIONS**

As used in this Settlement Agreement, the following capitalized terms have the meanings specified below:

(a) “Action” means *Contant, et al. v. Bank of America Corporation, et al.*, No. 1:17-cv- 03139-LGS, which is currently pending in the United States District Court for the Southern District of New York, including all actions consolidated thereunder or that may be consolidated thereunder in the future.

(b) “Alternative Judgment” means a Final Judgment and Order of Dismissal entered by the Court but in a form other than as proposed by Class Counsel and Settling Defendants.

(c) “Arizona Plaintiff” means Plaintiff Sandra Lavender.

(d) “Authorized Claimant” means any Class Member who will be entitled to a distribution from the Net Settlement Fund pursuant to the Plan of Distribution approved by the Court in accordance with the terms of the Settlement Agreement.

(e) “California Plaintiffs” means Plaintiffs Victor Hernandez and Martin-Han Tran.

(f) “Claims Administrator” means Heffler Claims Group.

(g) “Class Counsel” means Berger Montague PC, McCulley McCluer PLLC, Peiffer Wolf Carr & Kane LLP, and Schneider Wallace Cottrell Konecky LLP.

(h) “Class Member” means a Person who is a member of one of the Settlement Classes, as defined in paragraph II(nn), and who has not timely and validly excluded himself, herself, or itself in accordance with the procedures established by the Court.

(i) “Class Notice” means the form of notice concerning this Action and this

Settlement Agreement to be created in consultation with the Claims Administrator to comply with the requirements of Fed. R. Civ. P. 23(c) and provided to members of the Settlement Classes, which shall be subject to consultation with the Settling Defendants before being submitted to the Court for approval.

(j) “Class Period” means the period of December 1, 2007 through December 15, 2015 (inclusive).

(k) “Class Plaintiffs” means James Contant, Sandra Lavender, Victor Hernandez, Martin-Han Tran, FX Primus Ltd., Carlos Gonzalez, Ugnius Matkus, Charles G. Hitchcock III, Jerry Jacobson, Tina Porter, and Paul Vermillion.

(l) “Court” means the United States District Court for the Southern District of New York.

(m) “Defendants” means Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Bank of America”); MUFG Bank, Ltd. (formerly known as The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (“MUFG Bank”); Barclays Bank PLC and Barclays Capital Inc. (“Barclays”); BNP Paribas (identified in the Complaint as BNP Paribas Group), BNP Paribas US Wholesale Holdings Corp., previously known as BNP Paribas North America, Inc., and BNP Paribas Securities Corp., which now includes BNP Paribas Prime Brokerage, Inc. (“BNP Paribas”); Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc. (“Citigroup”); Credit Suisse AG, and Credit Suisse Securities (USA) LLC (“Credit Suisse”); Deutsche Bank AG (“Deutsche Bank”) and Deutsche Bank Securities Inc.; The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (now known as Goldman Sachs & Co. LLC) (“Goldman Sachs”); HSBC Holdings plc, HSBC Bank plc, HSBC North America Holdings, Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc. (“HSBC”); JPMorgan Chase & Co. and

JPMorgan Chase Bank, N.A. (“JPMorgan”); Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc (“Morgan Stanley”); RBC Capital Markets, LLC (“RBC”); The Royal Bank of Scotland plc (now known as NatWest Markets Plc) and RBS Securities Inc. (now known as NatWest Markets Securities Inc.) (“RBS”); Société Générale (“SG”); Standard Chartered Bank (“Standard Chartered”); and UBS AG, UBS Group AG, and UBS Securities LLC (“UBS”); and any other Person or Persons who are named as defendants in the Action at any time up to and including the date a Preliminary Approval Order is entered.

(n) “Direct Settlement Class” refers to the class of direct purchasers who purchased an FX Instrument directly from one or more Defendants or co-conspirators, which was granted class certification for settlement purposes in *FOREX*, *see, e.g.*, ECF No. 1097 and defines the Direct Settlement Class as:

All Persons who, between January 1, 2003 and December 15, 2015, entered into an FX Instrument directly with a Defendant, a direct or indirect parent, subsidiary, or division of a Defendant, a Released Defendant Party, or co-conspirator where such Persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted FX Instruments in the United States or its territories. Specifically excluded from the Direct Settlement Class are Defendants; Released Defendant Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Defendant Party, or co-conspirator; any entity in which any Defendant, Released Defendant Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Defendant Party, or co-conspirator and any person acting on their behalf; provided, however, that Investment Vehicles shall not be excluded from the definition of the Direct Settlement Class. Also excluded from the Direct Settlement Class are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this Action.

(o) “Escrow Agent” means Huntington National Bank.

(p) “Execution Date” means the date of the execution of this Settlement Agreement by counsel for all Parties thereto.

(q) “Fairness Hearing” means the hearing to be held by the Court to determine whether the settlement set forth in this Settlement Agreement shall receive final approval pursuant

to Fed. R. Civ. P. 23.

(r) “Final Judgment and Order of Dismissal” means the order of the Court, substantially in the form of Exhibit A, finally approving the settlement set forth in this Settlement Agreement and dismissing with prejudice the claims of Class Plaintiffs and Class Members against Settling Defendants and Deutsche Bank Securities Inc. The Final Judgment and Order of Dismissal shall become final when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (1) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (2) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an appeal includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings of like kind.

(s) “Florida Plaintiffs” means Plaintiffs FX Primus Ltd. and Carlos Gonzalez.

(t) “FOREX” means *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, 1:13-cv-07789-LGS, which is currently pending in the United States District Court for the Southern District of New York.

(u) “FX Instrument” means any FX spot, forward, swap, future, option, or any other FX transaction or instrument the trading or settlement value of which is related in any way to FX rates.

(v) “Illinois Plaintiff” means Plaintiff Ugnius Matkus.

(w) “Massachusetts Plaintiff” means Plaintiff Charles G. Hitchcock III.

(x) “Minnesota Plaintiff” means Plaintiff Jerry Jacobson.

(y) “New York Plaintiff” means Plaintiff James Contant.



(z) “Net Settlement Fund” has the meaning given to it in paragraph X(f)(v).

(aa) “North Carolina Plaintiffs” means Plaintiffs Tina Porter and Paul Vermillion.

(bb) “Notice Order” means an order of the Court that approves the form of Class Notice and preliminarily approves the proposed Plan of Distribution.

(cc) “Notice Plan” means the plan created in consultation with the Claims Administrator to comply with the requirements of Fed. R. Civ. P. 23(c) for providing members of the Settlement Classes with notice of this Action and the Settlement Agreement, which shall be subject to consultation with the Settling Defendants before being submitted to the Court for approval.

(dd) “Person” means an individual or entity, and his, her, or its spouses, heirs, predecessors, successors, representatives, or assignees.

(ee) “Plan of Distribution” means a plan or formula of allocation of the Net Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the settlement, taxes, and tax expenses, and such attorneys’ fees, costs, expenses, service awards, interest, and other expenses as may be awarded by the Court. At a time and in a manner determined by the Court, Class Counsel shall submit for Court approval a Plan of Distribution for each of the Settlement Classes that will provide for the distribution of the applicable Net Settlement Fund. Each Plan of Distribution shall be devised and implemented with the assistance of the Claims Administrator. For the avoidance of doubt, Settling Defendants shall have no responsibility or obligation to devise, implement, or assist with the Plan of Distribution.

(ff) “Preliminary Approval Order” means an order of the Court that preliminarily approves the settlement set forth in this Settlement Agreement.

(gg) “Released Claims” means any and all manner of claims, including Unknown Claims as defined below, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, attorneys’ fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, choate or inchoate, which Class Plaintiffs and the Settlement Classes ever had, now have, or hereafter can, shall, or may have, individually, representatively, derivatively, or in any capacity against the Released Parties that arise from or relate to a factual predicate of the Action, including any conduct alleged or that could have been alleged in any amended complaint or pleading therein, from the beginning of time through the Effective Date. The Released Claims do not include: (i) any claims relating to the enforcement of the settlement; or (ii) any claims of a Person that submits a timely Request for Exclusion in connection with the notice whose request is accepted by the Court. With respect to any and all Released Claims, the Parties stipulate and agree that, by operation of the Final Judgment and Order of Dismissal, upon the Effective Date, Releasing Parties shall have expressly waived and Class Members shall be deemed to have waived the provisions, rights, and benefits of Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

and any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

(hh) “Released Party” or “Released Parties” means Settling Defendants, Credit Suisse Group AG, Deutsche Bank Securities Inc., and each of their past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, predecessors, successors, and each of their respective past, present, and future officers, directors, managers, members, partners, shareholders, insurers, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

(ii) “Releasing Parties” means individually and collectively Class Plaintiffs and each Class Member, on behalf of themselves and any of their respective past, present or future officers, directors, stockholders, agents, employees, legal or other representatives, partners, associates, trustees, beneficiaries, parents, subsidiaries, divisions, affiliates, heirs, executors, administrators, purchasers, predecessors, successors, and assigns, whether or not they object to the settlement set forth in this Settlement Agreement, and whether or not they make a claim for payment from the Net Settlement Fund. For avoidance of doubt, Persons whose Requests for Exclusion are accepted by the Court are not “Releasing Parties.”

(jj) “Request for Exclusion” has the meaning given to it in Section V.

(kk) “Second Consolidated Class Action Complaint” or means the Second Consolidated Class Action Complaint filed in the Action on November 28, 2018 at ECF No. 183.

(ll) “Settlement Agreement” means this Stipulation and Agreement of Settlement.

(mm) “Settlement Amount” means \$10,000,000.00.

(nn) “Settlement Classes” means, collectively, the “New York Class,” “Arizona Class,” “California Class,” “Florida Class,” “Illinois Class,” “Massachusetts Class,” “Minnesota Class,” and “North Carolina Class”.

(oo) “Settling Defendants’ Claims” means claims, including “Unknown Claims” as defined below, that any Released Party may have against a Releasing Party or Class Counsel relating to the institution, prosecution, or settlement of the Action, except for claims to enforce any of the terms of this Settlement Agreement.

(pp) “Settlement Fund” means the escrow account established pursuant to paragraph X(a) of this Settlement Agreement, including all monies held therein in accordance with the terms of this Settlement Agreement.

(qq) “Settling Parties” means Class Plaintiffs and Settling Defendants.

(rr) “Taxes” has the meaning given to it in paragraph XII(c).

(ss) “Unknown Claims” means any and all Released Claims against the Released Parties which Releasing Parties do not know or suspect to exist in his, her, or its favor as of the Effective Date, and any Settling Defendants’ Claims against Releasing Parties which Released Parties do not know or suspect to exist in his, her, or its favor as of the Effective Date, which if known by the Releasing Parties or Released Parties might have affected his, her, or its decision(s) with respect to the settlement.

The Releasing Parties and Released Parties may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Settling Defendants’ Claims. Nevertheless, Class Plaintiffs and the Released Parties shall expressly, fully, finally, and forever settle and release, and each Class

Member, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have, fully, finally, and forever settled and released, any and all Released Claims and Settling Defendants' Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Class Plaintiffs and the Released Parties acknowledge, and Class Members shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Released Claims and Settling Defendants' Claims was separately bargained for and was a key element of the Settlement Agreement.

### **III. SETTLEMENT CLASS CERTIFICATION**

(a) The Settling Parties hereby stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and subject to Court approval, the following classes shall be certified as to Settling Defendants:

- (i) **New York Class:** All Persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in New York and/or while domiciled in New York, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the New York Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the New York Class are all

indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

- (ii) **Arizona Class:** All Persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Arizona and/or while domiciled in Arizona, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Arizona Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Arizona Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.
- (iii) **California Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in California by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the California Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-

conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the California Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

- (iv) **Florida Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Florida and/or while domiciled in Florida, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Florida Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Florida Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.
- (v) **Illinois Class:** All Persons and entities who, during the Class Period indirectly purchased

an FX Instrument from a Defendant or co-conspirator in Illinois and/or while domiciled in Illinois, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Illinois Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Illinois Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

- (vi) **Massachusetts Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Massachusetts and/or while domiciled in Massachusetts, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Massachusetts Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her



immediate family and judicial staff. Also excluded from the Massachusetts Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(vii) **Minnesota Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Minnesota and/or while domiciled in Minnesota, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Minnesota Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Minnesota Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(viii) **North Carolina Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in North Carolina, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the North Carolina

Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the North Carolina Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(b) The Settling Parties' agreement as to certification of the Settlement Classes is solely for purposes of effectuating a settlement and for no other purpose. Settling Defendants retain all of their objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective. The Settling Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the settlement, and that if the settlement set forth in this Settlement Agreement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the settlement set forth in this Settlement Agreement otherwise fails to become effective, this agreement as to certification of the Settlement Classes becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Settlement

Classes, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

**IV. GOOD FAITH EFFORTS TO EFFECTUATE THIS SETTLEMENT AGREEMENT**

The Settling Parties agree to cooperate with one another in good faith to effectuate and implement the terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms of this Settlement Agreement. This includes Settling Defendants serving notice on those entities required to receive notice pursuant to 28 U.S.C. §1715. For the avoidance of doubt, except as otherwise set forth herein, Settling Defendants shall have no liability, obligation, or responsibility to assist with preparing and distributing Class Notice and the administration of the settlement, including, without limitation, locating members of the Class (including relevant trade and location data), soliciting Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, or processing proof of claim and release forms. In the event that the Settling Parties are required under this Settlement Agreement to have a mediator resolve a dispute, the Settling Parties shall agree upon a mediator.

**V. PRELIMINARY APPROVAL ORDER, NOTICE, AND FAIRNESS HEARING**

(a) Within forty-five (45) days following the Execution Date as agreed to by the Settling Parties, Class Counsel shall submit to the Court, and Settling Defendants shall have an opportunity to comment on but shall not oppose, a motion requesting entry of the Preliminary Approval Order. That motion shall:

- (i) seek certification of the Settlement Classes solely for settlement purposes, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3);
- (ii) request preliminary approval of the settlement set forth in this Settlement

Agreement as fair, reasonable, and adequate within the meaning of Fed. R. Civ. P. 23;

(iii) seek the appointment of Arizona Plaintiff as representative of the Arizona Class, New York Plaintiff as representative of the New York Class, California Plaintiffs as representatives of the California Class, Florida Plaintiffs as representatives of the Florida Class, Illinois Plaintiff as representative of the Illinois Class, Massachusetts Plaintiff as representative of the Massachusetts Class, Minnesota Plaintiff as representative of the Minnesota Class, North Carolina Plaintiffs as representatives of the North Carolina Class, and Class Counsel as interim Lead Class Counsel for all Settlement Classes pursuant to Fed. R. Civ. P. 23(g);

(iv) explain that Class Plaintiffs will submit a separate application, seeking approval of the form, and method of dissemination, of notice to the Settlement Classes, which shall, among other things, apprise each member of a Class of his, her, or its right to exclude themselves from, or object to, the settlement;

(v) seek appointment of Heffler Claims Group as Claims Administrator;

(vi) seek appointment of Huntington National Bank as Escrow Agent;

(vii) stay all proceedings in the Action until the Court renders a final decision on approval of the settlement set forth in this Settlement Agreement; and

(viii) attach a proposed form of order, which includes such provisions as are typical in such orders, including: (1) setting a date for the Fairness Hearing, and (2) a provision that, if preliminary or final approval of the settlement is not obtained, the settlement is null and void, and the Settling Parties will revert to their positions ex ante without prejudice to their rights, claims, or defenses.

(b) The proposed Preliminary Approval Order submitted by Class Plaintiffs in

connection with their motion for preliminary approval of the Settlement Agreement shall provide that (1) proceedings will be stayed with respect to the Released Parties until the Court renders a final decision on approval of the Settlement Agreement; and (2) pending that final determination, each Class Plaintiff and member of the Settlement Classes, either directly, representatively, or in any other capacity, shall be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties.

(c) Class Counsel, in consultation with the Claims Administrator, shall develop a Class Notice to apprise each member of the Settlement Classes of his, her, or its right to exclude themselves from, or object to, the settlement.

(d) Any Person falling within the definition of the Settlement Classes may request to be excluded from the Settlement Classes (“Request for Exclusion”). A Request for Exclusion must be: (i) in writing, (ii) signed by the Person or his, her, or its authorized representative, (iii) state the name, address, and phone number of that Person, and (iv) include: (1) proof of membership in one or more of the Settlement Classes, including documentation evidencing FX trading during the Class Period; and (2) a signed statement that “I/we hereby request that I/we be excluded from the Settlement Classes in the *Contant v. Bank of America Corp.* Litigation.” The request must be mailed to the Claims Administrator at the address provided in the Class Notice and be postmarked no later than fifty (50) days prior to the date set for the Fairness Hearing or any other date set by the Court. Unless the Court orders otherwise, a Request for Exclusion that does not include all of the foregoing information, that does not contain the proper signature, that is sent to an address other than the one designated in the Class Notice, or that is not sent within the time specified, shall be invalid, and the Person(s) filing such an invalid request shall be a Class Member and shall be bound by the settlement set forth in the Settlement Agreement, if approved. All Persons who

submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall be excluded from the Settlement Classes, shall have no rights under the Settlement Agreement, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Settlement Agreement. Class Counsel shall cause to be provided to the Settling Defendants' respective counsel copies of all Requests for Exclusion, together with all documents and information provided with such Requests, and any written revocation of Requests for Exclusion, within three (3) business days of receipt by Class Counsel of that exclusion request.

(e) Any Person who has not requested exclusion from one of the Settlement Classes and who objects to the settlement set forth in this Settlement Agreement may appear in person or through counsel, at that Person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, subject to the Court's discretion, no such Person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (i) a notice of intention to appear; (ii) proof of membership in one or more of the Settlement Classes, including documentation evidencing FX trading during the Class Period; and (iii) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than fifty (50) days prior to the date set for the Fairness Hearing and mailed to Class Counsel and to the Settling Defendants' respective counsel at the addresses provided in the Class Notice and postmarked no later than fifty (50) days prior to the date set for the Fairness Hearing. Any Person that fails to object in the manner prescribed herein shall be deemed to have waived his, her, or its objections and will forever be barred from making any such objections in the Action,

unless otherwise excused for good cause shown, as determined by the Court.

(f) If preliminary approval of the Settlement Agreement is entered by the Court, Class Plaintiffs shall seek, and Settling Defendants shall not oppose, entry of a Final Judgment and Order of Dismissal that:

(i) certifies the Settlement Classes pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) solely for the purpose of the settlement;

(ii) approves finally the settlement set forth in this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to Class Members within the meaning of Fed. R. Civ. P. 23 and directing its consummation according to its terms;

(iii) finds that the Class Notice constituted due, adequate, and sufficient notice of the settlement set forth in this Settlement Agreement and the Fairness Hearing and meets the requirements of due process and the Federal Rules of Civil Procedure;

(iv) directs that, as to the Released Parties, the Action shall be dismissed with prejudice and, except as provided for in this Settlement Agreement, without costs. Such dismissal shall not affect, in any way, the right of Class Plaintiffs or Class Members to pursue claims, if any, outside the scope of the Released Claims;

(v) bars claims by any Person against any of the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise;

(vi) orders that the Releasing Parties are permanently enjoined and barred from instituting, commencing, or prosecuting any action or other proceeding asserting any Released Claims against any Released Party;

(vii) retains with the Court exclusive jurisdiction over the settlement and this

Settlement Agreement, including the administration and consummation of the settlement;  
and

(viii) determines under Fed. R. Civ. P. 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to Settling Defendants and Deutsche Bank Securities Inc. shall be final and entered forthwith.

**VI. EFFECTIVE DATE OF SETTLEMENT**

(a) The “Effective Date” of Settlement shall be the date when all of the following events shall have occurred and shall be conditioned on the occurrence of all of the following events:

(i) Settling Defendants’ contributions to the Settlement Fund have been made pursuant to this Settlement Agreement;

(ii) entry of the Preliminary Approval Order;

(iii) entry of an order approving Class Notice;

(iv) final approval by the Court of the settlement set forth in this Settlement Agreement, following Class Notice and the Fairness Hearing;

(v) no Settling Party has exercised his, her, or its rights to terminate this Settlement Agreement, including but not limited to pursuant to Section XIII hereof; and

(vi) entry by the Court of a Final Judgment and Order of Dismissal, and the Final Judgment and Order of Dismissal becomes final, or, in the event that the Court enters an Alternative Judgment and neither Class Plaintiffs nor Settling Defendants elect to terminate this Settlement Agreement, such Alternative Judgment becomes final.

(b) Notwithstanding any other provision herein, any proceeding or order, or motion for reconsideration, appeal, petition for a writ of certiorari or its equivalent, pertaining solely to any Plan of Distribution and/or Fee and Expense Application, shall not in any way delay or preclude



the Effective Date.

**VII. CLAIMS ADMINISTRATOR**

(a) Pursuant to the Preliminary Approval Order and subject to Court approval, Heffler Claims Group will be the Claims Administrator to assist with the settlement claims process as set forth herein consistent with the Court's Order granting preliminary approval of the settlements with Citigroup and MUFG. *See* ECF No. 297, ¶22.

(b) The Claims Administrator shall, in consultation with Class Counsel: (i) effectuate the notice plan approved by the Court, (ii) administer and calculate the claims submitted by Class Members, and (iii) oversee distribution of the Net Settlement Fund to Authorized Claimants in accordance with the Plan of Distribution. The Claims Administrator shall also be responsible, within three (3) business days of the deadline set by the Court for the filing of Requests for Exclusion, for supplying to Class Counsel and counsel for Settling Defendants a complete list of Persons who have timely requested exclusion from the Settlement Classes, together with all such Requests for Exclusion.

**VIII. SCOPE AND EFFECT OF SETTLEMENT**

(a) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action against Settling Defendants, Credit Suisse Group AG, and Deutsche Bank Securities Inc.; (ii) any and all Released Claims as against all Released Parties; and (iii) any and all of Released Parties' Claims as against all Releasing Parties.

(b) Upon the Effective Date of settlement, each of the Releasing Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever waived, released, relinquished, and discharged (1) all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of

claim and release form, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

(c) Upon the Effective Date of settlement, each of the Released Parties: (i) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal shall have fully, finally, and forever released and discharged (1) Class Plaintiffs, Class Counsel, and each and all Class Members from each and every one of Settling Defendants' Claims, and (2) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (ii) shall forever be enjoined from prosecuting any of Settling Defendants' Claims; and (iii) agrees and covenants not to sue, either directly, representatively, or in any other capacity, on the basis of any of Settling Defendants' Claims, or to assist any third party in commencing or maintaining any such suit related to any of Settling Defendants' Claims.

(d) The releases provided in this Settlement Agreement shall become effective immediately upon occurrence of the Effective Date without the need for any further action, notice, condition, or event.

(e) As an express and material condition of this Settlement Agreement, the Court shall enter an order, in the Final Judgment and Order of Dismissal or otherwise, to the extent not prohibited by law, barring claims by any Person against any of the Released Parties for contribution or indemnification (however denominated) for all or a portion of any amounts paid or awarded in the Action by way of settlement, judgment, or otherwise.

(f) In the event that this Settlement Agreement is terminated, including pursuant to Section XIII, or any material condition for the final approval of this Settlement Agreement is not satisfied, the release and covenant not to sue provisions of the foregoing paragraphs shall be null and void and unenforceable.

**IX. FEE AND EXPENSE APPLICATION**

(a) Class Counsel will submit an application or applications (the “Fee and Expense Application”) to the Court for an award from the Settlement Fund of: (i) attorneys’ fees; (ii) reimbursement of litigation expenses, plus interest, incurred in connection with the prosecution of the Action; and/or (iii) service awards for Class Plaintiffs in conjunction with their representation of the Settlement Classes. Settling Defendants will take no position regarding the Fee and Expense Application. Attorneys’ fees, expenses, service awards, and interest as are awarded by the Court (“Fee and Expense Award”) to Class Counsel shall be paid from the Settlement Fund to Class Counsel on the date that is five (5) business days following the Effective Date.

(b) Notwithstanding any other provision of this Settlement Agreement to the contrary, the Fee and Expense Application shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Agreement or the settlement of the Action, or affect the finality or binding nature of any of the releases granted hereunder. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment of attorneys’ fees or expenses to Class Counsel.

**X. THE SETTLEMENT FUND**

(a) The Settlement Fund shall be established as an escrow account to be maintained

and administered by the Escrow Agent, subject to approval by the Court. The Settlement Fund shall be administered pursuant to this Settlement Agreement and subject to the Court's continuing supervision and control. No monies shall be paid from the Settlement Fund without the specific authorization of Class Counsel. Counsel for the Settling Parties agree to cooperate, in good faith, to form an appropriate escrow agreement in conformance with this Settlement Agreement.

(b) Settling Defendants shall cause the Settlement Amount payment of \$10,000,000 to be transferred to the Escrow Agent within twenty-one (21) business days following entry of the Preliminary Approval Order, provided that within five (5) days following entry of the Preliminary Approval Order, Class Counsel shall provide Settling Defendants with such information as Settling Defendants may require to complete the wire transfer. If one or more of the Settling Defendants contend that a regulatory or other barrier imposed or caused by the COVID-19 pandemic would preclude the timely transfer of some or all of the Settlement Amount, Settling Defendants will inform the Court and Class Counsel as soon as practicable and provide an explanation for the delay and status update regarding the expected time of the Settlement Amount payment transfer. These funds, together with any interest earned thereon, shall constitute the Settlement Fund. After the Court approves of the form and method of Class Notice, Class Counsel may pay from the Settlement Fund, without further approval from Settling Defendants or the Court, the costs and expenses incurred up to the sum of \$400,000 in connection with preparing and distributing Class Notice and the administration of the settlement, including, without limitation, locating members of the Settlement Classes (including relevant trade and location data), soliciting Class Members' claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms. All costs and expenses incurred in connection with providing Class Notice and the administration of the settlement in

excess of \$400,000 shall be paid from the Settlement Fund, subject to approval from the Court.

(c) If the court does not grant final approval, then the Settlement Amount, plus any accrued interest, shall be returned to Settling Defendants, less the amounts expended to give notice up to \$400,000. Otherwise, any interest accrued on the Settlement Fund will be added to the total gross Settlement Amount to benefit Class Plaintiffs and the Settlement Classes.

(d) The Settlement Fund shall be invested exclusively in accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either: (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”); or (b) secured by instruments backed by the full faith and credit of the United States Government. The proceeds of these accounts shall be reinvested in similar instruments at their then-current market rates as they mature. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

(e) All funds held by the Escrow Agent shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Settlement Agreement and the Plan of Distribution approved by the Court.

(f) The Settlement Fund shall be applied as follows:

(i) to pay the Attorneys’ Fees and Expense Award, and service awards to Class Plaintiffs, if and to the extent allowed by the Court;

(ii) to pay all the costs and expenses reasonably and actually incurred in connection with providing Class Notice and the administration of the settlement, including, without limitation, locating members of the Settlement Classes, soliciting Class Members’

claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, and processing proof of claim and release forms;

- (iii) to pay the Taxes and tax expenses described in Section XII hereof;
- (iv) to pay any other Court-approved fees and expenses; and
- (v) to distribute the balance of the Settlement Fund (the “Net Settlement Fund”)

to Authorized Claimants for each Class as allowed by the Court pursuant to the Class Distribution Order.

(g) As set forth above, Settling Defendants shall be responsible for paying the total Settlement Amount of \$10,000,000. Settling Defendants shall have no responsibility for any other costs, including, as further detailed in this Settlement Agreement, any attorneys’ fees and expenses or any Taxes or tax-related costs relating to the Settlement Fund, but all such fees, expenses, and costs shall be paid from the Settlement Fund, as approved by the Court.

**XI. ADMINISTRATION OF THE SETTLEMENT**

(a) The Settling Parties have agreed that Heffler Claims Group shall be the Claims Administrator for Class Notice, allocation, distribution of funds, and other settlement administration responsibilities. All fees and costs associated with Class Notice, allocation, distribution of funds, and other settlement administration costs incurred by the Claims Administrator shall be paid exclusively out of the Settlement Fund.

(b) Any Class Member who does not submit a valid proof of claim and release form will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties

concerning the Released Claims.

(c) The Claims Administrator shall process this settlement based upon proofs of claim submitted in connection with the settlement, and, after entry of the Class Distribution Order, distribute the Net Settlement Fund in accordance with the Class Distribution Order. Except for their obligation to fund the settlement or cause it to be funded as detailed in this Settlement Agreement, Settling Defendants shall have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund. Class Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive what Class Counsel reasonably deems to be formal or technical defects in any proofs of claim submitted, including, without limitation, failure to submit a document by the submission deadline, in the interests of achieving substantial justice.

(d) For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

(i) Each Class Member, at a time determined by the Court, shall be required to submit a proof of claim and release form (as shall be approved by the Court) which, inter alia, releases all Released Claims against all Released Parties, is signed under penalty of perjury by an authorized Person, and is supported by such documents or proof as Class Counsel and the Claims Administrator, in their discretion, may deem acceptable;

(ii) All proofs of claim must be submitted by the date specified in the Preliminary Approval Order and the Notice Order, unless such period is extended by order of the Court. Any Class Member who fails to submit a proof of claim and release form by such date shall be forever barred from receiving any payment pursuant to this Settlement Agreement (unless, by order of the Court, a later submitted proof of claim and release form

by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims. Provided that it is received before the motion for the Class Distribution Order is filed, a proof of claim and release form shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the proof of claim and release form shall be deemed to have been submitted when actually received by the Claims Administrator. Notwithstanding the foregoing, Class Counsel shall have the discretion, but not the obligation, to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the proceeds of Settlement Funds is not materially delayed. Class Counsel shall have no liability for failing to accept any late-submitted claims;

(iii) Each proof of claim and release form shall be submitted to and reviewed by the Claims Administrator who shall determine whether the proof of claim and release form is in accordance with this Settlement Agreement and any applicable orders of the Court, and the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph 11(d)(v) below. The Claims Administrator will review each approved proof of claim and release form and determine, in accordance with the Plan of Distribution, the amount to be distributed to that claimant. The Released Parties shall not have any role in, or responsibility or liability to any Person for, the solicitation, review, or evaluation of proofs of claim;



(iv) Proofs of claim that do not meet the submission requirements may be rejected. Prior to rejection of a proof of claim and release form, the Claims Administrator shall communicate with the claimant in order to remedy the curable deficiencies in the proofs of claim submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose proofs of claim it proposes to reject, in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the claimant whose claim is to be rejected may seek review by the Court as provided below;

(v) If any claimant whose claim has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph 11(d)(iv) above, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation. If a dispute concerning a claim cannot be otherwise resolved in a timely fashion, Class Counsel shall thereafter present the request for review to the Court; and

(vi) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to counsel for Settling Defendants, for approval by the Court in the Class Distribution Order (as defined in paragraph 11(i)).

(e) Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that claimant's status as a Class Member and the validity and amount of the claimant's claim. No discovery shall be allowed to be directed to Settling Defendants or any of the

Released Parties, and no discovery shall be allowed on the merits of the Action or settlement in connection with processing of the proofs of claim.

(f) Payment pursuant to this Settlement Agreement and the Plan of Distribution shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved shall be barred from any participation in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Settlement Agreement and the settlement, including the terms of the Final Judgment and Order of Dismissal to be entered in the Action and the releases provided for herein, and will be barred from bringing any action or proceeding against the Released Parties concerning the Released Claims.

(g) All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court. As provided herein, Settling Defendants have no liability, obligation, or responsibility for the administration of the settlement or disbursement of the Net Settlement Fund; therefore, any such proceedings naming or purporting to name any Settling Defendant should be dismissed with prejudice as to the Settling Defendant(s).

(h) The Net Settlement Fund shall be distributed by the Claims Administrator to, or for the account of, Authorized Claimants, as the case may be, only after the Effective Date and after: (i) all claims have been processed and evaluated by the Claims Administrator, and all claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iii) all matters with

respect to the Fee and Expense Application have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (iv) all fees and costs of administration have been paid.

(i) Class Counsel will apply to the Court for an order (the “Class Distribution Order”) approving the Claims Administrator’s determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to or for the account of Authorized Claimants, as the case may be.

(j) Class Plaintiffs and Class Members shall look solely to the Settlement Fund as full, final, and complete satisfaction of all Released Claims. Except as set forth in paragraph 10(b), Settling Defendants shall have no obligation under this Settlement Agreement or the settlement to pay or cause to be paid any amount of money, and Settling Defendants shall have no obligation to pay or reimburse any fees, expenses, costs, liability, losses, Taxes, or damages whatsoever alleged or incurred by Class Plaintiffs, by any Class Member, or by any Releasing Parties, including but not limited to by their attorneys, experts, advisors, agents, or representatives, with respect to the Action and Released Claims. Class Plaintiffs and Class Members acknowledge that as of the Effective Date, the releases given herein shall become effective immediately by operation of the Final Judgment and Order of Dismissal and shall be permanent, absolute, and unconditional.

(k) Settling Defendants shall not have a reversionary interest in the Net Settlement Fund. If there is a balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), or reasonably soon thereafter, the Claims Administrator shall, if logistically feasible

and economically justifiable, reallocate such balances among Authorized Claimants in an equitable fashion. These redistributions shall be repeated until the remaining balance in the Net Settlement Fund is de minimis and such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Class Counsel, subject to Court approval.

## **XII. TAXES**

(a) The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1, and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Fund, less any amounts incurred for notice, administration, and/or Taxes (as defined below), plus any accrued interest thereon, shall be returned to Settling Defendants, as provided in paragraph XIII(c), if the settlement does not become effective for any reason, including by reason of a termination of this Settlement Agreement pursuant to paragraphs XIII(a) or XIII(b).

(b) For the purpose of § 468B of the Code and the Treasury regulations thereunder, Class Counsel shall be designated as the “administrator” of the Settlement Fund. The Escrow Agent shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns shall be consistent with this Section XII and in all events shall reflect that all Taxes (as defined below) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) All: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement

Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes or tax expenses imposed on or in connection with the Settlement Fund (collectively “Taxes”), shall promptly be paid out of the Settlement Fund by the Escrow Agent without prior order from the Court. The Escrow Agent shall also be obligated to, and shall be responsible for, withholding from distribution to Class Members any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

(d) Neither the Settling Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Escrow Agent, Claims Administrator, or Settlement Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) the Plan of Distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns. The Escrow Agent shall indemnify and hold harmless the Settling Parties out of the Settlement Fund from and against any claims, liabilities, or losses relating to the matters addressed in the preceding sentence.

### **XIII. TERMINATION OF SETTLEMENT**

(a) Either Class Plaintiffs, through Class Counsel, or the Settling Defendants as a group, through their respective counsel, shall have the right to terminate the settlement set forth in this Settlement Agreement by providing written notice of their election to do so (“Termination

Notice”) to all other Parties hereto within thirty (30) days of the date on which: (i) the Court or any appellate court enters a final order denying Plaintiffs’ motion for preliminary approval of the Settlement Agreement; (ii) the Court or any appellate court enters an order refusing to approve this Settlement Agreement or any material part of it; (iii) the Court enters an order declining to enter the Final Judgment and Order of Dismissal in any material respect; (iv) the Court enters an Alternative Judgment; (v) the Final Judgment and Order of Dismissal is modified or reversed by a court of appeal or any higher court in any material respect; or (vi) an Alternative Judgment is modified or reversed by a court of appeal or any higher court in any material respect. If Settling Defendants as a group or Class Plaintiffs as a group elect to terminate the settlement pursuant to this Section XIII, all pre-settlement rights and positions of Settling Parties shall be restored and the fact and terms of the settlement shall not be admissible in any trial or otherwise used against any party. Notwithstanding this paragraph, the Court’s determination as to the Fee and Expense Application and/or any Plan of Distribution, or any determination on appeal from any such order, shall not provide grounds for termination of this Settlement Agreement or settlement.

(b) As set forth in paragraph VII(b) above, the Claims Administrator shall provide Class Counsel and Counsel for Settling Defendants a list of those Persons, if any, who have filed a request to be excluded from the Settlement Classes, together with all such Requests for Exclusion, within three (3) business days of the deadline set by the Court for the filing of Requests for Exclusion. Simultaneously herewith, the Settling Parties are executing a supplemental agreement setting forth opt-out thresholds, which provide Settling Defendants with the right to terminate the Settlement Agreement if (i) a material number of persons submit Requests for Exclusion from the Settlement Classes or (ii) the Persons requesting exclusion would likely have been eligible to receive, but for their exclusion, a material percentage of distributions from the Net Settlement

Fund. The Settling Parties agree that the supplemental agreement shall not be filed with the Court unless and until either (i) the Court orders or otherwise directs the parties to file the supplemental agreement or (ii) a dispute among Plaintiffs and Settling Defendants concerning its interpretation or application arises and, in either such event, it shall be filed and maintained with the Court under seal. The parties will otherwise keep the terms of the supplemental agreement confidential, except if compelled by judicial process to disclose the supplemental agreement. As for the terms of this Settlement Agreement, they shall remain confidential until the preliminary approval motion is filed.

(c) Except as otherwise provided herein, in the event the Settlement Agreement is terminated in accordance herewith, is vacated, is not approved, or the Effective Date fails to occur for any reason, then the Settling Parties to this Settlement Agreement shall be deemed to have reverted to their respective status in the Action as of the Execution Date, and, except as otherwise expressly provided herein, the Settling Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been entered, and any portion of the Settlement Fund previously paid by or on behalf of Settling Defendants, together with any interest earned thereon (and, if applicable, re-payment of any Fee and Expense Award, less Taxes due, if any, with respect to such income, and less costs of administration and notice actually incurred and paid or payable from the Settlement Fund (not to exceed \$400,000)) shall be returned to Settling Defendants within ten (10) business days from the date of the event causing such termination. At the request of Counsel for Settling Defendants, the Escrow Agent shall apply for any tax refund owed on the Settlement Fund and pay the proceeds to Settling Defendants.

(d) No Settling Party hereto or its counsel shall directly, or indirectly, solicit or encourage any Person to request exclusion from the Class.

**XIV. MISCELLANEOUS**

(a) Any and all of exhibits attached hereto are hereby incorporated by reference as though fully set forth herein and are material and integral parts hereof.

(b) The Settling Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Class Plaintiffs and/or any Class Member against the Released Parties with respect to the Action and the Released Claims. Accordingly, Class Plaintiffs and Settling Defendants agree not to assert in any judicial proceeding that the Action was brought by Class Plaintiffs or defended by Settling Defendants in bad faith or without a reasonable basis. The Settling Parties further agree not to assert in any judicial proceeding that any Party violated Fed. R. Civ. P. 11. The Settling Parties agree that the amount paid and the other terms of the settlement were negotiated at arm's-length in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after extensive negotiations between and consultations with, experienced legal counsel.

(c) Upon the Court's entry of an order granting final approval of this Settlement Agreement, Plaintiffs will voluntarily dismiss Deutsche Bank Securities Inc. from this Action with prejudice.

(d) The Settling Parties agree to provide reasonable cooperation to assist one another in opposing or negotiating a resolution of any claim for costs, attorneys' fees, or expenses asserted by any third-party retail foreign exchange dealer or other third party in connection with subpoenas served by the Settling Parties in the Action. For the avoidance of doubt, the Settling Parties shall be liable for any costs or fees that the Court may assess against them as awarded to any third party, and no Party is required to indemnify or otherwise pay the costs or fees of any other Party as awarded by the Court.



(e) The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

(f) The administration and consummation of the settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders relating to the Fee and Expense Application, the Plan of Distribution, and enforcing the terms of this Settlement Agreement.

(g) For the purpose of construing or interpreting this Settlement Agreement, Class Plaintiffs and Settling Defendants agree that it is to be deemed to have been drafted equally by all Settling Parties hereto and shall not be construed strictly for or against any Party.

(h) This Settlement Agreement and the supplemental agreement described in paragraph XIII(b) shall constitute the entire agreement between Class Plaintiffs and Settling Defendants pertaining to the settlement of the Action against Settling Defendants and supersedes any and all prior and contemporaneous undertakings of Class Plaintiffs and Settling Defendants in connection therewith. All terms of this Settlement Agreement are contractual and not mere recitals. The terms of this Settlement Agreement are and shall be binding upon each of the Settling Parties hereto, their heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns, and upon all other Persons claiming any interest in the subject matter hereto through any of the Settling Parties hereto including any Class Members.

(i) This Settlement Agreement may be modified or amended only by a writing executed by Class Plaintiffs, through Class Counsel, and Settling Defendants, through counsel for Settling Defendants, subject (if after preliminary or final approval by the Court) to approval by the Court. Amendments and modifications may be made without notice to the Settlement Classes unless notice is required by law or by the Court.

(j) Nothing in this Settlement Agreement shall be construed as an admission of any fact, wrongdoing, or liability by Settling Defendants or by any of their subsidiaries, affiliates, officers, directors, employees, insurers, predecessors or successors. Settling Parties stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied. Settling Defendants retain all of their objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the settlement does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if the Settlement Agreement is terminated, or if the settlement otherwise does not become final. Defendants enter into this Settlement Agreement without any admission of liability or wrongdoing, which they expressly deny, and nothing in this Settlement Agreement shall limit the Settling Defendants' ability to fully defend against litigation brought by other class and nonclass plaintiffs as to any matter relating to FX instruments or otherwise or to take any position in any other action.

(k) All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of New York without regard to its choice-of-law principles.

(l) Settling Defendants, Class Plaintiffs, their respective counsel, and the Class Members hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein.

(m) The Settling Parties acknowledge that this Settlement Agreement makes no determination as to which Class Members are entitled to distribution of the Settlement Fund, or as to the formula for determining the amounts to be distributed.

(n) The proposed Plan of Distribution is not a necessary term of this Settlement

Agreement and it is not a condition of this Settlement Agreement that any particular Plan of Distribution be approved. The Released Parties will take no position with respect to the proposed Plan of Distribution or such Plan of Distribution as may be approved by the Court. The Plan of Distribution is a matter separate and apart from the settlement between the Settling Parties and any decision by the Court concerning a particular Plan of Distribution shall not affect the validity or finality of the proposed settlement, including the scope of the release.

(o) This Settlement Agreement may be executed in counterparts by Class Plaintiffs and Settling Defendants, and a facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

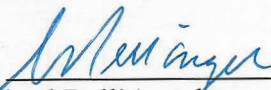
(p) Class Plaintiffs and Settling Defendants acknowledge that they have been represented by counsel and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so. Therefore, Class Plaintiffs and Settling Defendants and their respective counsel agree that they will not seek to set aside any part of this Settlement Agreement on the grounds of mistake. Moreover, Class Plaintiffs and Settling Defendants and their respective counsel understand, agree, and expressly assume the risk that any fact may turn out hereinafter to be other than, different from, or contrary to the facts now known to them or believed by them to be true, and further agree that this Settlement Agreement shall be effective in all respects notwithstanding and shall not be subject to termination, modification, or rescission by reason of any such difference in facts.

(q) Each of the undersigned attorneys represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; and the undersigned Class Counsel represent that they are authorized to execute this Settlement Agreement on behalf of Class Plaintiffs. Each of the undersigned attorneys shall use

their best efforts to effectuate this Settlement Agreement.

IN WITNESS WHEREOF, the Settling Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

*On behalf of Class Plaintiffs and the Settlement Classes:*

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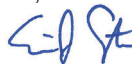
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**What is this About?** This lawsuit alleges Citigroup, MUFG Bank, Standard Chartered, Société Générale, Bank of America, Barclays, BNP Paribas, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBC, RBS, and UBS (the “Defendants”) conspired to fix foreign currency (“FX”) instrument prices causing people to be overcharged when purchasing an FX Instrument from an individual or entity and that individual or entity transacted in an FX Instrument directly with a Defendant or one of Defendants’ alleged co-conspirators. Defendants maintain that these claims lack merit. The settlements are not evidence of liability or wrongdoing. The Court has not decided who is right.

**Who’s Included?** You are if: (1) you purchased an FX Instrument from an individual or entity from December 1, 2007 through [DATE OF PAO], and that individual or entity in turn transacted in an FX Instrument directly with a Defendant or alleged co-conspirator; and (2) you lived in NY, AZ, CA, FL, IL, MA, MN, or NC at the time of the transaction.

**What do the Settlements provide?** The \$23,630,000 Settlement Fund, less court-approved fees and costs, will be distributed based on the greater of (1) a *pro rata* award based on transaction volume of FX Instrument purchases with a discount applied for purchases after December 31, 2013; or (2) a *de minimis* award. See the Plan of Allocation at FXIndirectAntitrustSettlement.com for detailed payout information.

**How can I get payment?** If the Settlements are approved, you will receive a claim form in the mail or by email explaining the calculation of Settlement awards for eligible claimants. Claim forms will also be available on the settlement website. You can also submit documents showing your FX Instrument purchases to the Settlement Administrator, Heffler Claims Group, to substantiate your claim. The deadline to file a claim will be 120 days after the Court grants final approval of the Settlements.

**What are my Rights? Do nothing** - If you do nothing, you will get no settlement proceeds but will be legally bound by all Court judgments and you won’t be able to sue, or continue to sue, Defendants for the same claims in this action. **Object** - If you want to remain in the Settlements but wish to object to the Settlements or any aspect of them, you must submit your objection by [50 DAYS PRIOR TO FAIRNESS HEARING]. **Exclude** - If you want to maintain your right to sue the Defendants, you must exclude yourself from the Settlements by [50 DAYS PRIOR TO FAIRNESS HEARING]. If you exclude yourself, you will not get a payment from these Settlements. If you do not exclude yourself, you will remain a member of a Settlement Class and your legal claims will be released even if you do not submit a claim.

**When will the Court decide?** A Fairness Hearing will be held on [MONTH, DAY, YEAR (date set by Court)] at time at the Thurgood Marshall US Courthouse, 40 Foley Square, NY, NY 10007, in Courtroom 1106 to consider whether to approve the Settlements and fee and costs application. You may, at your own expense, appear at the hearing, but you do not have to. Class Counsel will ask the Court to approve an award of attorneys’ fees of up to 26.21% of the Settlement Fund, plus service awards for the class representatives and reimbursement of costs and expenses not to exceed \$1,825,000. The fee application will be available on the settlement website when filed.

**This is only a summary.** For more information, including Settlement Agreements and release of claims, instructions on filing a claim (when available), and details on how to exclude or object to the Settlements, visit FXIndirectAntitrustSettlement.com or call 1-844-245-3777.

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**If you purchased a foreign currency instrument from certain individuals or entities, a \$23,630,000 class action settlement may affect you.**

*A federal court directed this Notice. This is not a solicitation from a lawyer.*

- There is a class action lawsuit *Contant, et al v. Bank of America Corp., et al*, No. 17-cv-3139-LGS pending in the United States District Court for the Southern District of New York (“Action” or “Lawsuit”). The Court has granted preliminary approval of cash settlements totaling \$23.63 million with Defendants Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc. (“Citigroup”); MUFG Bank, Ltd. (formerly known as The Bank of Tokyo-Mitsubishi UFJ, Ltd.) (“MUFG Bank”); Standard Chartered Bank (“SC”), Société Générale (“SG”); Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Inc. (“Bank of America”); Barclays Bank PLC and Barclays Capital Inc. (“Barclays”); BNP Paribas (identified in the Complaint as BNP Paribas Group), BNP Paribas US Wholesale Holdings Corp., previously known as BNP Paribas North America, Inc., and BNP Paribas Securities Corp., which now includes BNP Paribas Prime Brokerage, Inc. (“BNP Paribas”); Credit Suisse AG and Credit Suisse Securities (USA) LLC (“Credit Suisse”); Deutsche Bank AG (“Deutsche Bank”); The Goldman Sachs Group, Inc. and Goldman, Sachs & Co. (now known as Goldman Sachs & Co. LLC) (“Goldman Sachs”); HSBC Bank plc, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc. (“HSBC”); JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (“JPMorgan”); Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International plc (“Morgan Stanley”); RBC Capital Markets, LLC (“RBC”); The Royal Bank of Scotland plc (now known as NatWest Markets Plc) and RBS Securities Inc. (now known as NatWest Markets Securities Inc.) (“RBS”); UBS AG, UBS Group AG, and UBS Securities LLC (“UBS”) (collectively, (“Settling Defendants”). Citigroup has agreed to pay \$9,950,000 (“Citigroup Settlement”); MUFG Bank has agreed to pay \$985,000 (“MUFG Bank Settlement”); SC has agreed to pay \$1,720,000 (“SC Settlement”). SG has agreed to pay \$975,000 (“SG Settlement”); and the remaining twelve Defendant groups have agreed to pay \$10,000,000 (“Group Settlement”) for a total of \$23,630,000, to resolve and release all claims that were alleged or could have been alleged against them in the Action. Collectively, the Citigroup, MUFG Bank, SC, SG, and Group Settlements are referred to as the “Settlements.”
- The Lawsuit alleges that Defendants conspired to fix foreign currency (“FX”) instrument prices, causing members of the Settlement Classes to be overcharged when purchasing an FX Instrument from an individual or entity and that individual or entity transacted in an FX Instrument directly with a Defendant or one of Defendants’ alleged co-conspirators. Defendants believe that Class Plaintiffs’ claims lack merit and would have been rejected prior to trial, at trial, or on appeal.
- For people and entities who purchased an FX Instrument from an individual or entity in or while residing in New York, Arizona, California, Florida, Illinois, Massachusetts, Minnesota, or North Carolina, during the period of December 1, 2007, through [DATE OF PRELIMINARY APPROVAL ORDER], and that party in turn transacted the FX instrument with a Defendant or an alleged co-conspirator, the Settlements create separate Settlement Classes for each of those states. If you fall into one of the state Settlement Classes, you are a Settlement Class Member.
- The Settlements offer cash payments to members of the Settlement Classes who file valid timely Claims.
- This Notice has important information. It explains the Settlements in this class action lawsuit. It also explains your rights and options in this case.

**QUESTIONS? CALL 1-844-245-3777 OR VISIT [WWW.FXINDIRECTANTITRUSTSETTLEMENT.COM](http://WWW.FXINDIRECTANTITRUSTSETTLEMENT.COM)**

### Legal Rights and Options

**Your legal rights and options are described in this section. You may:**

**File a Claim:** This is the only way to get money from the Settlements. You must timely file a valid claim. See Question 8 for more information.

**Exclude Yourself:** You may request to be excluded from the Settlement Classes. This is the only way you can be part of another lawsuit that asks for money for claims in this case against the Settling Defendants. You will *not* get a payment from these Settlements. You must mail your exclusion request by [50 DAYS PRIOR TO FAIRNESS HEARING DATE]. See Question 10 for more information.

**Object:** If you do not agree with any part of the Settlements or you do not agree with the requested award of attorneys' fees, expenses and/or service awards, you may write to the Court to say why and mail your objection by [50 DAYS PRIOR TO FAIRNESS HEARING DATE]. See Question 14 for more information. You may also request to speak at the Court hearing about either the fairness of these Settlements or about the requested attorneys' fees and expenses or service awards. See Question 20 for more information.

**Do Nothing:** You will not get money. You give up your rights to sue for relief about the claims in this Lawsuit. See Question 21 for more information.

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## **1. Purpose of this Notice?**

This notice explains the proposed Settlements in a class action which is called *Contant, et al v. Bank of America Corp., et al*, No. 17-cv-3139-LGS, and the legal rights and options of the members of the Settlement Classes to participate in it, or not, before the Court decides whether to give final approval to the Settlements. This Notice explains the Lawsuit, the proposed Settlements, your legal rights, the benefits available, eligibility for those benefits, and how to get them. The Honorable Lorna G. Schofield of the U.S. District Court for the Southern District of New York is overseeing this Lawsuit.

The persons or entities who started this case are called the “Plaintiffs.” The Plaintiffs are James Contant, Sandra Lavender, Victor Hernandez, Martin-Han Tran, FX Primus Ltd., Carlos Gonzalez, Ugnius Matkus, Charles G. Hitchcock III, Jerry Jacobson, Tina Porter, and Paul Vermillion.

The companies they sued and settled with are the “Defendants.” Defendants are Citigroup, MUFG Bank, SC, SG, Bank of America, Barclays, BNP Paribas, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBC, RBS, and UBS.

## **2. What is this Lawsuit about?**

Generally, Plaintiffs allege that Defendants fixed the prices of foreign currency instruments (“FX Instruments”) in violation of the following state laws: Arizona Revised Statutes, § 44-1401, *et seq.* (the Arizona Antitrust Act); California Business and Professions Code § 16700, *et seq.* (the California Cartwright Act); California Business and Professions Code § 17200, *et seq.* (California’s Unfair Competition Law); Fla. Stat. § 501.201, *et seq.* (the Florida Deceptive and Unfair Trade Practices Act); 740 Ill. Comp. Stat. 10/1, *et seq.* (the Illinois Antitrust Act); Mass. Gen. Laws ch. 93A, §1 *et seq.* (the Massachusetts Consumer Protection Law); Minn. Stat. §§ 325D.49 to 325D.66 (the Minnesota Antitrust Law of 1971); New York General Business Laws § 340, *et seq.* (the New York Donnelly Act); and N.C. Gen. Stat. § 75-1, *et seq.* (the North Carolina Unfair Trade Practice Act). FX Instruments are any FX spot transaction, forward, swap, future, option, or any other FX transaction or instrument the trading or settlement value of which is related to FX rates.

Plaintiffs claim that beginning on or around December 1, 2007, Defendants conspired to fix prices in the FX market on a daily basis. Plaintiffs allege that Defendants’ conspiracy involved, among other things: (1) the fixing of FX bid-ask spreads; and (2) the fixing of benchmark FX rates, including, but not limited to, the WM/Reuters Fixes and the ECB Fixes. Plaintiffs further allege that Defendants: (1) created and participated in chat rooms and other forms of electronic communication; (2) shared confidential client and proprietary trading information with other Defendants involved in the conspiracy; (3) coordinated trades with other Defendants and alleged co-conspirators in order to illegally manipulate FX benchmark rates and spot rates; (4) monitored the trades placed by traders employed by co-conspirator Defendants in order to ensure compliance with the conspiracy; and (5) used code names, code words, and deliberate misspellings in efforts to evade detection. As a result of the alleged conspiracy, Plaintiffs allege that they and the members of the proposed Settlement Classes were injured in the form of overcharges on FX Instruments purchased from an individual or entity and that individual or entity transacted in an FX Instrument directly with a Defendant or one of Defendants’ alleged co-conspirators during the litigation Class Period December 1, 2007 through December 31, 2013. The “Class Period” for the Settlements is the period of December 1, 2007 through December 15, 2015, for purposes of the Group Settlement; December 1, 2007 through July 29, 2019, for purposes of the Citigroup and MUFG Bank Settlements; and December 1, 2007 through [DATE OF PRELIMINARY APPROVAL ORDER] for purposes of the SC and SG Settlements.

You may obtain more information regarding the specific allegations of the Action by reviewing the Second Consolidated Class Action Complaint (“SCCAC”), which is available at [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com).

### **3. Why is this Lawsuit a class action?**

In a class action, the Plaintiffs (or Class Plaintiffs) sue not only for themselves, but also on behalf of other people or businesses with similar legal claims and interests. Together all of these people or businesses with similar claims and interests form classes, and are class members.

When a court decides a case or approves a settlement, it is applicable to all members of the classes (except class members who exclude themselves). In this case, the Court has preliminarily approved the Settlements and the classes defined below in Question 6, and approved this Notice.

### **4. Why are there Settlements?**

Class Plaintiffs and Class Counsel believe that the members of the Settlement Classes have been damaged by Defendants' conduct, as described in the SCCAC. Defendants believe that Class Plaintiffs' claims lack merit, and would have been rejected prior to trial, at trial, or on appeal. Nothing in the Settlements constitutes an admission by Defendants of, or evidence of, liability, wrongdoing, or the merits of the allegations and claims asserted by Class Plaintiffs in the Action. Nor does anything in the Settlements constitute an admission by Class Plaintiffs of, or evidence of, the validity of any defense asserted by, or that could have been asserted by, Defendants.

The Court has not decided on the merits in favor of Class Plaintiffs or Defendants. However, on May 20, 2019 the Court granted a motion to dismiss for lack of personal jurisdiction filed by MUFG Bank and SG, and dismissed MUFG Bank and SG from the Lawsuit. The Settlements allow both sides to avoid the costs and risks of lengthy litigation, trial, and any appeals. The Settlements allow members of the Settlement Classes who submit valid claims to receive some compensation, rather than risk ultimately receiving nothing. Class Counsel and Class Plaintiffs believe that the Settlements are in the best interests of all members of the Settlement Classes.

If the Settlements are approved, Plaintiffs and the Settlement Classes will dismiss and release their claims against Defendants.

### **5. Am I part of these Settlements?**

In the Court's Preliminary Approval Orders of July 29, 2019, and [DATE OF PRELIMINARY APPROVAL ORDER], the Court defined the following statewide Settlement Classes:

**New York Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in New York and/or while domiciled in New York, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the New York Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the New York Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**Arizona Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Arizona and/or while domiciled in Arizona, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Arizona Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members

of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the Arizona Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**California Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in California by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the California Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the California Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**Florida Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Florida and/or while domiciled in Florida, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Florida Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the Florida Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**Illinois Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Illinois and/or while domiciled in Illinois, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Illinois Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the Illinois Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**Massachusetts Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Massachusetts and/or while domiciled in Massachusetts, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Massachusetts Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to

this action. Also excluded from the Massachusetts Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**Minnesota Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Minnesota and/or while domiciled in Minnesota, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Minnesota Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the Minnesota Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

**North Carolina Class:** All persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in North Carolina, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class Member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the North Carolina Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; any judicial officer presiding over this action and the members of his/her immediate family and judicial staff; and any juror assigned to this action. Also excluded from the North Carolina Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

The “Class Period” for the Settlements is the period of December 1, 2007 through December 15, 2015 for purposes of the Group Settlement; December 1, 2007 through July 29, 2019 for purposes of the Citigroup and MUFG Bank Settlements; and December 1, 2007 through [DATE OF PRELIMINARY APPROVAL ORDER] for purposes of the SC and SG Settlements.

The “Direct Settlement Class” is:

All Persons who, between January 1, 2003 and December 15, 2015, entered into an FX Instrument directly with a Defendant, a direct or indirect parent, subsidiary, or division of a Defendant, a Released Defendant Party, or co-conspirator where such Persons were either domiciled in the United States or its territories or, if domiciled outside the United States or its territories, transacted FX Instruments in the United States or its territories. Specifically excluded from the Direct Settlement Class are Defendants; Released Defendant Parties; co-conspirators; the officers, directors, or employees of any Defendant, Released Defendant Party, or co-conspirator; any entity in which any Defendant, Released Defendant Party, or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant, Released Defendant Party, or co-conspirator and any person acting on their behalf; provided, however, that Investment Vehicles shall not be excluded from the definition of the Direct Settlement Class. Also excluded from the Direct Settlement Class are any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this Action.

If you are not sure whether you are part of these Settlements, contact the Settlement Administrator at:



Call the toll-free number, 1-844-245-3777  
Visit [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com)  
Write to: Heffler Claims Group, PO Box 7907, Philadelphia, PA 19101-7907  
Email: [info@fxindirectantitrustsettlement.com](mailto:info@fxindirectantitrustsettlement.com).

## SETTLEMENT BENEFITS

### **6. What do these Settlements Provide?**

Settling Defendants have collectively paid \$23,630,000 of Settlements into a fund (the “Settlement Fund”) to be held for disbursement to the members of the Settlement Classes, if the Court grants final approval of the Settlement Agreements. The Settlement Fund, plus interest earned from the date it was established, less the costs of settlement administration and notice, applicable taxes on the settlement fund, attorneys’ fees and expenses, and service awards for the class representatives, all as approved by the Court (the “Net-Settlement Fund”) will be divided among the members of the Settlement Classes, who send in valid Claim Forms by [120 DAYS AFTER ORDER GRANTING FINAL APPROVAL] (“Authorized Claimants”) according to the Plan of Allocation.

### **7. How do I ask for money from these Settlements?**

You must file a valid and timely claim to get money from the Settlements. If the Court finally approves the Settlements, you are a member of one or more of the Settlement Classes and you do not exclude yourself from the Settlement Classes, you will receive a Claim Form in the mail or by email. You may also get a Claim Form by visiting [FXIndirectAntitrustSettlement.com](http://FXIndirectAntitrustSettlement.com) or by contacting the Settlement Administrator toll-free number: 1-844-245-3777.

### **How much money will I get?**

At this time, it is not known precisely how much each member of the Settlement Classes will receive from the Net Settlement Fund or when payments will be made. The amount of your payment, if any, will be determined by the Plan of Allocation. The Settlement Administrator will first determine the Settlement Class Member’s eligible transaction volume on FX Instruments. The Plan of Allocation includes two claim amount options: a “Pro Rata Award” and a “De Minimis Award.” For the **Pro Rata Award**, award calculations are based on a model that will estimate the Class Member’s claim relative to the claims of the other Class Members. The Pro Rata Award model will apply a uniform overcharge percentage rate across all currency pairs to a Class Member’s eligible FX instrument transactions. The overcharge rate is then weighted based on the currency pair’s trading liquidity to generate the amount of each Claimant’s potential claim. Currency pairs that are most liquid category will have the lowest weightings while illiquid pairs will have the highest weightings to reflect that the illiquid currency pairs have larger spreads. The Net Settlement Fund will be distributed to all Authorized Claimants that qualify for the Pro Rata Award on a *pro rata* basis. Specifically, the Pro Rata Award distribution of the Net Settlement Fund will be based on the percentage of each Authorized Claimant’s allowed claim as compared to the sum of all valid, allowed claims that are filed. A discount of 90% will be applied for FX instruments purchased after December 31, 2013. Eligible Class Members whose Pro Rata Award would otherwise fall under a certain threshold—and Class Members who provide documentation sufficient to demonstrate that they transacted FX Instruments with an individual or entity that in turn transacted in the FX instrument with a Defendant or one of Defendants’ alleged co-conspirators during the Class Period but who do not have transactional data sufficient for the Claims Administrator to calculate a Pro Rata Award—are eligible to receive a **De Minimis Award** in a fixed amount determined pursuant to the Plan of Allocation. The complete Plan of Allocation is available on the settlement website, [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com). No monies will revert to Settling Defendants if the Settlements are granted final approval.

## HOW TO FILE A CLAIM

### **8. How do I file a claim?**

If the Court approves the Settlements (see “The Court’s Fairness Hearing” below), the Court will approve a Claim Form and set a deadline for members of the Settlement Classes to submit claims. To receive a payment, you must submit a Claim Form. A Claim Form will be mailed or emailed to you automatically. The Claim Form will also be posted on the website and available by calling the tollfree number shown below. Members of the Settlement Classes will be able to submit claims electronically using this website or by email or by returning a paper Claim Form.

Read the instructions carefully. The Claim Form will provide two options for submitting your claim. Option 1 is the Estimated Claim Option. Under Option 1, the Settlement Administrator will estimate your eligible transaction volume using transaction data received from retail foreign exchange dealers (“RFEDs”) in this case. If you select Option 1 and the Settlement Administrator does not have data for your transactions sufficient to calculate a Pro Rata Award, you will be eligible to receive a De Minimis Award. Option 2 is the Document Claim Option. Under Option 2, you will submit data and documentation of your eligible transactions using the electronic data template available on the settlement website, and the Settlement Administrator will review it. More details on these options will be available at [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com) or by contacting the Settlement Administrator at 1-844-245-3777.

Once the Settlement Administrator receives your timely-filed Claim Form, the Settlement Administrator will estimate your volume and eligible participation amount for the relevant time period and will provide you with an explanation of how the estimate was determined (for example, analysis of documentation you submitted, analysis of RFED transaction data produced in this case, extrapolation from your documentation or RFED’s transaction data produced in this case, or any combination thereof). As provided in the Plan of Allocation, if your eligible participation amount falls below a certain threshold, you will be eligible to receive a De Minimis Award.

**Please keep all documentation related to your transactions in FX Instruments during the period December 1, 2007 to [DATE OF PRELIMINARY APPROVAL ORDER] for use in filing your Claim Form. Having documentation may be important to filing and substantiating a successful claim.**

Some companies may offer to help you file your Claim Form in exchange for a portion of your recovery from the Settlements. While you may choose to use such companies, you should know that you can file with the Settlement Administrator on your own, free of charge. Additionally, you are entitled to contact the Settlement Administrator or Class Counsel for assistance with understanding and filing your Claim Form – again, at no cost to you.

### **9. Am I giving anything up by filing a claim or not filing a claim?**

If you are a member of any of the Settlement Classes and do not exclude yourself, you can’t sue, continue to sue, or be part of any other lawsuit related to the conduct and legal issues alleged in the SCCAC against any of the Defendants or Released Parties, even if you do not file a Claim Form. More specifically, staying in the Settlement Classes means you have agreed to be bound by the Settlement Agreements and all of their terms including the release of claims contained therein. The Settlement Agreements are available on the settlement website, [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com). The claims released in these settlements are described below.

The “Released Claims” for purposes of the Settlements means any and all manner of claims (including Unknown Claims), causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses,

attorneys' fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, choate or inchoate, which Class Plaintiffs and the Settlement Classes ever had, now have, or hereafter can, shall, or may have, individually, representatively, derivatively, or in any capacity against the Released Parties that arise from or relate to a factual predicate of the Action, including any conduct alleged or that could have been alleged in any amended complaint or pleading therein, from the beginning of time through the Effective Date. "Unknown Claims" means any and all Released Claims against the Released Parties which Releasing Parties do not know or suspect to exist in their favor as of the Effective Date, and any Settling Defendants' Claims against Releasing Parties which Released Parties do not know or suspect to exist in their favor as of the Effective Date, which if known by the Releasing Parties or Released Parties might have affected their decision(s) with respect to the Settlements. Upon the Effective Date, members of the Settlement Classes shall have expressly waived the provisions, rights, and benefits of Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Settlement Class members shall have also waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

"Released Party" or "Released Parties" means Defendants along with Credit Suisse Group AG, Deutsche Bank Securities Inc., and each of their past, present, and future, direct and indirect parents (including holding companies), subsidiaries, affiliates, associates (all as defined in SEC Rule 12b-2 promulgated pursuant to the Securities Exchange Act of 1934), divisions, predecessors, successors, and each of their respective past, present, and future officers, directors, managers, members, partners, shareholders, insurers, employees, agents, attorneys, legal or other representatives, trustees, heirs, executors, administrators, advisors, and assigns, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

**The Scope and Effect of the Release:** Upon the Effective Date of the Settlements, members of the Settlements who do not exclude themselves from the Settlements: (1) shall be deemed to have, and by operation of the Final Judgment and Order of Dismissal, shall have, fully, finally, and forever waived, released, relinquished, and discharged (a) all Released Claims against the Released Parties, regardless of whether such Releasing Party executes and delivers a proof of claim and release from, and (b) any rights to the protections afforded under California Civil Code § 1542 and/or any other similar, comparable, or equivalent laws; (2) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (3) agrees and covenants not to sue, either directly, representatively, or in any other capacity, any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

#### **10. How do I exclude myself from the Settlement Classes?**

If you are a member of one of the Settlement Classes, do not want to remain in that Settlement Class, and do not want a payment from the Settlements, then you must take steps to exclude yourself from the Settlements. This is sometimes referred to as "opting out" of a class. The Court will exclude from the Settlements all Settlement Class Members who submit valid and timely requests for exclusion.

If you exclude yourself, you will not be able to receive any payments from these Settlements. However, this is the only way you will retain your rights to sue the Defendants and the Released Parties on your own based on the claims asserted in this Action.

You can exclude yourself by sending a written “Request for Exclusion” to the Settlement Administrator. You cannot exclude yourself by telephone or email. You must do so in writing by mail. To be valid, your Request for Exclusion must be postmarked by [50 DAYS PRIOR TO FAIRNESS HEARING DATE] and be mailed to the Settlement Administrator: *Contant v. Bank of America Corp.* Settlement, c/o Heffler Claims Group, PO Box 7907, Philadelphia, PA 19101-7907.

Your Request for Exclusion must: (i) be in writing; (ii) be signed by the person holding the claim or his, her or its authorized representative; (iii) state the name, address, and phone number of the Person; (iv) include proof of membership in a Settlement Class; and (v) include a signed statement that “I/we hereby request I/we be excluded from the Settlements in *Contant v. Bank of America Corp.*, No. 17-cv-3139-LGS.”

**11. If I don’t exclude myself, can I sue Defendants and the other Released Parties for the same thing later?**

No. Unless you exclude yourself, you give up any right to sue Defendants and the Released Parties for the claims that the Settlements resolve. If you decide to exclude yourself, your decision will apply only to Defendants and the other Released Parties.

**12. If I exclude myself from these Settlements, can I get money from the Settlements?**

No. You will not get any money from the Settlements if you exclude yourself.

**13. If I exclude myself from these Settlements, can I still object?**

No. If you exclude yourself, you are no longer a member of a Settlement Class and may not object to any aspect of the Settlements.

**OBJECTING TO THE SETTLEMENTS**

**14. How do I tell the Court if I don’t like the Settlements?**

If you are a member of one of the Settlement Classes (and don’t exclude yourself from one of the Settlement Classes), you can object to any part of the Settlements, the Plan of Allocation, and/or the request for attorneys’ fees and litigation costs and expenses and/or the service awards request.

To object, you must timely submit a letter that includes the following: (1) the name of the case (*Contant v. Bank of America Corp.*, No. 17-cv-3139-LGS); (2) your name and address and if represented by counsel, the name, address, and telephone number of your counsel; (3) proof that you are a member of one of the Settlement Classes; (4) a statement detailing all your objections to the Settlements with specificity and including your legal and factual bases for each objection; and (5) a statement of whether you intend to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name of your counsel who will attend.

You cannot make an objection by telephone or email. You must do so in writing and file your objection with the Clerk of Court and mail your objection to each of the following addresses postmarked by [50 DAYS PRIOR TO FAIRNESS HEARING DATE].

**Court**

United States District Court for the Southern District of New York  
Clerk of Court  
Daniel Patrick Moynihan Courthouse  
500 Pearl St.  
New York, NY 10007

You must also send a copy of your Statement of Objections to Class Counsel and Counsel for the Settling Defendants at the following addresses:

**Class Counsel**

Michael Dell'Angelo  
Berger Montague PC  
1818 Market St., Suite 3600  
Philadelphia, PA 19103

**Defendant Citigroup**

Andrew Lazerow  
Covington & Burling LLP  
One City Center  
850 Tenth Street, NW  
Washington, DC 20001

**Defendant MUFG Bank**

Andrew C. Finch  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064

**Defendant SC**

Marc Gottridge  
Hogan Lovells US LLP  
390 Madison Avenue  
New York, NY 10017

**Defendant SG**

Patrick Ashby  
Linklaters LLP  
1345 Avenue of the Americas  
New York, NY 10105

**Settling Group Defendants**

Jeffrey J. Resetarits  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022

If you don't timely and validly submit your objection, your view will not be considered by the Court or any court on appeal.

**15. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the Settlements. You can object to the Settlements only if you don't exclude yourself from one of the Settlement Classes. Objecting does not change your ability to claim money from the Settlement Fund if the Court approves the Settlements. If you exclude yourself, you cannot object because the Settlements no longer affect your rights and you cannot claim money from the Settlement Fund.

## THE LAWYERS REPRESENTING YOU

### **16. Do I have a lawyer in this Lawsuit?**

The Court has appointed the law firm of Berger Montague PC to represent you and the other members of the Settlement Classes:

Michael Dell' Angelo  
Michael J. Kane  
Berger Montague PC  
1818 Market St., Suite 3600  
Philadelphia, PA 19103  
mdellangelo@bm.net  
mkane@bm.net  
(215) 875-3000

Berger Montague PC has been appointed Settlement Class Counsel by the Court. If you have any questions about the notice or the Lawsuit, you can contact the above-listed law firm. Class Counsel will apply to the Court for payment of attorneys' fees and litigation costs and expenses from the Settlement Fund. You will not otherwise be charged for the services of Settlement Class Counsel or any other attorneys representing the Plaintiffs in this Action (collectively, "Class Counsel"). If you want to be represented by your own lawyer, you may hire one at your own cost.

### **17. How will the lawyers be paid?**

To date, Class Counsel have not been paid any attorneys' fees or reimbursed for any out-of-pocket costs or expenses. Any attorneys' fees and costs and expenses will be awarded only as approved by the Court in amounts determined to be fair and reasonable. By [21 DAYS AFTER NOTICE DATE], Class Counsel will move for an award of attorneys' fees not to exceed \$6,194,083.33 (26.21% of the Settlement Fund), reimbursement of litigation costs and expenses not to exceed \$1,825,000, and service awards of \$5,000 for each of the eleven Settlement Class Representatives (\$55,000 total) to be paid out of the Settlement Fund.

Any motions in support of the requests will be available on the Settlement Website after they are filed. After that time, if you wish to review the motion papers, you may do so by viewing them at [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com).

The Court will consider the motion for attorneys' fees and litigation costs and expenses at or after the Fairness Hearing.

## THE COURT'S FAIRNESS HEARING

### **18. When and where will the Court decide whether to approve these Settlements?**

There will be a Fairness Hearing at [TIME] on [MONTH, DAY, YEAR (on a date to be determined by the Court)]. The hearing will take place at the United States District Court for the Southern District of New York, Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007

**Important!** The time and date of the Fairness Hearing may change without additional mailed or published notice. For updated information on the hearing, visit: [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com).

At the Fairness Hearing the Court will consider whether the Settlements are fair, adequate, and reasonable and should be approved. The Court will also decide whether it should give its final approval of the Plaintiffs' requests for attorneys' fees and expenses, service awards to the Class Plaintiffs and other costs. The Court will consider any objections and listen to members of the Settlement Classes who have asked to speak at the Fairness Hearing.

**19. Do I have to come to the Fairness Hearing to get my money?**

No. You do not have to go to the Fairness Hearing, even if you sent the Court an objection. But, you can go to the hearing or hire a lawyer to go the Fairness Hearing if you want to, at your own expense.

**20. What if I want to speak at the Fairness Hearing?**

You must file a Notice of Intention to Appear with the Court at this address:

United States District Court for the Southern District of New York  
Clerk of Court  
Daniel Patrick Moynihan Courthouse  
500 Pearl St.  
New York, New York 10007

Your Notice of Intention to Appear must be filed by [50 DAYS PRIOR TO FINAL FAIRNESS HEARING DATE]. You must also mail a copy of your letter to Class Counsel and Counsel for the Settling Defendants at the addresses listed in question 15.

Your Notice of Intention to Appear must be signed and: (i) state the name, address, and phone number of the person and if applicable, the name, address, and telephone number of you attorney (who must file a Notice of Appearance with the Court); and (ii) state that you (or if applicable, your lawyer) intends to appear at the Fairness Hearing for the Settlements in *Contant v. Bank of America Corp.*, No. 17-cv-3139-LGS.

**IF YOU DO NOTHING**

**21. What happens if I do nothing?**

If you do nothing, you will be automatically a member of one or more of the Settlement Classes if you fit one or more of the Settlement Class descriptions. However, if you do not timely file a Claim Form, you will not receive any payment from the Settlements. You will be bound by past and future rulings, including rulings on the Settlements and Settlement releases, Released Claims, and Released Parties.

**GETTING MORE INFORMATION**

**22. How do I get more information?**

This Notice summarizes the Lawsuit, the terms of the Settlements, and your rights and options in connection with the Settlements. More details are in the Settlement Agreements, which are available for your review at [www.FXIndirectAntitrustSettlement.com](http://www.FXIndirectAntitrustSettlement.com). The Settlement Website also has the operative Complaint and other documents relating to the Settlements. You may also call toll free 1-844-245-3777 or write the Claim Administrator at: *Contant v. Bank of America Corp.* Settlement, c/o Heffler Claims Group, PO Box 7907, Philadelphia, PA 19101-7907.

**Please Do Not Attempt to Contact Judge Schofield or the Clerk of Court with Any Questions**

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

JAMES CONTANT, *et al.*,

Plaintiffs,

v.

BANK OF AMERICA  
CORPORATION, *et al.*,

Defendants.

Case No. 17-cv-3139-LGS

(related to No. 13-cv-7789-LGS)

**DECLARATION OF JANET S. NETZ, PH.D.**

May 22, 2020



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## I. Qualifications

I, Janet S. Netz, am a founding partner of applEcon, LLC. I have been a tenured Associate Professor of Economics at Purdue University and a Visiting Associate Professor at the University of Michigan. I received a B.A. (1986) from the University of California, Berkeley, cum laude, and an M.A. (1990) and Ph.D. (1992) from the University of Michigan, all in Economics. My doctoral fields of study were Industrial Organization – the study of firm interaction and market performance – and International Trade and Finance. In my thesis I empirically examined the impact of financial instruments (futures contracts) on physical markets.

I have taught Industrial Organization at the undergraduate and doctoral levels; Antitrust and Regulation at the undergraduate level; Microeconomic Theory at the undergraduate and master's levels; and International Economics at the undergraduate and master's levels. My research has focused on competitive interactions of firms and strategies firms can use to increase profits as well as the resulting impact on firms and the market. I have published in peer-reviewed, scholarly journals and have presented my research at many conferences and seminars. I provide my academic employment and publication histories in my curriculum vitae, which is attached as Exhibit A.

I have testified at trial and by affidavit or declaration in matters related to antitrust, consumer protection, and business practices, especially with regard to the impact of anti-competitive conduct, for over fifteen years. In addition, I have consulted on numerous antitrust, consumer protection, and business practices cases. I provide a list of the cases on which I have testified and consulted in my curriculum vitae, which is attached as Exhibit A.

applEcon bills my work on this case at the rate of \$800 per hour. My and applEcon's compensation is not dependent on my opinions or the outcome of the case.

## II. Assignment

I previously submitted a declaration on May 24, 2019, describing a general method of allocating settlement funds in a manner that was proportional to the volume of each Class Member's transactions and the degree to which Class Member transactions were likely impacted by the alleged conspiracy under Plaintiffs' theory of harm.<sup>1</sup>

Counsel has asked me to revise my proposed allocation method to include de minimis payments to all Claimants. The total value of these de minimis payments will be capped at 20% of the settlement fund (net of fees and administration costs). The net settlement funds that remain after these de minimis payments will be allocated to Claimants in proportion to their discounted adjusted trading volume, as described below and in my previous declaration. It is my understanding that counsel expects the de minimis payments to be within the ranges set forth below:

- Claimants who traded spot foreign exchange (FX) between December 1, 2007, and December 31, 2013, will receive a minimum payment of between \$12.50 and \$25.

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<sup>1</sup> 24 May 2019, Declaration of Janet S. Netz, Ph.D. Concerning Proposed Plan of Allocation of Settlement Funds. (Hereinafter "2019 Netz Declaration").

- Claimants who only traded spot FX on or after January 1, 2014, will receive a minimum payment of between \$5 and \$10.

Counsel has also asked me to perform the allocation calculations using data produced by two retail foreign exchange dealers (RFEDs), FXDD and GAIN, for illustrative purposes. These calculations are summarized in Section IV.I and Exhibits 1-4. All documents and data I have relied on are listed in Exhibit B. I reserve the right to revise my conclusions and opinions should more information come to light.

### III. Summary of allegations and the theory of harm and damages

#### A. Allegations

Plaintiffs allege Defendants shared competitively sensitive information and conspired to widen the bid-ask spreads on FX spot transactions in the over-the-counter (OTC) market in violation of various state antitrust and consumer protection laws.<sup>2</sup>

The bid-ask spread is the difference between the price at which a Defendant would buy a currency pair (the bid price) and that price at which it would sell the same currency pair (the ask price). Plaintiffs allege that Defendants' widening of the spreads simultaneously elevated the prices at which Defendants' counterparties purchased spot FX and depressed the prices at which their counterparties sold spot FX.<sup>3</sup>

Defendants' counterparties in the OTC market included RFEDs, which purchased spot FX instruments for resale to retail FX customers including Plaintiffs and members of the Classes.<sup>4</sup>

Plaintiffs further allege that RFEDs set their retail spot FX prices via pricing methods that automatically added a retail markup to the spread paid by the RFED to Defendants. The RFEDs therefore automatically and mechanically passed on the full amount of Defendants' collusive spread increase to their retail customers, including Plaintiffs and members of the Classes, in the form of increased retail bid-ask spreads.

Under Plaintiffs' theory of harm, when a Class Member purchased a currency pair via an RFED during the Class Period, harm suffered is equal to the total purchase price less the total purchase price that would have prevailed but-for Defendants' allegedly collusive conduct.

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<sup>2</sup> 28 November 2018, Second Consolidated Class Action Complaint (hereinafter "Second Complaint"), *Contant et al. v. Bank of America Corporation, et al.*, No. 1:17-cv-03139-LGS (United States District Court for the Southern District of New York, ECF No. 183, at ¶¶ 115-118, 262-280.

<sup>3</sup> All foreign exchange transactions necessarily involve the simultaneous purchase of one currency (the currency received) and the sale of another currency (the currency delivered). By convention, market participants refer to currency pairs in terms of the base currency and the quote currency. For example, the currency pair of the U.S. dollar and the Euro is referred to as the EUR/USD, with the base currency, the Euro, listed first. The exchange rate is denominated in the quote currency, e.g., EUR/USD exchange rates are quoted in terms of the USD. When a bank quotes a bid (ask) price, it is announcing the price at which it will buy (sell) the base currency in terms of the quote currency. For example, the bid price for the EUR/USD is the price in dollars at which the bank will buy Euros and sell U.S. dollars. The ask price for the EUR/USD is the price in dollars at which the bank will sell Euros and buy U.S. dollars. Transactions in both directions (e.g., Euros for U.S. dollars as well as U.S. dollars for Euros) for purchases, i.e., the first half of a "round turn" transaction, are included in the Settlements and will be included for purposes of calculating Claimant transactional volumes for the allocation

<sup>4</sup> Second Complaint, at ¶3.

## B. Assumptions for settlement allocation purposes

For settlement allocation purposes, I assume Plaintiffs' allegations are true. Specifically, I assume that Defendants' conduct had the effect of widening the spreads of all currency pairs throughout the Class Period and that RFEDs fully passed through those anti-competitive price effects to their retail customers.

Different currency pairs typically trade at different spreads due in large part to differences in liquidity between currency pairs.<sup>5</sup> For example, the USD/JPY (U.S. Dollar/Japanese Yen) currency pair is widely understood to be very liquid and typically has a small spread. From December 2007 through December 2015 the spread for the USD/JPY averaged 0.0210%.<sup>6</sup> The GBP/NZD (British Pound/New Zealand Dollar), on the other hand, is an illiquid currency pair and typically has a larger spread. From December 2007 through December 2015 the spread for the GBP/NZD has averaged 0.0653%, about three times the USD/JPY spread. See Exhibit 5 for a list of spreads for each currency pair.

For settlement allocation purposes, I assume that Defendants' conduct increased spreads by a uniform percentage rate across all currency pairs.<sup>7</sup> This assumption is commonly used when quantifying the impact of anti-competitive conduct, including price-fixing, on the price of goods.<sup>8</sup>

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<sup>5</sup> In my prior declaration, I adopted the currency pair liquidity categories used in the Plan of Distribution in the Direct Purchaser Plaintiff case: most liquid, liquid, illiquid, and pegged. I calculated weighted average spreads for each category and proposed using these average spreads as the basis for allocation calculations. Calculating spreads specific to each currency pair provides a more accurate basis for allocation calculations, and I have changed the calculation method accordingly. See,

- 2019 Netz Declaration.
- 29 September 2017, Plan of Distribution, In re Foreign Exchange Benchmark Rates Antitrust Litigation, No. 1:13-cv-07789-LGS (United States District Court Southern District of New York).

<sup>6</sup> I have expressed the spread as a percentage of the level of the exchange rate. This facilitates the comparison of spreads across all currency pairs, including across FX rates that have different quote currencies. I use this convention throughout my declaration. Bid-ask spreads are commonly expressed as a percentage of the mid-point in basis points (one basis point is 1/100<sup>th</sup> of a percent). See, Lyons, Richard, 2001, *The Microstructure Approach to Exchange Rates*, MIT Press 2001, at Chapter 3, discussing spreads for various exchange rates and comparing them to spreads for stocks, all expressed in basis points.

<sup>7</sup> I also assume that the spread was widened symmetrically, i.e., that the bid price decreased by the same amount that the ask price increased.

<sup>8</sup> See, e.g.,

- The authors describe the "dummy variable" model method of estimating overcharges and note that such an approach often estimates a uniform percentage overcharge. Finkelstein, Michael O. and Levenbach, Hans, 1983, *Regression Estimates of Damages in Price-Fixing Cases*, Law and Contemporary Problems, Vol. 46, No. 4, *Statistical Inference in Litigation*, 145-169, at pp. 155-156.
- The authors describe the "before-and-after" benchmark method to estimating antitrust overcharges, which implicitly employs calculating a uniform overcharge across products. Oxera and Komninos, Assimakis, December 2009, *Quantifying Antitrust Damages: Towards Non-binding Guidance for Courts*, Study prepared for the European Commission, at pp. 52-59.

Assuming a uniform percentage increase in spreads across all currency pairs, the impact of Defendants' spread widening on a given Class Member trade is proportional to the spread on the currency pair that Class Member traded.

For example, suppose that the Defendants' conduct had the effect of increasing the spread for all currency pairs by 10%, in which case the observed spreads in Exhibit 5 were 10% greater than they would have been in the but-for world. The average spread for the USD/JPY was 0.0210% in the actual world and would have been 0.0191% in the but-for world, a difference of 0.0019 percentage points.<sup>9</sup> The average spread for the GBP/NZD was 0.0653% in the actual world and would have been 0.0594% in the but-for world, a difference of 0.0059 percentage points.<sup>10</sup>

The impact to Class Members who transacted in GBP/NZD would thus be approximately three times greater than the impact to Class Members who transacted in USD/JPY, all else equal.<sup>11</sup> This ratio is in direct proportion to the average spreads for the two currency pairs.<sup>12</sup> Regardless of the size by which the spread was widened by Defendants' conduct, be it 10% or 20%, the impact to Class Members who transacted in GBP/NZD would always be about three times greater than those who transacted in USD/JPY.<sup>13</sup> Using the figures in Exhibit 5, similar calculations can be made to estimate the relative impact of spread widening on Class Members who transacted in all currency pairs.

Fifty-three different currency pairs are represented in the transaction data produced by FXDD and GAIN. I have been able to calculate the average spreads for each of these currency pairs using historical spread data obtained from a market data provider.<sup>14</sup> It is possible that other RFEDs traded other currency pairs with their customers for which market data are not available.<sup>15</sup> In that case I would use the average spread of other illiquid currency pairs in place of the unavailable spread data.

I have not estimated the magnitude of the overcharge and it is not necessary to do so for settlement allocation purposes. Assuming the spreads for all currency pairs increased by the same percentage, all Class Members would have suffered the same proportional impact regardless of the magnitude of the overcharge (that is, regardless of the magnitude by which the

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<sup>9</sup>  $0.0210\% / 1.10 = 0.0191\%$ .

<sup>10</sup>  $0.0653\% / 1.10 = 0.0594\%$ .

<sup>11</sup> Class Members who transacted in GBP/NZD would have paid a spread that was 0.0059 percentage points greater than they would have in the but-for world. Class Members who transacted in USD/JPY would have paid a spread that was 0.0019 percentage points greater than they would have in the but-for world. The degree to which trades in GBP/NZD were damaged relative to trades in USD/JPY is given by  $0.0059/0.0019 = 3.11$ .

<sup>12</sup> The average spreads for GBP/NZD and USD/JPY are 0.0653% and 0.0210%, respectively.  $0.0653\%/0.0210\% = 3.11$ .

<sup>13</sup> For example, if the challenged conduct had instead caused spreads to increase by 20%, the average spreads for the USD/JPY and GBP/NZD would have been 0.0175% and 0.0544% in the but-for world, respectively. The increase in the spread of the GBP/NZD of 0.0109 percentage points would be 3.11 times the increase in the spread of the USD/JPY of 0.0035 percentage points.

<sup>14</sup> Olsen Financial Technologies, 29 April 2020, FX Spot Daily Mean Spread. See Exhibit 6 for a full listing of data series.

<sup>15</sup> Spread data are readily available for the most liquid currency pairs, which, by definition, are popularly traded. However, spread data may be unavailable for less liquid currency pairs, some of which are traded only rarely. Such pairs would almost surely represent a tiny fraction of an RFED's total trading volume.

spread was widened). For example, suppose that a 10% increase in all spreads caused Class Member A to overpay by \$500 and Class Member B to overpay by \$1,000. If the spread instead had increased by 20%, then A would have overpaid by \$1,000 and B by \$2,000. In both cases, B overpaid by twice as much as A and both Class Members' shares of the total overpayment do not depend on the size of the increase in the spread. Because settlement allocation involves allocation of a fixed amount of funds, only Class Members' shares of the total harm are relevant.

### C. Expected impact

Taken together, these assumptions imply that under the Plaintiffs' theory, the impact of Defendants' spread widening on any given trade that a Class Member made would be proportional to the volume of that trade multiplied by the spread at the time of the trade.

For example, suppose a Class Member entered four transactions, buying \$100,000 each of: AUD/NZD, EUR/USD, USD/HKD, and USD/TWD. The impact on that Class Member attributable to each of those trades is summarized in Table 1 below.<sup>16</sup>

Trade	Currency pair	Actual spread	Assumed spread increase	But-for spread	Overpayment
\$100,000	AUD/NZD	0.0665%	10%	0.0605%	\$3.02
\$100,000	EUR/USD	0.0145%	10%	0.0132%	\$0.66
\$100,000	USD/HKD	0.0091%	10%	0.0083%	\$0.41
\$100,000	USD/TWD	0.1270%	10%	0.1155%	\$5.77

The wider spread caused the Class Member to overpay by \$5.77 for USD/TWD, which is approximately 1.9 times the \$3.02 overpayment for AUD/NZD. The impact on the Class Member is in direct proportion to the actual spreads for the two currency pairs.<sup>17</sup>

## IV. Settlement allocation calculations

### A. Overview

Counsel has informed me that there are three settlement funds, each of which applies to trades made during a different time period. See Exhibit 7. The total gross settlement fund is \$23,630,000. The net fund available for distribution to Claimants will be lower and will depend on the size of attorneys' fees, expenses, service awards, taxes (if any), and settlement administration costs. For the purposes of this declaration, Counsel has instructed me to assume

<sup>16</sup> The impact attributable to each trade is equal to the price paid in the actual world less the price paid in the but-for world, i.e.,  $\$100,000 \times (\text{actual ask price}) - \$100,000 \times (\text{but-for ask price})$ .

<sup>17</sup>  $0.1270\% / 0.0665\% = 1.9$ .

that these costs and fees will be 30% of the gross settlement fund. That is, the net settlement fund to be allocated to Claimants will be 70% of the gross settlement fund, or \$16,541,000.

Some Claimants may lack detailed trading records,<sup>18</sup> which makes it impossible to estimate the degree to which they were impacted by the challenged conduct. To ensure that such Claimants receive at least some compensation, counsel has proposed that all Claimants will receive one of two de minimis payments:

- Claimants who traded spot FX between December 1, 2007, and December 31, 2013, will receive between \$12.50 and \$25.
- Claimants who only traded spot FX on or after January 1, 2014, will receive between \$5 and \$10.<sup>19</sup>

The de minimis payments will be funded proportionally from the three settlement funds. For example, suppose there is \$16,000,000 of net settlement funds to be allocated to 100,000 Claimants. Suppose further that together the Claimants receive de minimis payments of \$2,000,000, which is 12.5% of the available net settlement funds. Then 12.5% of each settlement fund (net of fees, etc.) would be set aside for the de minimis payments, i.e., \$925,518 from the Citigroup and MUFG Bank fund, \$228,100 from the SocGen and Standard Chartered fund, and \$846,382 from the Group Settling Defendants fund.

After setting aside the funds for the de minimis payments, the remaining portion of each settlement fund would be allocated to individual trades during the appropriate time period in proportion to the volume of the trade multiplied by the spread at the time of the trade.<sup>20</sup> This ensures that the rest of the settlement funds are allocated in proportion to the impact of the challenged conduct on each trade. See Section III.C.

Because each settlement fund applies to a different time period, each fund will be allocated separately. Continuing with the example above, after 12.5% of the net settlement funds were allocated to the de minimis payments:

- \$6,478,629 would remain in the Citigroup and MUFG Bank fund, which would be allocated among all Claimant trades made between December 1, 2007, and July 29, 2019.
- \$1,596,699 would remain in the SocGen and Standard Chartered fund, which would be allocated among all Claimant trades made between December 1, 2007, and the date of the Court's order granting preliminary approval of the SocGen and Standard Chartered Settlements.
- \$5,924,672 would remain in the Group Settling Defendants fund, which would be allocated among all Claimant trades made between December 1, 2007, and December 15, 2015.

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<sup>18</sup> In general, such records are typically held by the Claimant, the RFED, or both. Any Claimant may lack records from either source.

<sup>19</sup> Counsel has also proposed discounting by 90% the value of trades that occurred on or after January 1, 2014. See Section IV.G

<sup>20</sup> Again, the value of trades made on or after January 1, 2014, will be discounted by 90%. See Section IV.G.

The following sections describe the RFED datasets that have been produced so far and the calculations I have performed. It is straightforward to perform these calculations on a dataset that incorporates trading data provided by additional RFEDs or the Claimants themselves.

## **B. Trading data**

Counsel has advised me that the four major RFEDs that operated during the Class Period – Forex Capital Markets (“FXCM”), FXDirectDealer, LLC (“FXDD”), GAIN Capital (“GAIN”), and Oanda Corporation (“Oanda”) – have produced trading data.

In the following subsections, I briefly describe the FXDD and GAIN datasets. Together, the two RFED datasets at hand include 37,127 customers, with approximately \$1.52 trillion traded. The FXCM and Oanda data were only produced recently and have not yet been fully processed. I have, however, determined that the FXCM data contains trading records for approximately 54,000 customers.<sup>21</sup>

### **1. FXDD data**

FXDD produced two files, one with detailed customer information (containing physical addresses, email addresses, phone numbers, etc.) and another with detailed transaction data (currency pairs, trade volumes, trade rates, etc.). The latter file also includes the customer’s name, province (state), and country, which allows matching between the two files.<sup>22</sup>

The FXDD data contain information on approximately 16.7 million individual foreign exchange transactions between FXDD and 10,382 customers in the relevant states. The data also include information on the currency pair, price, volume traded, and date of the transaction. The total trading volume of customers in the relevant states during the Class Period was roughly \$423.5 billion.

### **2. GAIN data**

GAIN produced seven files, one of which includes detailed customer information (containing customer account numbers, names, mailing address, phone numbers, and email addresses) and six of which include customer transactions (containing currency pairs, trade volumes, trade rates, etc.). The customer transactions files also include a customer account number field, which allows them to be matched with the customer information file.<sup>23</sup>

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<sup>21</sup> This figure is preliminary and could change as I and my staff continue to process the FXCM data.

<sup>22</sup> In addition to matching the detailed customer information with the transaction data, I perform a number of cleaning operations to prepare the data for the calculations to follow. The state field in the customer information file often contains inaccurate values or no values at all, which require correction or filling-in using street number, city, and/or zip code information. If an accurate state value cannot be determined, I drop the customer from the analysis. This results in dropping 94 customers. Additional cleaning of the combined data included dropping trades of products not at issue, such as metals and oil, and dropping trades that occurred before December 1, 2007. I also combine customers who maintained the same email address but for whom slight variations in user-entered names create multiple “different” customers. For example, an entry for “John A. Smith” and an entry for “John Smith,” both with the email address of johnsmith@example.com, would be standardized as “John Smith,” allowing me to combine observations for this customer.

<sup>23</sup> In addition to matching the detailed customer information with the transaction data, I perform a number of cleaning operations to prepare the data for the calculations to follow. In the transaction data, I drop observations with a unit price (trade rate) of zero or units (trade volumes) of zero. Cleaning the customer information file first involves scrubbing customer names of unnecessary pieces of text like the word “META” and numbers that come



The GAIN data contain information concerning approximately 26.5 million individual foreign exchange transactions between GAIN and 26,745 customers in the relevant states. The total trading volume of customers in the relevant states during the Class Period was roughly \$1.1 trillion.

### 3. Claimant-provided data

In addition to these data from RFEDs, Claimants may present their own trading data.

Counsel also expects that some portion of Claimants will be able to prove that they traded spot FX during the relevant time period but lack detailed trading records.

#### C. De minimis allocations

Counsel has proposed that Claimants who can demonstrate that they traded spot FX between December 1, 2007, and December 31, 2013, will receive a de minimis payment between \$12.50 and \$25. Claimants who can only demonstrate that they traded FX on or after January 1, 2014, will receive a de minimis payment between \$5 and \$10.

The final values of the de minimis payments will be determined, in large part, by the total number of Claimants according to the following:

- The minimum de minimis payments will be \$5 (for Claimants who only traded on or after January 1, 2014) and \$12.50 (for Claimants who traded between December 1, 2007, and December 31, 2013);
- De minimis payment amounts will be set at \$10 and \$25 if that would result in the aggregate de minimis payments totaling less than or equal to 20% of all Claimant awards; and
- If de minimis payments of \$10 and \$25 would result in aggregate de minimis payments of greater than 20% of all Claimant awards, then the de minimis payments will be the greater of the following:
  - \$5 and \$12.50; or
  - Values at which aggregate de minimis payments account for 20% all Claimant awards.

Of the 37,127 Claimants in the FXDD and GAIN datasets, 30,514 traded spot FX between December 1, 2007 and December 31, 2013, and 6,613 traded spot FX only on or after January 1, 2014.

After allocating the de minimis payments, I allocate the remaining settlement funds to the Claimants in proportion to the estimated harm, as described below.

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after the name. I then standardize customer names for customers who had the same account number but for whom slight variations in user-entered names create multiple “different” customers within a distinct account number. For example, an entry for “John A. Smith” and an entry for “John Smith,” both with the account number of 10000001, would be standardized as “John Smith,” allowing me to observe just one customer name for each customer account number found in the transaction data. Additional cleaning includes scrubbing mailing and email addresses of the word “Unknown”.

**D. USD trade volume**

I convert the volume of each transaction into U.S. dollars. For transactions involving a currency pair with a U.S. dollar base, like the USD/JPY, nothing needs to be done as the volume is already expressed in U.S. dollars. For transactions involving a currency pair quoted in U.S. dollars, like the EUR/USD, I use the exchange rate implied by the trade to convert the volume into U.S. dollars. For example, if a customer bought 100,000 EUR/USD at a rate of 1.25, the volume in USD would be  $100,000 \times 1.25 = \$125,000$ .

For transactions that did not involve the U.S. dollar I use the daily exchange rate for the base currency and the U.S. dollar for the conversion.<sup>24</sup> For example, for trades involving the GBP/NZD, I convert the transaction volume from GBP to USD using the daily GBP/USD exchange rate.

**E. Percentage spread**

Next, I calculate the percentage spread for each transaction.

First, I calculate the monthly average spread for each currency pair in the data. For example, the spread on the EUR/USD in June 2010 was \$0.0002175.

Then for each transaction, I divide the average spread for that month by the exchange rate used in the transaction to arrive at the percentage spread. The exchange rate for the EUR/USD in June 2010 averaged \$1.2201 per Euro in the transaction data. Therefore, the percentage spread was 0.0178%.

**F. Adjusted trade volume**

I then calculate the “adjusted trade volume” by multiplying the USD trade volume by the percentage spread.

**G. Time period discount and discounted adjusted trade volume**

Plaintiffs’ counsel has also proposed discounting the value of claims that took place after December 31, 2013 by 90%. Accordingly, for trades that took place on or after January 1, 2014, I multiply the adjusted trade volume by 0.10 to apply a discount rate of 90%.

**H. Total discounted adjusted trade volume**

I then repeat the following steps for each of the three settlement funds for the time period to which the settlement fund applies:

- I sum the discounted adjusted trade volume across all trades for each Claimant during the relevant time period. This results in the Claimant’s total discounted adjusted trade volume.
- I calculate the total discounted adjusted trade volume across all Claimants during the relevant time period.

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<sup>24</sup> For this calculation, I used foreign exchange rate data published by the Federal Reserve Bank. See Exhibit 6.

- I allocate the settlement fund remaining after the de minimis payments. The allocation is in proportion to each Claimant's share of the total discounted adjusted trading volume during the relevant time period.

For example, suppose there was \$6,000,000 remaining in the Group Settling Defendants fund after the de minimis payments were made and there was \$700,000,000 total discounted adjusted trading volume across all Claimants between December 1, 2007 and December 15, 2015. A Claimant with discounted adjusted trade volume of \$7,000 would represent 0.001% of the total adjusted trade volume, so would receive an allocation of 0.001% or \$60 of the \$6,000,000 remaining in the Group Settling Defendants fund.

### **I. Final allocation calculations**

Counsel has asked me to calculate the final allocation for the approximately 37,000 customers in the data provided by FXDD and GAIN.

Counsel has advised me that they expect the total number of Claimants to be in the range of 50,000 to 100,000. Accordingly, I perform the allocation calculations twice; Exhibit 1 presents selected summary statistics for the settlement allocation assuming 50,000 or 100,000 total Claimants.<sup>25</sup>

For example, if there are 100,000 Claimants, the de minimis payments would be \$10 and \$25, and the median Claimant would receive approximately \$37. If, instead, there were 50,000 Claimants, the de minimis payments would remain the same but the median Claimant would receive approximately \$51.

Exhibits 2-4 further illustrate the distribution of the settlement allocation. Each of these exhibits assumes there will be 100,000 Claimants.

Exhibit 2 is a histogram that graphically depicts the distribution of the allocation. Most Claimants would receive less than \$100 in this scenario.

Exhibit 3 lists the allocation amounts for the forty Claimants with the largest payments in the FXDD and GAIN data. For example, the Claimant with the largest payment would receive \$111,980.

Exhibit 4 lists the allocation amounts for forty randomly chosen Claimants from the FXDD and GAIN data. The allocations vary from a low of \$10 to a high of \$30,434, with about half of Claimants receiving between \$10 and \$40.

### **V. Summary**

In this declaration I have described a method to allocate funds from settlements Plaintiffs reached with Defendants. In addition, I have implemented the method for illustrative purposes using the data currently at hand, from FXDD and GAIN.

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<sup>25</sup> I make two other assumptions necessary to calculate the final allocation. I assume that attorneys' and settlement administration fees will account for 30% of the gross settlement fund. I assume that the Claimants as a whole traded spot FX in a pattern (volumes, currency pairs, dates) that is similar to the pattern observed in the FXDD and GAIN customer data.



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### Education

Ph.D. Economics, University of Michigan, 1992  
M.A. Economics, University of Michigan, 1990  
B.A. Economics, University of California at Berkeley, 1986, *cum laude*

### Employment

Founder and Partner, applEcon, May 2001 to present  
Visiting Associate Professor, University of Michigan, Fall 2001, Fall 2002, Fall 2003  
Associate Professor, Purdue University, Fall 2001 to January 2003  
Visiting Assistant Professor, University of Michigan, Winter 2001  
Assistant Professor, Purdue University, Fall 1994 to Spring 2001  
Assistant Professor, University of Delaware, Fall 1992 to Summer 1994

### Courses Taught

Industrial Organization (undergraduate and doctoral)  
Antitrust and Regulation (undergraduate)  
Intermediate Microeconomics (undergraduate and master's)  
Microeconomic Principles (undergraduate)  
International Economics (undergraduate and master's)

### Honors and Awards

Outstanding Antitrust Litigation Achievement in Economics, awarded by the American Antitrust Institute, for work in re TFT-LCD Antitrust Litigation, 2013.

Outstanding Economics Professor of the Year, Economics Club, Purdue University, 1999.

## Publications

“Are All Men’s College Basketball Players Exploited?”, with Erin Lane and Juan Nagel, *Journal of Sports Economics*, 15(3), June 2014, 237-262.

“Price Regulation: Theory and Performance”, in *Regulation and Economics*, Roger J. Van den Bergh and Alessio M. Paccas, eds., Edward Elgar Publishing, 2011.

“Sports Trivia: A Review of The Economics of Intercollegiate Sports by Randy R. Grant, John Leadley, and Zenon Zygmunt”, *Journal of Economic Literature*, 47(2), June 2009, 485-489.

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“International Integration and Growth: A Further Investigation on Developing Countries”, with Claire Economidou and Vivian Lei, *International Advances in Economic Research*, 12(4), November 2006, 435-448.

“Maximum or Minimum Differentiation? An Empirical Investigation into the Location of Firms”, with Beck A. Taylor, *Review of Economics and Statistics*, 84(1), February 2002, 162-175.

“International Integration and Growth: A Survey and Empirical Investigation”, with Vivian Lei and Jon D. Haveman, *Review of Development Economics*, 5(2), June 2001, 289-311.

“Price Regulation: A (Non-Technical) Overview”, in *Encyclopedia of Law and Economics*, Boudewijn Bouckaert and Gerrit De Geest, eds, Edward Elgar and University of Ghent, 2000.

“Exercising Market Power in Proprietary Aftermarkets,” with Severin Borenstein and Jeffrey K. MacKie-Mason, *Journal of Economic and Management Strategy*, 9(2), Summer 2000, 157-188.

“All in the Family: Family, Income, and Labor Force Attachment”, with Jon D. Haveman, *Feminist Economics*, 5(3), November 1999, 85-106.

“Why Do All Flights Leave at 8am?: Competition and Departure-Time Differentiation in Airline Markets”, with Severin Borenstein, *International Journal of Industrial Organization*, 17(5), July 1999, 611-640.

“An Empirical Test of the Effect of Basis Risk on Cash Market Positions”, *Journal of Futures Markets*, 16(3), May 1996, 289-312.

“The Effect of Futures Markets and Corners on Storage and Spot Price Variability”, *American Journal of Agricultural Economics*, 77(1), February 1995, 182-193.

“Antitrust Policy in Aftermarkets”, with Severin Borenstein and Jeffrey K. MacKie-Mason, *Antitrust Law Journal*, 63(2), Winter 1995, 455-482.

“The Economics of Customer Lock-In and Market Power in Services”, with Severin Borenstein and Jeffrey K. MacKie-Mason, in *The Service Productivity and Quality Challenge*, Patrick T. Harker, ed., Kluwer Academic, 1994.

## Working Papers and Work in Progress

“LCDs and Antitrust: Does Crime Pay?”, with Nick Navitski and Josh Palmer

“Fantasy Football Points as a Measure of Performance”, with Erin Lane and Juan Nagel

“Non-Profits and Price-Fixing: The Case of the Ivy League”

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”

“Basis and Exchange Rate Risks and their Impact on Storage and Exports”

### **Research Grants**

“Product Customization and Product-Space Positioning”, Dauch Center for the Management of Manufacturing Enterprises, Summer 2000.

“Trade Barriers, Trade Blocs, Growth, and Convergence”, Purdue Research Foundation, 1998-1999.  
“Effects of Informational Asymmetry on Competition in the Residential Long Distance Calling Market”, Purdue Research Foundation, 1997-1998.

“Basis and Exchange Rate Risks and their Impact on Storage and Exports”, Center for International Business and Economic Research, Summer 1997.

Global Initiative Faculty Grant (Course Development), “Industrial Organization in an International Marketplace”, Purdue University, Summer 1997.

“Trade, Not Aid”, Purdue Research Foundation, Summer 1996.

“Trade, Not Aid”, Center for International Business and Economic Research, Summer 1996.

“The Effect of Price-Fixing by Institutions of Higher Education”, Purdue Research Foundation, Summer 1995.

“Applied Microeconomics/International Workshop”, Purdue University, Spring 1995.

“The Market Structure of Higher Education”, University of Delaware, Summer 1993.

Research Associate, Center for the Study of Futures Markets, Columbia University, 1991.

Rackham Merit Fellowship, University of Michigan, 1987-1989.

Chancellor’s Scholar, University of California at Berkeley, 1983-1986.

### **Referee**

American Economic Review  
Contemporary Economic Policy  
Economics Bulletin  
Feminist Economics  
International Journal of the Economics of Business  
International Journal of Industrial Organization  
Journal of Economic Education  
Journal of Economic and Management Strategy  
Journal of Family and Economic Issues  
Journal of Futures Markets  
Journal of Industrial Economics  
Journal of Law and Economics  
Journal of Law, Economics, and Organization  
Management Science  
Review of Economics and Statistics  
Scandinavian Journal of Economics  
Telecommunications Systems

### Conference and Workshop Presentations

Panel participant, “*Apple v. Pepper*: SCOTUS Clarifies Application of *Illinois Brick*”, ABA Section of Antitrust Law, May 2019.

Panel participant, “Is ‘Direct’ Really Correct? Bricks, Tix, Kicks, and Apps after *Apple v. Pepper*”, ABA Section of Antitrust Law, Pricing Conduct and Civil Practice and Procedure Committees Program, October 2018.

Panel participant, “Will Apple’s App Store Lead to the end of *Illinois Brick*”, CLA Antitrust, UCL & Privacy Law Section and ABA Antitrust Section’s Global Private Litigation Committee program, San Francisco, CA, July 2018.

Guest lecturer, Antitrust Law, University of San Francisco Law School, April 2017 and 2018.

Panel participant, “The Challenge of Circumstantial Proof of Cartel Behavior and of Presenting Economic Issues and Concepts to Judges and Juries”, American Antitrust Institute, 10<sup>th</sup> Annual Private Enforcement Conference, Washington, DC, November 2016.

Panel participant, “Winning or Losing: Class Certification Post-Comcast”, American Bar Association, 62<sup>nd</sup> Antitrust Law Spring Meeting, Washington, DC, March 2014.

Panel participant, “Preparing Early and Often”, State-of-the-Art Strategies for Managing Class Action Experts, American Bar Association, 16<sup>th</sup> Annual National Institute on Class Actions, Chicago, IL, October 2012.

Panel participant, “Hot Topics Involving Experts in Antitrust Litigation”, New York State Bar Association, Antitrust Law Section, Annual Meeting, New York, NY, January 2011.

Guest lecturer, Alternative Dispute Resolution Practicum, University of Michigan Law School, April 2008.

“The Economics of Indirect Purchaser Cases”, State Bar of Arizona Annual Conference, Phoenix, AZ, June 2004.

“Manipulating Interface Standards as an Anti-Competitive Strategy”, Standards and Public Policy Conference, Federal Reserve Bank of Chicago, Chicago, IL, May 2004.

“One-Way Standards as an Anti-Competitive Strategy”, Telecommunications Policy Research Conference, Alexandria, VA, September 2002.

“Product Proliferation and Product Space Location”, Econometric Society Meetings, New Orleans, January 2001.

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”, American Economics Association Meetings, New Orleans, January 2001.

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”, Indiana University-Purdue University Indianapolis, November 2000.

“Maximum or Minimum Differentiation? An Empirical Investigation into the Location of Firms”, University of British Columbia, March 2000.

“Non-Profits and Price-Fixing: The Case of the Ivy League”, University of Illinois, October 1999.

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”, Baylor University, September 1999.

“The End of Collusion? Competition after Justice and the Ivy League and MIT Settle”, Western Economic Association Meetings, San Diego, July 1999.

“Non-Profits and Price-Fixing: The Case of the Ivy League”, University of Chicago, April 1999.

“Non-Profits and Price-Fixing: The Case of the Ivy League”, Indiana University, December 1998.

“International Integration and Growth: A Survey and Empirical Investigation”, Dynamics, Economic Growth, and International Trade, III, Taiwan, August 1998.

Discussant (“Fiscal Policy and International Demand Spillovers”), Dynamics, Economic Growth, and International Trade, III, An International Conference, Taiwan, August 1998.

“International Integration and Growth”, Workshop on Empirical Research in International Trade and Investment, Copenhagen, June 1998.

Discussant (“Factor Endowments and the Pattern of Affiliate Production by Multinational Enterprises,” by Karolina Ekholm), Workshop on Empirical Research in International Trade and Investment, Copenhagen, June 1998.

“Non-Profits and Price-Fixing: The Case of the Ivy League”, Department of Justice Antitrust Division, April 1998.

“Non-Profits and Price-Fixing: The Case of the Ivy League”, American Economics Association Meetings, Chicago, January 1998.

Discussant (“Equilibrium under Satisficing,” by Ralph W. Pfouts), International Atlantic Economics Society, ASSA Meetings, Chicago, January 1998.

Discussant (“Overseas Investments and Firm Exports,” by Keith Head and John Ries), Fourth Annual Empirical Investigations in International Trade conference, Purdue University, November 1997.

“Maximum or Minimum Differentiation? An Empirical Investigation into the Location of Firms”, International Atlantic Economic Association Conference, Philadelphia, October 1997.

Discussant (“Antidumping Enforcement in a Reciprocal Model of Dumping: Theory and Evidence,” Taiji Furusawa and Thomas J. Prusa) and session chair, Third Annual Empirical Investigations in International Trade conference, Purdue University, November 1996.

“The Effect of Price-Fixing by Institutions of Higher Education”, Indiana University-Purdue University Indianapolis, April 1996.

“Exercising Market Power in Proprietary Aftermarkets”, with Severin Borenstein and Jeffrey K. MacKie-Mason, Indiana University - Purdue University - IUPUI First Tri-School Conference, March 1996.

“All in the Family: Family, Income, and Labor Force Attachment”, with Jon D. Haveman, American Economic Association Meetings, San Francisco, January 1996.

“Family Matters: Unemployment, Wage Changes, and Mobility”, with Jon D. Haveman, Southern Economics Association Meetings, New Orleans, November 1995.

Discussant and session chair, Second Annual Empirical Investigations in International Trade conference, Purdue University, November 1995.



“Competition and Anti-Competitive Behavior”, ICLE (The State Bar of Michigan) Conference on Antitrust and Intellectual Property, July 1995.

“Price-Fixing, Tuition, and Financial Aid”, Midwest Economics Association Meetings, Cincinnati, April 1995.

“Family Matters: Unemployment, Wage Changes, and Mobility,” Midwest Economics Association Meetings, Cincinnati, April 1995.

Discussant and session chair, “Customer Discrimination, Entrepreneurial Decisions, and Investment”, Midwest Economics Association Meetings, April 1995.

“An Empirical Test of the Effect of Basis Risk on Cash Market Positions”, University of Illinois, Urbana-Champaign, February 1995.

Discussant and session chair, First Annual Empirical Investigations in International Trade conference, Purdue University, November 1994.

“Antitrust Policy in Aftermarkets”, with Severin Borenstein and Jeffrey K. MacKie-Mason, FTC/DOJ/ABA Conference on Post-Chicago Economics, Washington, D.C., May 1994.

“The Effect of Price-Fixing by Institutions of Higher Education, University of Delaware, May 1994.

“The Effect of Futures Markets and Corners on Storage and Spot Price Variability”, Purdue University, February 1994.

“An Empirical Test of the Effect of Basis Risk on Cash Market Positions”, University of California at Davis, February 1993.

Discussant, Econometrics Association, Anaheim, 1992 Annual Meetings.

“Testing the Principle of Minimum Differentiation: Airline Departure-Time Crowding”, Econometrics Association, Washington, D.C., 1990 Annual Meetings.

### **Consulting and Testifying**

Contant v. Bank of America, 2019-  
*United States District Court, Southern District of New York*, No. 17-cv-3139-LGS  
Testifying expert for plaintiffs

Confidential client, 2019-  
Antitrust analysis regarding various cellular phone components

In re Malden Transportation, Inc. et al., v. Uber Technologies, Inc., 2018-  
*United States District Court, District of Massachusetts*, No. 1:16-cv-12538-NGM  
Testifying expert for plaintiffs

Confidential client, 2017-2018  
Antitrust analysis regarding various cellular phone components

In re Automotive Parts Antitrust Litigation

*United States District Court, Eastern District of Michigan Southern Division*, No. 2:12-cv-02311

Testifying expert for plaintiffs

- In re Occupant Safety Systems, No. 2:12-cv-00603, 2018-
- In re Heater Control Panels, No. 2:12-cv-00403, 2018-
- In re Anti-Vibrational Rubber Parts, No. 2:13-cv-00803-MOB-MKM, 2016-
- In re Bearings, No. 2:12-cv-00500, 2016-
- In re Automotive Wire Harness Systems Antitrust Litigation, No. 12-md-00101, 2012-
- In re Shock Absorbers Cases, No. 2:16-cv-0332, 2015-

Alarm Detection Systems, Inc. v. Orland Fire Protection District, et al., 2016-

*United States District Court, Northern District of Illinois*, No. 14-cv-00876

Testifying expert for plaintiff

Deposed May 2017

Testified at trial May 2017

In re LIBOR-Based Financial Instruments Antitrust Litigation, 2016-

*United States District Court, Southern District of New York*, No. 1:11-md-02262-NRB

Testifying expert for plaintiffs

Deposed March 2017, June 2017

Stacey Pierce-Nunes, on behalf of herself and all others similarly situated, v. Toshiba American Information Systems, 2015-

*United States District Court, Central District of California*, No. 3:14-CV-00796 JST

Testifying expert for plaintiffs

Deposed April 2016

John Moseley v. Toshiba America Information Systems, Inc., 2015-

Judicial Arbitration and Mediation Services No. 1200049482

Testifying expert for claimant

Deposed July 2015

In re Cathode Ray Tube (CRT) Antitrust Litigation, 2008-

*United States District Court, Northern District of California, San Francisco Division*, No. CV-07-5944-SC

Testifying expert for plaintiffs

Deposed November 2012, March 2013, June 2014, September 2014, October 2014

In re Photochromic Lens Antitrust Litigation, 2010-2012

*United States District Court Middle District of Florida, Tampa Division*, No. 8:10-md-02173-JDW-EAJ

Testifying expert for plaintiffs

Deposed August 2012

Datel Holdings and Datel Design and Development v. Microsoft, 2010-2011

*United States District Court, Northern District of California, San Francisco Division*, No. 09-cv-05535

Testifying expert for plaintiffs

Deposed October 2011

In re Prefilled Propane Tank Marketing and Sales Practices Litigation, 2010-2011

*United States District Court, Western District of Missouri, Western Division*, No. 4:09-cv-00465

Testifying expert for plaintiffs

In re Florida Cement and Concrete Antitrust Litigation, 2010

*United States District Court, Southern District of Florida, Miami Division*, No. 1:09-cv-23493-CMA

Consulting expert for plaintiffs

Altair Engineering v. MSC Software, 2009-2010

*United States District Court, Eastern District of Michigan, Southern Division*, No. 2:07-cv-12807

Testifying expert for plaintiff

Deposed May 2010

In re Optical Disk Drive products Antitrust Litigation, 2009-2010

*United States District Court, Northern District of California, San Francisco Division*, No. M:2010-cv-02143

Consulting expert for plaintiffs

In re Flash Memory Antitrust Litigation, 2008-2011

*United States District Court, Northern District of California, Oakland Division*, No. C-07-0086-SBA

Testifying expert for plaintiffs

Deposed August 2009

Valassis Communications, Inc. v. News America, Inc., 2008-2009

*United States District Court, Eastern District of Michigan, Southern Division*, No. 2:06-cv-10240

*Circuit Court of the State of Michigan, County of Wayne*, No. 07-0706645-CZ

Consulting expert for plaintiff

In re TFT-LCD (Flat Panel) Antitrust Litigation, 2008-present

*United States District Court, Northern District of California, San Francisco Division*, No. M:07-cv-01827

Testifying expert for plaintiffs

Deposed July 2009, June 2011, August 2011

Houston Baptist University v. NCAA, 2008-2009

*United States District Court in and for the Southern District of Texas, Houston Division*

Testifying expert for plaintiff

Seoul Semiconductor Co. v. Nichia Corp., 2008

*United States District Court, Northern District of California*, No. 3:08-cv-04932-PJH

Testifying expert for plaintiffs

Albert Andy Cohn v. Office Depot, 2008

*Superior Court of the State of California, County of Los Angeles, Central District*, No. BC 372449

Testifying expert for defendant

In re Graphics Processing Units Antitrust Litigation, 2007-2008

*United States District Court Northern District of California*, No. M:07-CV-01826-WHA

Testifying expert for plaintiffs

Deposed June 2008

Pro-Sys Consultants Ltd. and Neil Godfrey v. Microsoft, 2007-present

*Supreme Court of British Columbia*, No. L043175, *Vancouver Registry*

Testifying expert for plaintiffs

Deposed December 2008

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation, 2007

*United States District Court, Northern District of California*, No. 02-cv-01486

Consulting expert for plaintiffs

Jason White et al. v. NCAA, 2006-2008

*United States District Court Central District of California*, No. CV 06-0999 RGK (MANx)

Testifying expert for plaintiffs

Deposed October 2007

In re Reformulated Gasoline (RFG) Antitrust and Patent Litigation, 2004-2008  
*United States District Court Central District of California, No. 05-1671 CAS*  
Testifying expert for plaintiffs  
Deposed December 2006

Carlisle, settlement negotiations with Crompton, EPDM price-fixing cartel, 2005-2007  
Consulting expert

Caterpillar and Carlisle, settlement negotiations with DuPont-Dow Elastomers, PCP (or CR) and EPDM price-fixing cartels, 2004-2005  
Consulting expert

City and County of San Francisco et al. v. Microsoft, 2004-2007  
*United States District Court for the District of Maryland, No. 1332*  
Testifying expert for plaintiffs

The Service Source v. Office Depot, 2004-2005  
*United States District Court Eastern District of Michigan Southern Division, No. 02-73361*  
Project director

Joe Comes et al. v. Microsoft, 2002-2008  
*Iowa District Court for Polk County, No. CL82311*  
Testifying expert for plaintiffs  
Deposed July 2006, November 2006

Charles Cox et al. v. Microsoft, 2002-2006  
*Supreme Court of the State of New York County of New York, No. 105193/00*  
Testifying expert for plaintiffs

Daniel Gordon et al. v. Microsoft, 2002-2004  
*State of Minnesota District Court County of Hennepin Fourth Judicial District, No. 00-5994*  
Testifying expert for plaintiffs  
Deposed September 2003

Morelock Enterprises, Inc. v. Weyerhaeuser Co., 2004-2008  
*United States District Court District of Oregon, No. 3:04-cv-00583-PA*  
Testifying expert for plaintiffs  
Deposed October 2004, April 2005, October 2007  
Testified in trial April 2008

Compuware v. IBM, 2002-2005  
*United States District Court for the Eastern District of Michigan, No. 02-70906*  
Project director

In re New Mexico Indirect Purchaser Microsoft Corp. Antitrust Litigation, 2002-2004  
*State of New Mexico First Judicial District, No. D-0101-CV-2000-1697*  
Testifying expert for plaintiffs

Charles Friedman et al. v. Microsoft, 2002-2004  
*Superior Court of the State of Arizona in and for the County of Maricopa, No. CV2000-000722 / CV2000-005872*  
Testifying expert for plaintiffs  
Deposed September 2003

In re Massachusetts Consumer Protection Litigation, 2003-2004  
*Commonwealth of Massachusetts, Superior Court Department of the Trial Court Middlesex Division,*  
No. 00-2456  
Consulting expert

Olson v. Microsoft, 2002  
*Montana First Judicial District Court Lewis & Clark County, No. CDV-2000-219*  
Consulting expert

Covad v. Bell Atlantic (Verizon), 2001-2004  
*United District Court for the District of Columbia, No. 99-1046*  
Project director

AMD, 2000-2004  
Project director

Leckrone, et al. v. Premark International, Inc., et al., 2001  
Testifying expert for plaintiffs

Ren, et al. v. EMI Music Distribution, Inc., 2001  
*State of Michigan in the Circuit Court of the County of Macomb, No. 00-2383-CZ*  
Testifying expert for plaintiffs

SBC, 2000  
Staff economist

Lingo et al. v. Microsoft, 1999-2004  
*Superior Court of the State of California City and County of San Francisco, J.C.C.P. No. 4106*  
Project director

Gravity et al. v. Microsoft, 1999-2003  
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Staff economist

City and County of San Francisco, 1999  
Staff economist

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*United States District Court Appeals for the Federal District, No. 98-1308*  
Staff economist

Comm-Tract v. Northern Telecom, 1991-1997  
*United States District Court District of Massachusetts, No. 90-13088-WF*  
Project director

Systemcare, Inc. v. Wang Computer, 1991-1993  
*United States District Court for the District of Colorado, No. 89-B-1778*  
Staff economist

International Travel Arrangers v. Northwest Airlines, 1988-1989  
Staff economist

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**Exhibit B: Documents Considered in the Declaration of Janet S. Netz, Ph.D.**

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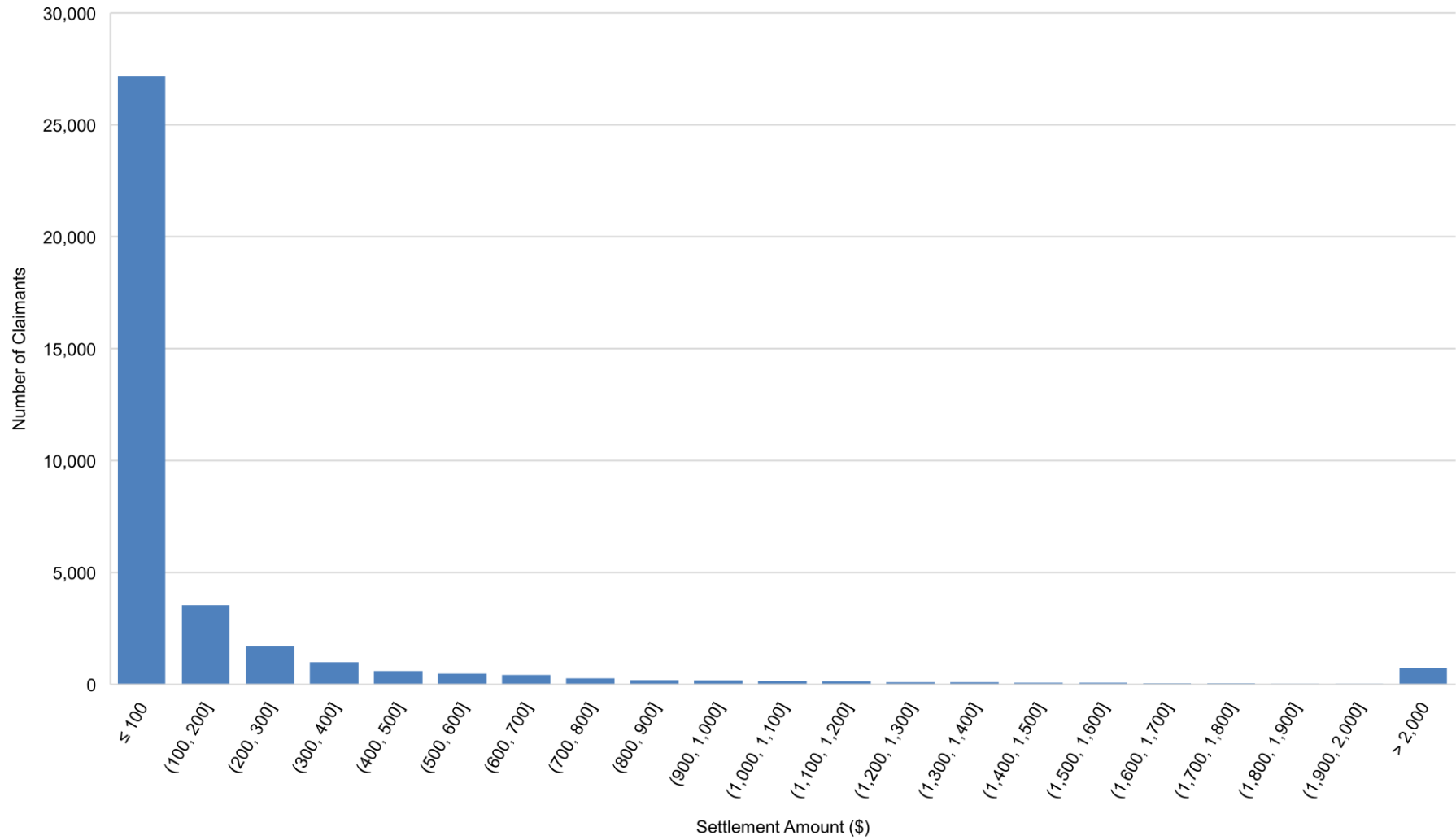
**Settlement Amount Summary Statistics**

	<b>50,000 Claimants</b>	<b>100,000 Claimants</b>
Minimum	\$ 10	\$ 10
10th Percentile	\$ 11	\$ 11
25th Percentile	\$ 27	\$ 26
Median	\$ 51	\$ 37
75th Percentile	\$ 164	\$ 89
90th Percentile	\$ 556	\$ 271
Maximum	\$ 241,405	\$ 111,980
 Total De Minimis	 \$ 1,116,411	 \$ 2,232,822
 Net Settlement	 \$ 16,541,000	 \$ 16,541,000
 De Minimis Share of Net Settlement	 6.75%	 13.50%

Data Source(s): FXDD, GAIN, Olsen Daily Mean Spread, Zip Code, and U.S. Federal Reserve Exchange Rate Data (see Exhibit 6)

Source File(s): FXDD and GAIN combined.do; FXDD and GAIN combined.xlsx

### Illustrative Allocation of Funds to FXDD and GAIN Claimants



Data Source(s): FXDD, GAIN, Olsen Daily Mean Spread, Zip Code, and U.S. Federal Reserve Exchange Rate Data (see Exhibit 6)

Source File(s): FXDD and GAIN combined.do; FXDD and GAIN combined.xlsx

## Allocation for Top 40 Claimants in FXDD and GAIN Data

<b>Alias</b>	<b>Settlement Amount</b>
Class Member 1	\$ 111,980
Class Member 2	\$ 65,782
Class Member 3	\$ 38,109
Class Member 4	\$ 30,434
Class Member 5	\$ 29,397
Class Member 6	\$ 29,317
Class Member 7	\$ 27,965
Class Member 8	\$ 27,667
Class Member 9	\$ 25,579
Class Member 10	\$ 23,243
Class Member 11	\$ 21,943
Class Member 12	\$ 21,752
Class Member 13	\$ 20,658
Class Member 14	\$ 19,784
Class Member 15	\$ 19,594
Class Member 16	\$ 19,032
Class Member 17	\$ 18,149
Class Member 18	\$ 17,814
Class Member 19	\$ 17,443
Class Member 20	\$ 15,606
Class Member 21	\$ 15,152
Class Member 22	\$ 14,229
Class Member 23	\$ 12,908
Class Member 24	\$ 12,674
Class Member 25	\$ 12,355
Class Member 26	\$ 11,455
Class Member 27	\$ 11,340
Class Member 28	\$ 10,894
Class Member 29	\$ 10,620
Class Member 30	\$ 10,338
Class Member 31	\$ 10,262
Class Member 32	\$ 9,860
Class Member 33	\$ 9,835
Class Member 34	\$ 9,777
Class Member 35	\$ 9,726
Class Member 36	\$ 9,477
Class Member 37	\$ 9,377
Class Member 38	\$ 9,001
Class Member 39	\$ 8,813
Class Member 40	\$ 8,746

Data Source(s): FXDD, GAIN, Olsen Daily Mean Spread, Zip Code, and U.S. Federal Reserve Exchange Rate Data (see Exhibit 6)

Source File(s): FXDD and GAIN combined.do; FXDD and GAIN combined.xlsx

**Allocation for 40 Randomly Selected Claimants in FXDD and GAIN Data**

<b>Alias</b>	<b>Settlement Amount</b>
Class Member 41	\$ 12
Class Member 42	\$ 35
Class Member 43	\$ 36
Class Member 44	\$ 178
Class Member 45	\$ 49
Class Member 46	\$ 31
Class Member 47	\$ 41
Class Member 48	\$ 49
Class Member 49	\$ 31
Class Member 50	\$ 27
Class Member 51	\$ 30
Class Member 52	\$ 31
Class Member 53	\$ 200
Class Member 54	\$ 10
Class Member 55	\$ 40
Class Member 56	\$ 33
Class Member 57	\$ 30
Class Member 58	\$ 40
Class Member 59	\$ 114
Class Member 60	\$ 53
Class Member 61	\$ 58
Class Member 62	\$ 38
Class Member 63	\$ 145
Class Member 64	\$ 26
Class Member 65	\$ 29
Class Member 66	\$ 111
Class Member 67	\$ 701
Class Member 68	\$ 262
Class Member 69	\$ 28
Class Member 70	\$ 18
Class Member 71	\$ 3,344
Class Member 72	\$ 30,434
Class Member 73	\$ 11
Class Member 74	\$ 26
Class Member 75	\$ 27
Class Member 76	\$ 34
Class Member 77	\$ 66
Class Member 78	\$ 25
Class Member 79	\$ 35
Class Member 80	\$ 32

Data Source(s): FXDD, GAIN, Olsen Daily Mean Spread, Zip Code, and U.S. Federal Reserve Exchange Rate Data (see Exhibit 6)

Source File(s): FXDD and GAIN combined.do; FXDD and GAIN combined.xlsx



**Average Spreads by Currency Pair**

December 1, 2007\* through December 31, 2015\*\*

<b>Currency Pair</b>	<b>Spread</b>	<b>Currency Pair</b>	<b>Spread</b>
AUD/CAD	0.0760%	GBP/NZD	0.0644%
AUD/CHF	0.0786%	GBP/SEK	0.1122%
AUD/JPY	0.0345%	GBP/USD	0.0172%
AUD/NZD	0.0625%	HKD/JPY	0.0862%
AUD/USD	0.0266%	JPY/NOK	0.1247%
CAD/CHF	0.0686%	JPY/SEK	3.8059%
CAD/JPY	0.0404%	NZD/CAD	0.1050%
CHF/JPY	0.0439%	NZD/CHF	0.1199%
CHF/NOK	0.0804%	NZD/JPY	0.0755%
CHF/SEK	0.0903%	NZD/USD	0.0465%
EUR/AUD	0.0356%	SGD/JPY	0.0797%
EUR/CAD	0.0398%	TRY/JPY	0.1735%
EUR/CHF	0.0236%	USD/CAD	0.0265%
EUR/CZK	0.1528%	USD/CHF	0.0286%
EUR/DKK	0.0140%	USD/CNH	0.0456%
EUR/GBP	0.0243%	USD/CNY	0.0521%
EUR/HUF	0.1709%	USD/CZK	0.2350%
EUR/JPY	0.0208%	USD/DKK	0.0263%
EUR/NOK	0.0727%	USD/HKD	0.0091%
EUR/NZD	0.0702%	USD/HUF	0.2887%
EUR/PLN	0.1213%	USD/ILS	0.2225%
EUR/SEK	0.0618%	USD/INR	0.0837%
EUR/TRY	0.1902%	USD/JPY	0.0189%
EUR/USD	0.0135%	USD/MXN	0.0720%
GBP/AUD	0.0324%	USD/NOK	0.0819%
GBP/CAD	0.0355%		
GBP/CHF	0.0351%		
GBP/JPY	0.0281%		

## Notes(s):

\*USD/CNH starts on April 18, 2011.

\*\*USD/CNY, USD/INR, and USD/TWD end on December 31, 2014.

To calculate the average spread percentages, I first divide Olsen's daily average spreads by the daily buying exchange rates collected by the U.S. Federal Reserve, Czech National Bank, Hungarian National Bank, National Bank of Poland, Bank of Russia, and Central Bank of the Republic of Turkey. For USD/CNH, I use Olsen's daily average median bid as the denominator. I then take the average of these percentages across the relevant time period.

## Data Source(s):

Olsen Daily Mean Spread, Olsen Daily Median Bid, U.S. Federal Reserve Exchange Rate, and Other Exchange Rate Data (see Exhibit 6)

## Source File(s):

Olsen\_currency\_avg\_spread\_ratios.do; Olsen\_currency\_avg\_spread\_ratios.xlsx

## Data Source Files

### FXDD Data

FXDD Customer Information  
FXDD Customer Transactions

### GAIN Data

GAIN Customer Information  
GAIN Customer Transactions

### Olsen Daily Mean Spread Data

fx-spot_AUD_CAD_DailyMeanSpread_200712_201512.csv	fx-spot_EUR_PLN_DailyMeanSpread_200712_201512.csv	fx-spot_USD_CNY_DailyMeanSpread_200712_201412.csv
fx-spot_AUD_CHF_DailyMeanSpread_200712_201512.csv	fx-spot_EUR_SEK_DailyMeanSpread_200712_201512.csv	fx-spot_USD_CSK_DailyMeanSpread_200712_201512.csv
fx-spot_AUD_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_EUR_TRY_DailyMeanSpread_200712_201512.csv	fx-spot_USD_DKK_DailyMeanSpread_200712_201512.csv
fx-spot_AUD_NZD_DailyMeanSpread_200712_201512.csv	fx-spot_EUR_USD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_HKD_DailyMeanSpread_200712_201512.csv
fx-spot_AUD_USD_DailyMeanSpread_200712_201512.csv	fx-spot_GBP_AUD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_HUF_DailyMeanSpread_200712_201512.csv
fx-spot_CAD_CHF_DailyMeanSpread_200712_201512.csv	fx-spot_GBP_CAD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_INR_DailyMeanSpread_200712_201412.csv
fx-spot_CAD_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_GBP_CHF_DailyMeanSpread_200712_201512.csv	fx-spot_USD_JPY_DailyMeanSpread_200712_201512.csv
fx-spot_CHF_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_GBP_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_USD_MXP_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_AUD_DailyMeanSpread_200712_201512.csv	fx-spot_GBP_NZD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_NOK_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_CAD_DailyMeanSpread_200712_201512.csv	fx-spot_GBP_USD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_PLN_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_CHF_DailyMeanSpread_200712_201512.csv	fx-spot_NZD_CAD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_RUB_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_CSK_DailyMeanSpread_200712_201512.csv	fx-spot_NZD_CHF_DailyMeanSpread_200712_201512.csv	fx-spot_USD_SEK_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_DKK_DailyMeanSpread_200712_201512.csv	fx-spot_NZD_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_USD_SGD_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_GBP_DailyMeanSpread_200712_201512.csv	fx-spot_NZD_USD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_TRY_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_HUF_DailyMeanSpread_200712_201512.csv	fx-spot_SGD_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_USD_TWD_DailyMeanSpread_200712_201412.csv
fx-spot_EUR_JPY_DailyMeanSpread_200712_201512.csv	fx-spot_USD_CAD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_ZAR_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_NOK_DailyMeanSpread_200712_201512.csv	fx-spot_USD_CHF_DailyMeanSpread_200712_201512.csv	fx-spot_ZAR_JPY_DailyMeanSpread_200712_201512.csv
fx-spot_EUR_NZD_DailyMeanSpread_200712_201512.csv	fx-spot_USD_CNH_DailyMeanSpread_201104_201512.csv	

### Olsen Daily Median Bid Data

fx-spot\_USD\_CNH\_DailyMedianBid\_201104\_201512.csv

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Series:	AEXBZUS	AEXNOUS	AEXUSNZ	DEXKOUS	DEXTHUS	EXCHUS	EXKOUS	EXSPUS
	AEXCAUS	AEXSDUS	AEXUSUK	DEXMAUS	DEXUSAL	EXDNUS	EXMAUS	EXSZUS
	AEXCHUS	AEXSFUS	AEXVZUS	DEXMXUS	DEXUSEU	EXFNUS	EXMXUS	EXTAUS
	AEXDNUS	AEXSIUS	DEXBZUS	DEXNOUS	DEXUSNZ	EXFRUS	EXNEUS	EXTHUS
	AEXHKUS	AEXSLUS	DEXCAUS	DEXSDUS	DEXUSUK	EXGEUS	EXNOUS	EXUSAL
	AEXINUS	AEXSZUS	DEXCHUS	DEXSFUS	DEXVZUS	EXGRUS	EXPOUS	EXUSEU
	AEXJPUS	AEXTAUS	DEXDNUS	DEXSIUS	EXAUUS	EXHKUS	EXSDUS	EXUSIR
	AEXKOUS	AEXTHUS	DEXHKUS	DEXSLUS	EXBEUS	EXINUS	EXSFUS	EXUSNZ
	AEXMAUS	AEXUSAL	DEXINUS	DEXSZUS	EXBZUS	EXITUS	EXSIUS	EXUSUK
	AEXMXUS	AEXUSEU	DEXJPUS	DEXTAUS	EXCAUS	EXJPUS	EXSLUS	EXVZUS

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Czech National Bank, Undated, Exchange rates - yearly history: 2005 (CZK), <https://www.cnb.cz/en/financial-markets/foreign-exchange-market/central-bank-exchange-rate-fixing/central-bank-exchange-rate-fixing/year.txt?year=2005>, accessed 09 July 2019.

Czech National Bank, Undated, Exchange rates - yearly history: 2006 (CZK), <https://www.cnb.cz/en/financial-markets/foreign-exchange-market/central-bank-exchange-rate-fixing/central-bank-exchange-rate-fixing/year.txt?year=2006>, accessed 09 July 2019.

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Czech National Bank, Undated, Exchange rates - yearly history: 2008 (CZK), <https://www.cnb.cz/en/financial-markets/foreign-exchange-market/central-bank-exchange-rate-fixing/central-bank-exchange-rate-fixing/year.txt?year=2008>, accessed 09 July 2019.

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## Settlement Funds

Fund	Settlement Class Period		Fund Amount
	Start Date	End Date	
Citigroup and MUFG Bank	1-Dec-07	29-Jul-19	\$10,935,000
SocGen and Standard Chartered Group Settling Defendants	1-Dec-07	Preliminary approval*	\$2,695,000
	1-Dec-07	15-Dec-15	\$10,000,000
Total (Gross)			\$23,630,000
Fees (30%)			(\$7,089,000)
Total (Net)			\$16,541,000

Note(s): \*The end date will be the the date of the Court's order granting preliminary approval of the SocGen and Standard Chartered Settlement.

Data Source(s): Counsel

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

JAMES CONTANT, *et al.*,

*Plaintiffs,*

v.

BANK OF AMERICA  
CORPORATION, *et al.*,

*Defendants.*

No. 17-cv-3139-LGS

(related to No. 13-cv-7789-LGS)

**DECLARATION OF JEANNE C. FINEGAN, APR CONCERNING CLASS  
MEMBER NOTIFICATION**

**INTRODUCTION**

1. I am President and Chief Media Officer of HF Media, LLC (“HF Media”), a division of Heffler Claims Group LLC (“Heffler”). This Declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

**QUALIFICATIONS**

2. My credentials that qualify me to provide an expert opinion regarding notice in this matter include more than 30 years of communications and advertising experience. I am the only Notice Expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided testimony before Congress on issues of notice. Also, I have lectured, published and been cited extensively on various aspects of legal noticing, product recall and crisis communications and have served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns. More recently, I was extensively involved as a contributing author for “*Guidelines and Best Practices Implementing*

2018 Amendments to Rule 23 Class Action Settlement Provisions” published by Duke University School of Law. Also, I am a member of the Board of Directors for the Alliance for Audited Media (“AAM”).

3. I have served as an expert, with day-to-day operational responsibilities, directly responsible for the design and implementation of hundreds of class action notice programs, some of which are the largest and most complex programs ever implemented in both the United States and Canada. My work includes a wide range of class actions and regulatory and consumer matters that include product liability, construction defect, antitrust, asbestos, medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance and bankruptcy.

4. Importantly, I have particularly relevant experience planning and implementing complex notice programs for recent court-approved securities class actions including:

- *In re: The Bank of New York Mellon ADR FX Litigation*, 16-CV-00212-JPO-JLC (S.D.N.Y.)
- *Merryman, et al. v. Citigroup, Inc. et al.* No 1:15-cv-09185- CM-KNF (S.D.N.Y.)

5. Additionally, I have been at the forefront of modern notice, including plain language as noted in a RAND study<sup>1</sup>, and importantly, I was the first notice expert to integrate digital media and social media into court-approved legal notice programs. My recent work includes:

- *Yahoo! Inc. Customer Data Security Breach Litigation*, Case No. 5:16-MD-02752 (N.D. Cal. 2019).
- *In re Dental Supplies Antitrust Litigation*, Case No. 1:16-CV-00696 (E.D.N.Y.).
- *Simerlein et al., v. Toyota Motor Corporation*, Case No. 3:17-cv-01091-VAB (D. Conn. 2019).
- *Carter v. Forjas Taurus S.S., Taurus International Manufacturing, Inc.*, Case No. 1:13-CV-24583 PAS (S.D. Fla. 2016); and
- *In re: Blue Buffalo Marketing and Sales Practices Litigation*, No. 14-md-02562-RWS (E.D. Mo. 2016).

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<sup>1</sup> Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).



6. As further reference, in evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example, in:

- (a) ***Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fla. 2016)***. In her Final Order and Judgment Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

*"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ...There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ...The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."*

7. Additionally, in the January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, further noted:

*"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."*

- (a) ***In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015)***, (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

*"It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations."*

- (b) ***Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (S.D.N.Y.)*** (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti gave accolades to the notice program, noting:

*"The notice plan was the best practicable under the circumstances. ... [and] the proof is in the pudding. ... So the notice has reached a lot of people and a lot of people have made claims."*

8. Additionally, I have published extensively on various aspects of legal noticing, including the following publications and articles and social media:

- (a) Author, Tweet Chat: Contributing Panelist #Law360SocialChat, A live Tweet workshop concerning the benefits and pit-falls of social media, LexTalk.com, November 7, 2019.
- (b) Author, “*Creating a Class Notice Program that Satisfies Due Process*,” Law360, New York, (February 13, 2018 12:58 PM ET).
- (c) “What Would Class Action Reform Mean for Notice?” Law360, New York, (April 13, 2017 11:50 AM ET).
- (d) Author, “Bots Can Silently Steal your Due Process Notice.” Wisconsin Law Journal, April 2017.
- (e) Author, “*Don’t Turn a Blind Eye to Bots. Ad Fraud and Bots are a Reality of the Digital Environment.*” LinkedIn article March 6, 2017.
- (f) Co- Author, “Modern Notice Requirements Through the Lens of Eisen and Mullane” – *Bloomberg BNA Class Action Litigation Report*. 17 CLASS 1077. (October 14, 2016).
- (g) Author, “Think All Internet Impressions are the Same? Think Again” – Law360.com, New York (March 16, 2016).
- (h) Author, “Why Class Members Should See An Online Ad More Than Once” – Law360.com, New York (December 3, 2015).
- (i) Author, ‘Being ‘Media-Relevant’ — What It Means And Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).
- (j) Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, November 2011.
- (k) Quoted Expert, “Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist,” Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).
- (l) Co-Author, with Hon. Dickran Tevrizian, “Expert Opinion: It’s More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape,” BNA Class Action Litigation Report, 12 CLASS 464, 5/27/11.
- (m) Co-Author, with Hon. Dickran Tevrizian, “Your Insight: It’s More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape, TXLR, Vol. 26, No. 21, 5/26/2011.
- (n) Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, 4/9/10 Vol. 11, No. 7 p. 343.

- (o) Quoted: Technology Trends Pose Novel Notification Issues for Class Litigators, BNA Electronic Commerce and Law Report, 15, ECLR 109, 1/27/10.
- (p) Author, Legal Notice: R U ready 2 adapt? BNA Class Action Litigation Report, Vol. 10, No. 14, 7/24/2009, pp. 702-703.
- (q) Author, On Demand Media Could Change the Future of Best Practicable Notice, BNA Class Action Litigation Report, Vol. 9, No. 7, 4/11/2008, pp. 307-310.
- (r) Quoted in, Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty, Warranty Week, February 28, 2007, available at [www.warrantyweek.com/archive/ww20070228.html](http://www.warrantyweek.com/archive/ww20070228.html).
- (s) Co-Author, Approaches to Notice in State Court Class Actions, For The Defense, Vol. 45, No. 11, November, 2003.
- (t) Author, The Web Offers Near, Real-Time Cost Efficient Notice, American Bankruptcy Institute Journal, Vol. XXII, No. 5, June 2003.
- (u) Author, Determining Adequate Notice in Rule 23 Actions, For The Defense, Vol. 44, No. 9, September, 2002.
- (v) Co-Author, The Electronic Nature of Legal Noticing, American Bankruptcy Institute Journal, Vol. XXI, No. 3, April, 2002.
- (w) Author, Three Important Mantras for CEO's and Risk Managers in 2002, International Risk Management Institute, [irmi.com/](http://irmi.com/), January, 2002.
- (x) Co-Author, Used the Bat Signal Lately, The National Law Journal, Special Litigation Section, February 19, 2001.
- (y) Author, How Much is Enough Notice, Dispute Resolution Alert, Vol. 1, No. 6, March, 2001.
- (z) Author, High-Profile Product Recalls Need More Than the Bat Signal, International Risk Management Institute, [irmi.com/](http://irmi.com/), July 2001.
- (aa) Author, The Great Debate - How Much is Enough Legal Notice? American Bar Association -- Class Actions and Derivatives Suits Newsletter, Winter 1999.
- (bb) Author, What are the Best Practicable Methods to Give Notice? Georgetown University Law Center Mass Tort Litigation Institute, CLE White Paper: Dispelling the communications myth -- A notice disseminated is a notice communicated, November 1, 2001.

9. In addition, I have lectured or presented extensively on various aspects of legal noticing. A sample list includes the following:

- (a) Chief Litigation Counsel Association, Speaker, “Four Factors Impacting the Cost of Your Settlement and Notice,” Houston TX, May 1, 2019.
- (b) CLE Webinar: “Rule 23 Changes: Are You Ready for the Digital Wild, Wild West?” October 23, 2018.
- (c) American Bar Association Faculty Panelist, 4<sup>th</sup> Annual Western Regional CLE Class Actions: “Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape,” San Francisco, CA, June, 2017.
- (d) Miami Law Class Action & Complex Litigation Forum, Faculty Panelist, “Settlement and Resolution of Class Actions.” Miami, FL, December 2, 2016.
- (e) The Knowledge Group, Faculty Panelist, “Class Action Settlements: Hot Topics 2016 and Beyond,” Live Webcast, [www.theknowledgegroup.org/](http://www.theknowledgegroup.org/), October 2016.
- (f) BA National Symposium, Faculty Panelist, “Ethical Considerations in Settling Class Actions,” New Orleans, LA March 2016.
- (g) SF Banking Attorney Association, Speaker, “How a Class Action Notice can Make or Break your Client’s Settlement,” San Francisco, CA May 2015.
- (h) Perrin Class Action Conference, Faculty Panelist, “Being Media Relevant, What it Means and Why It Matters – The Social Media Evolution: Trends Challenges and Opportunities,” Chicago, IL May 2015
- (i) Bridgeport Continuing Ed. Faculty Panelist, “Media Relevant in the Class Notice Context,” April 2014.
- (j) CASD 5<sup>th</sup> Annual Speaker, “The Impact of Social Media on Class Action Notice.” Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
- i) Law Seminars International, Speaker, “Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media.” Chicago, IL, October 2011.
- (k) CLE International, Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California, May 2011.
- (l) Consumer Attorneys of San Diego (CASD), Faculty Panelist, “21st Century Class Notice and Outreach,” 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.

- (m) Consumer Attorneys of San Diego (CASD), Faculty Panelist, “The Future of Notice,” 2nd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2009.
- (n) American Bar Association, Speaker, 2008 Annual Meeting, “Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard.”
- (o) American Bar Association, Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
- (p) Faculty Panelist, Women Lawyers Association of Los Angeles (WLALA) CLE Presentation, “The Anatomy of a Class Action.” Los Angeles, CA, February 2008.
- (q) Faculty Panelist, Practising Law Institute (PLI) CLE Presentation, 11th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures -- “Evolving Notice Standards in the Internet Age.” New York/Boston (simulcast), March, 2006; Chicago, April, 2006; and San Francisco, May 2006.
- (r) Expert Panelist, U.S. Consumer Product Safety Commission. I was the only legal notice expert invited to participate as an expert to the Consumer Product Safety Commission to discuss ways in which the CPSC could enhance and measure the recall process. As an expert panelist, I discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.
- (s) Expert Speaker, American Bar Association. Presentation: “How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice,” ABA Litigation Section Committee on Class Actions & Derivative Suits, Chicago, August 6, 2001.

10. A comprehensive description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs is attached as **Exhibit A**.

### **NOTICE PROGRAM**

11. Heffler has been engaged by plaintiffs’ counsel to design and implement a notice publication program appropriately reaching Settlement Class Members in this matter. Heffler has also been engaged to handle other administrative duties for the complete implementation of the Settlement Agreement such as claims review and validation, calculation of awards based upon the approved Plan of Allocation, and distribution of funds to approved valid claims.

### **CLASS DEFINITION**

12. According to the Stipulation and Agreement of Settlement with Settling Defendant's, section 3(n), the Parties stipulate solely for settlement purposes that the requirements of Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) are satisfied, and subject to Court approval, the following classes shall be certified as to Settling Defendants:

- (i) **New York Class:** All Persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in New York and/or while domiciled in New York, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the New York Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the New York Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.
- (ii) **Arizona Class:** All Persons and entities who, during the Class Period, indirectly purchased an FX Instrument from a Defendant or co-conspirator in Arizona and/or while domiciled in Arizona, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Arizona Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Arizona Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.
- (iii) **California Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in California by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the California Class are Defendants and their co-conspirators; the officers, directors,

and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the California Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

- (iv) **Florida Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Florida and/or while domiciled in Florida, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Florida Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Florida Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.
- (v) **Illinois Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Illinois and/or while domiciled in Illinois, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Illinois Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Illinois Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.
- (vi) **Massachusetts Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Massachusetts and/or while domiciled in Massachusetts, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct

Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Massachusetts Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Massachusetts Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(vii) **Minnesota Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator in Minnesota and/or while domiciled in Minnesota, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the Minnesota Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the Minnesota Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.

(viii) **North Carolina Class:** All Persons and entities who, during the Class Period indirectly purchased an FX Instrument from a Defendant or co-conspirator and were thereby injured in North Carolina, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator. Excluded from the North Carolina Class are Defendants and their co-conspirators; the officers, directors, and employees of any Defendant or co-conspirator; any entity in which any Defendant or co-conspirator has a controlling interest; any affiliate, legal representative, heir, or assign of any Defendant or co-conspirator; federal, state, and municipal government entities and agencies; and any judicial officer presiding over this Action and the members of his/her immediate family and judicial staff. Also excluded from the North Carolina Class are all indirect purchases of FX Instruments where the direct purchaser and indirect purchaser were operating outside of the U.S. at the time the direct purchase was made and the purchase was made with the foreign desk of a Defendant.



13. The Class Periods for all Settlements commences on December 1, 2007. The end dates for the Class Periods are (1) December 15, 2015, for the Group Settlement; (2) July 29, 2019, for the Citigroup and MUFG Settlements; and (3) the date of the Court's forthcoming Preliminary Approval Order for the SC and SG Settlements.

### **NOTICE PROGRAM**

14. I have been informed by Plaintiffs' Counsel that they believe they have name and address records for the substantial majority of the class. Based on Heffler's analysis and experience with direct notice programs and the availability of updating contact information for Class Members through advanced address search mechanisms, we believe that a majority of the class will be reached through direct notice. However, the parties are going the extra step to provide additional supplemental notice via multiple media channels described below.

15. The proposed notice program includes the following components:

- Direct notice to all class members for whom Plaintiffs' Counsel have contact information via U.S. First Class Mail;
- Social media notice;
- A whitelist of online investment sites;
- Google Search terms;
- A press release;
- An informational website will be established where notices and other important Court documents will be posted; and
- A toll-free information line will be established by which Class Members can call 24/7 for more information about the Settlement, including, but not limited to, requesting copies of the Long Form Notice or Claim Form.

### **DIRECT NOTICE**

16. The primary method for outreach in this matter will be through direct mail. It is Heffler's understanding that it will receive the substantial majority of Class Member contact information for the indirect purchasers including name, email, and physical mailing addresses, along with a large population of the class' transactional purchase information of FX Instruments. Heffler will mail notice of the Settlements to all Class Members for whom it receives contact information, both via email and postcard. Attached as **Exhibit B** is the postcard notice that will be sent to Class Members. Postcards are noted for effectively capturing attention and presenting

important content. Studies by the U.S. Postal Service (“USPS”)<sup>2</sup> and the Direct Marketing Association provide research reporting that consumers are more likely to read short, engaging materials in contrast to longer forms of communication.

17. The email notice will be substantially the same but modified for email transmission. Class Members will be asked to register online or by mail so that upon Final Approval from the Court, claim forms can be mailed to all who registered.

18. Heffler intends to first update all address information by running addresses through the National Change of Address database maintained by the U.S. Postal Service. This database is a compilation of all address changes that the U.S. Postal Service is notified of and is kept for four years. It will allow Heffler to update addresses to the most current address known by the U.S. Postal service before sending notice.

19. Additionally, if mail is returned as undeliverable with no further forwarding address, Heffler will run these records through an advanced address locator database to obtain additional contact information and remail notice. Likewise, if mail is returned with a forwarding address, Heffler will remail the notice to the newly provided address.

20. In addition to the mailed postcard notice, Heffler will send email notice to all Class Members where Defendants have provided a valid email address. The email notice will be substantially the same as the postcard notice and will direct people to the website, [www.fxindirectantitrustsettlement.com](http://www.fxindirectantitrustsettlement.com), for further information on the settlement and to file a claim online.

21. The email notice will be crafted in plain language, run through a spam grading system to ensure the least amount of spam blocking possible, and use all best practices for sending email so that the most effective email campaign can be achieved. Heffler will send an email up to three times to an email address to achieve delivery. Heffler will monitor for any bounced emails and will report to the Court and the Parties.

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<sup>2</sup> USPS Household Diary Study 2011, p 149, table A3-31, A-32 and A-34.

## **SUPPLEMENTAL NOTICE PROGRAM METHODOLOGY**

22. HF Media utilized a methodology accepted by the advertising industry and embraced by courts in the United States to determine the “reach” of this program to appropriately design and target the publication component of the proposed notice program. It is our intention that through direct mail and supplemental media the proposed notice program will reach at least 80-86 percent of targeted Settlement Class Members.

23. In developing the proposed notice program, we were guided by well-established principles of communication and utilized best-in-class nationally syndicated media research data provided by GfK Mediamark Research and Intelligence, LLC,<sup>3</sup> and online measurement currency comScore<sup>4</sup>, and Telmar, among others, to provide media consumption habits and audience delivery verification of the potentially affected population. These data resources are used by advertising agencies nationwide as the basis to select the most appropriate media to reach specific target audiences. Specifically, this research identifies which media channels are favored by the target audience (i.e., the Settlement Class Members). For instance, browsing behaviors on the Internet, social media channels that are used, and which magazines Settlement Class Members are reading. The resulting key findings were instrumental in our selection of media channels and outlets for determining the estimated net audience reached through this legal notice program.

24. Additionally, HF Media employed the best-in-class tools and technology in order to appropriately target Settlement Class Members and appropriately measure and validate audience delivery using Media Ratings Counsel accepted third-party validation of all media. By utilizing media research tools such as GfK Mediamark Research, Intelligence LLC and comScore, we can create target audience characteristics or segments, and then select the most appropriate media and communication methods to best reach them.

25. This media research technology allows us to fuse data and accurately report to the Court the percentage of the target audience that will be reached by the notice component and how

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<sup>3</sup> GfK MRI’s *Survey of the American Consumer*® (“MRI”) is the industry standard for magazine audience ratings in the U.S. and is used in the majority of media and marketing agencies in the country. MRI provides comprehensive reports on demographic, lifestyle, product usage and media exposure.

<sup>4</sup> comScore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data. comScore maintains a proprietary database of more than 2 million consumers who have given comScore permission to monitor their browsing and transaction behavior, including online and offline purchasing.

many times the target audience had the opportunity to see the message. In advertising, this is commonly referred to as a “Reach and Frequency” analysis, where “Reach” refers to the estimated percentage of the unduplicated audience exposed to the campaign, and “Frequency” refers to how many times, on average, the target audience had the opportunity to see the message. These calculations are used by advertising and communications firms worldwide and have become a critical element to help provide the basis for determining adequacy of notice in class actions.

**TARGET AUDIENCE:  
MEDIA DEFINITION AND RELEVANT DEMOGRAPHIC  
CHARACTERISTICS**

26. According to various articles<sup>5</sup>, FX Instrument investors tend to be a more sophisticated, with a higher tolerance for investment risk, and larger available leverageable investment dollars.

27. While our media research does not specifically report on those who own FX Instruments, the closest proxy target audience definition for the purpose of selecting media for this proposed notice program would be adults with investment transactions in the affected states.

**MEDIA PREFERENCES AND KEY INSIGHTS**

28. Based on MRI data, we see that nearly 95 percent of our target audience is online. They are a cross-device audience, with nearly 90 percent of our target audience using a smartphone or tablet to access the internet. They are also heavy users of social media including Facebook.

**ONLINE AND SOCIAL MEDIA NOTICE**

29. Based on the results of the Direct Mail program, the supplemental online and social media notice will buttress the overall reach to deliver an estimated 80% of this target audience and they are estimated to see the message, on average, 3 times. If the direct mail results are less than the parties anticipate, a larger number of impressions will be delivered to maintain the overall reach of this notice program.

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<sup>5</sup> See: Future Returns: The Risk and Reward of Foreign Currency Exchange Markets <https://www.barrons.com/articles/future-returns-the-risk-and-reward-of-foreign-currency-exchange-markets-01556648573/>. Also See: Forex Market: Who Trades Currency and Why: <https://www.investopedia.com/articles/forex/11/who-trades-fores-and-why.asp>.

30. To accomplish this, notice will be published across a whitelist of investment websites, which may include, among others: Morningstar, Investopedia, MarketWatch and Motley Fool. Further, we intend to match class member contact information (email addresses, phone numbers) to Facebook and Instagram profiles to create a custom audience of known class members. Additionally, we will target users within the class member states who have liked or followed pages such as *The Motley Fool*, *Investing.com*, *MarketWatch*, *Morningstar*, *Seeking Alpha*, *TheStreet*, *The Wall Street Journal*, *Yahoo Finance*, *Bloomberg*, *Financial Times* and others. Finally, we will retarget users who visit the Settlement website, providing them with reminders to file a claim. The total number of impressions served will be determined based on the results of the direct mail and will be reported to this Court upon the completion of the Notice Program.

31. The notice program will also employ Google search engine advertising. Here we plan to target keywords and topics within the Class Member States related to the settlement including Bank of America settlement, Bank of America class action, BOA litigation, as well as stock and investment keywords.

### **PRESS RELEASE AND MEDIA MONITORING**

32. HF Media intends to issue a press release over PR Newswire's National Newslines with additional targeting to 1,777 influencers who cover finance. Our team will then monitor various media channels for subsequent news articles. A complete report on the results will be filed with the Court upon completion of the notice program.

### **OFFICIAL SETTLEMENT WEBSITE**

33. Further, Heffler intends to establish and maintain an official settlement website, [www.fxindirectantitrustsettlement.com](http://www.fxindirectantitrustsettlement.com). The Settlement website will serve as a “landing page for the banner advertising,” where Class Members may get information about the Settlement and obtain and/or submit a Claim Form, along with other information including information about the class action, Class Member rights, the Long Form Notice, Summary Notice, and related information, including the Settlement Agreement, Court Orders, and Plaintiff’s Motion for Approval of Fees, Expenses, and Class Representative Service Awards once it has been filed with the Court. The website will be available 24 hours a day and 7 days a week. It will be updated with current information and status as appropriate with direction from Counsel or the Court.

### **TOLL FREE INFORMATION LINE**

34. Additionally, Heffler will establish and maintain a 24-hour toll-free Interactive Voice Response (“IVR”) telephone line, where callers may obtain information about the class action. Heffler will also have available live operator support to answer questions during normal business hours. These operators will be trained to answer questions on the settlement and help people with any questions on filing a claim.


### **DEDICATED POST OFFICE BOX**

35. Heffler will secure and monitor a dedicated post office box for all mail and written communications from Class Members. Mail will be scanned and uploaded into Heffler’s dedicated database for this Settlement so that it can be tracked. All written correspondence will be monitored and responded to promptly.

### **CONCLUSION**

36. In my opinion, the outreach efforts described above reflect a particularly appropriate, highly targeted, and contemporary way to employ notice to this class. We estimate at least 80-86 percent of targeted Class Members will be reached by the direct mail outreach program. In my opinion, the efforts to be used in this proposed notice program are of the highest modern communication standards to provide notice and are consistent with best practicable court-approved notice programs in similar matters and the Federal Judicial Center’s guidelines concerning appropriate reach.

37. I declare under the penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct. Executed on May 22, 2020 in Tigard, Oregon.



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Jeanne C. Finegan

# Exhibit A



## JEANNE C. FINEGAN, APR

### BIOGRAPHY



Jeanne Finegan, APR, is Vice President of Notice Media Solutions of Prime Clerk. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM), and was named by *Diversity Journal* as one of the “Top 100 Women Worth Watching.” She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, "*Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions.*" And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA), and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted





numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,<sup>1</sup>) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

### **JUDICIAL COMMENTS AND LEGAL NOTICE CASES**

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

***In Re: Purdue Pharma L.P.***, No. 19-23649 Bankr. (S.D.N.Y. 2020). Omnibus Hearing, Transcript of Hearing p. 24:11, the Honorable Dennis Drain said,

***"This is an amazingly comprehensive and expansive notice program. As is set forth in the papers, we're looking to reach 95 percent or more of the entirety of the adult population in the United States."***

***In Re: PG&E Corporation*** Case No. 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:*

***...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...***

***Yahoo! Inc. Customer Data Security Breach Litigation***, Case No. 5:16-MD-02752 (ND Cal 2010). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

***"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."***

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<sup>1</sup> Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).



***In re: The Bank of New York Mellon ADR FX Litigation***, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:

***“The dissemination of notice constituted the best notice practicable under the circumstances.”***

***Simerlein et al., v. Toyota Motor Corporation***, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminary Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

***“In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8.”***

***Fitzhenry- Russell et al., v Keurig Dr. Pepper Inc.***, Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

***“...the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254 claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler’s efforts to ensure that notice was adequately provided to the Class.”***

***Pettit et al., v. Procter & Gamble Co.***, Case No. 15-cv-02150-RS ND Cal. In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

***“The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. ...the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements.”***

***Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc.***, Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

***“The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ...There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus the form and method used for notifying Class Members of the terms of the Settlement was***



***the best notice practicable. ...The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members.”***

Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:

***“I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class.”***

***Cook et. al v. Rockwell International Corp. and the Dow Chemical Co., No. 90-cv-00181- KLK (D.Colo. 2017).***, aka, Rocky Flats Nuclear Weapons Plant Contamination. In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

***The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ... and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ...Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.***

***In re: Domestic Drywall Antitrust Litigation***, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented and extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

***“The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons... and complies fully with the requirements of the Federal rule of Civil Procedure.”***

***Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017).*** In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney’s Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

***Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. ...the court finds that the class notice and the notice***



***process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).***

***Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement***, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

***Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.***

***Foster v. L-3 Communications EOTech, Inc. et al*** (6:15-cv-03519), Missouri Western District Court.

***In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."***

***In re: Skechers Toning Shoes Products Liability Litigation***, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

***... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.***

***Brody v. Merck & Co., Inc., et al***, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

***Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.***

***Quinn v. Walgreen Co., Wal-Mart Stores Inc.***, 7:12 CV-8187-VB (NYSJ) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:



***"The notice plan was the best practicable under the circumstances. ... [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."***

***In Re: TracFone Unlimited Service Plan Litigation***, No. C-13-3440 EMC (ND Ca). In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

***"...[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result..."***

***In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation***, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

***It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.***

***DeHoyos, et al. v. Allstate Ins. Co.***, No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

***[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.***

***In re: Reebok Easytone Litigation***, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

***The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement***



***Agreement and this Court's Preliminary Approval Order... constituted the best practicable notice to Class Members under the circumstances of the Actions.***

**Bezdek v. Vibram USA and Vibram FiveFingers LLC**, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

***...[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. ...I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).***

**Gemelas v. The Dannon Company Inc.**, No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

***In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. ... The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.***

**Pashmova v. New Balance Athletic Shoes, Inc.**, 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

***The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement ... met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.***

**Hartless v. Clorox Company**, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

***The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal***



***Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.***

***McDonough et al v. Toys 'R' Us et al***, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

***The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.***

***In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation***, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

***The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.***

***Stern v. AT&T Mobility Wireless***, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

***[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.***

***In re: Processed Egg Prods. Antitrust Litig.***, MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

***The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.... Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.***

***In re Polyurethane Foam Antitrust Litigation***, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

***The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the***



***circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.***

***Rojas v Career Education Corporation***, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virginia M. Kendall stated:

***The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member’s wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.***

***Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix)***, No. C 1206002 N.D CA. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

***The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.***

***Stefanyshyn v. Consolidated Industries***, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

***The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the “best practicable” notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. ... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.***

***McGee v. Continental Tire North America, Inc. et al***, No. 06-6234-(GEB) (D.N.J.).

***The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness***





**Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices,**

**Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al.,** No. 04-2702 (JLL) (D.N.J.). The Court stated that:

**[A]ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. ... By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). . . . The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).**

**In re: Nortel Network Corp., Sec. Litig.,** No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. See [www.nortelsecuritieslitigation.com](http://www.nortelsecuritieslitigation.com). Of the U.S. notice program, the Honorable Loretta A. Preska stated:

**The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.**

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

**The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages have been available through the worldwide web site [nortelsecuritieslitigation.com](http://nortelsecuritieslitigation.com) on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.**



**Mayo v. Walmart Stores and Sam's Club**, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

***According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator ... has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.'... The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.***

**Fishbein v. All Market Inc.**, (d/b/a Vita Coco) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

***"The Court finds that the dissemination of Class Notice pursuant to the Notice Program...constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation ... and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."***

**Lucas, et al. v. Kmart Corp.**, No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

***The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).***

**In re: Johns-Manville Corp. (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement)**, No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

***As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and***



***far exceeded the minimum notice required. . . . The results simply speak for themselves.***

***Pigford v. Glickman and U.S. Department of Agriculture***, No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

***The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations. . . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.***

***In re: Louisiana-Pacific Inner-Seal Siding Litig.***, Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

***The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign.***

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

***...well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to insure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).***

***In re: Expedia Hotel Taxes and Fees Litigation***, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

***The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how***



***Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.***

***Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation***, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

***The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. ... The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.***

***Wilson v. Massachusetts Mut. Life Ins. Co.***, No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. [www.insuranceclassclaims.com](http://www.insuranceclassclaims.com). In granting preliminary approval to the settlement, the Honorable Art Encinias found:

***[T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. ...[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.***

***Sparks v. AT&T Corp.***, No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

***The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out of the proposed settlement. The Court therefore concludes***



***that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.***

***In re: Georgia-Pacific Toxic Explosion Litig.***, No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-borne toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

***[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).***

***In re: American Cyanamid***, No. CV-97-0581-BH-M (S.D.Al.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

***The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.***

***In re: First Alert Smoke Alarm Litig.***, No. CV-98-C-1546-W (UWC) (N.D.Al.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

***...constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.***

***In re: James Hardie Roofing Litig.***, No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:



***The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.***

***Barden v. Hurd Millwork Co. Inc., et al*, No. 2:6-cv-00046 (LA) (E.D.Wis.) ("The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1).")**

***Altieri v. Reebok*, No. 4:10-cv-11977 (FDS) (D.C.Mass.) ("The Court finds that the notices ... constitute the best practicable notice... The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.")**

***Marengo v. Visa Inc.*, No. CV 10-08022 (DMG) (C.D.Cal.) ("[T]he Court finds that the notice plan...meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law.")**

***Palmer v. Sprint Solutions, Inc.*, No. 09-cv-01211 (JLR) (W.D.Wa.) ("The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide<sup>3d</sup> with notice.")**

***In re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation*, No. 1:08-md-01982 RDB (D. Md. N. Div.) ("The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement.")**

***Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation*, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara) ("Notice provided was the best practicable under the circumstances.")**

***Deke, et al. v. Cardservice Internat'l*, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles) ("The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances.")**



***Levine, et al. v. Dr. Philip C. McGraw, et al.***, Case No. BC 312830 (Los Angeles County Super. Ct., Cal.) (“***[T]he plan for notice to the Settlement Class ... constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class ... and satisfies the requirements of California law and federal due process of law.***”).

***In re: Canadian Air Cargo Shipping Class Actions***, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court (“***I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate.***”).

***Fischer et al v. IG Investment Management, Ltd. et al***, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

***In re: Vivendi Universal, S.A. Securities Litigation***, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

***In re: Air Cargo Shipping Services Antitrust Litigation***, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

***Berger, et al., v. Property ID Corporation, et al.***, No. CV 05-5373-GHK (CWx) (C.D.Cal.).

***Lozano v. AT&T Mobility Wireless***, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

***Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp.***, No. 94-08273 CA (22) (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

***In re: Royal Dutch/Shell Transport Securities Litigation***, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).

***In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding***, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

***UAW v. General Motors Corporation***, No: 05-73991 (E.D.MI).

***Wicon, Inc. v. Cardservice Intern’l, Inc.***, BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

***In re: SmithKline Beecham Clinical Billing Litig.***, No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

***MacGregor v. Schering-Plough Corp.***, No. EC248041 (Sup. Ct. Cal., County of Los Angeles). This nationwide notification program was designed to reach all persons who had purchased or used



an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

***In re: Swiss Banks Holocaust Victim Asset Litig.***, No. CV-96-4849 (E.D.N.Y.). Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. [www.swissbankclaims.com](http://www.swissbankclaims.com).

***In re: Exxon Valdez Oil Spill Litig.***, No. A89-095-CV (HRH) (Consolidated) (D. Alaska). Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

***In re: Johns-Manville Phenolic Foam Litig.***, No. CV 96-10069 (D. Mass). The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

***Bristow v Fleetwood Enters Litig.***, No Civ 00-0082-S-EJL (D. Id). Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

***In re: New Orleans Tank Car Leakage Fire Litig.***, No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000). This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

***Garria Spencer v. Shell Oil Co.***, No. CV 94-074(Dist. Ct., Harris County, Tex.). The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

***In re: Hurd Millwork Heat Mirror™ Litig.***, No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara). This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

***Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc.***, No. CV-97-C-629-W (N.D. Ala.). Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.





***In re: StarLink Corn Prods. Liab. Litig.***, No. 01-C-1181 (N.D. Ill).. Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

***In re: MCI Non-Subscriber Rate Payers Litig.***, MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.). The advertising and media notice program, found to be “more than adequate” by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. [www.rateclaims.com](http://www.rateclaims.com).

***In re: Albertson’s Back Pay Litig.***, No. 97-0159-S-BLW (D.Id.). Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

***In re: Georgia Pacific Hardboard Siding Recovering Program***, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.). Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

***In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.***, Nos. 1203, 99-20593. Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court’s Memorandum and Pretrial Order 1415, approving the settlement,

***In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig.***, 2000 WL 1222042, Nos. 1203, 99-20593 (E.D.Pa. Aug. 28, 2002).

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

***In re: Florida Microsoft Antitrust Litig. Settlement***, No. 99-27340 CA 11 (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).



***In re: Montana Microsoft Antitrust Litig. Settlement***, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

***In re: South Dakota Microsoft Antitrust Litig. Settlement***, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).

***In re: Kansas Microsoft Antitrust Litig. Settlement***, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.) (“The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.”).

***In re: North Carolina Microsoft Antitrust Litig. Settlement***, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

***In re: ABS II Pipes Litig.***, No. 3126 (Sup. Ct. of Cal., Contra Costa County). The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

***In re: Avenue A Inc. Internet Privacy Litig.***, No: C00-1964C (W.D. Wash.).

***In re: Lorazepam and Clorazepate Antitrust Litig.***, No. 1290 (TFH) (D.C.C.).

***In re: Providian Fin. Corp. ERISA Litig.***, No C-01-5027 (N.D. Cal.).

***In re: H & R Block., et al Tax Refund Litig.***, No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

***In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp.***, No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

***In re: Sprint Corp. Optical Fiber Litig.***, No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

***In re: Shelter Mutual Ins. Co. Litig.***, No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

***In re: Conseco, Inc. Sec. Litig.***, No: IP-00-0585-C Y/S CA (S.D. Ind.).

***In re: Nat’l Treasury Employees Union, et al.***, 54 Fed. Cl. 791 (2002).

***In re: City of Miami Parking Litig.***, Nos. 99-21456 CA-10, 99-23765 – CA-10 (11<sup>th</sup> Judicial Dist. Ct. of Miami-Dade County, Fla.).

***In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm.***, No. L 1:01CV658 (E.D. Tx.).

***Alsea Veneer v. State of Oregon A.A.***, No. 88C-11289-88C-11300.



### **INTERNATIONAL EXPERIENCE**

***Bell v. Canadian Imperial Bank of Commerce, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).***

***In re: Canadian Air Cargo Shipping Class Actions (Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.***

***In re: Canadian Air Cargo Shipping Class Actions (Québec Superior Court).***

***Fischer v. IG Investment Management LTD., No. 06-CV-307599CP (Ontario Superior Court of Justice).***

***In Re Nortel I & II Securities Litigation, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).***

***Frohlinger v. Nortel Networks Corporation et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).***

***Association de Protection des Épargnants et Investisseurs du Québec v. Corporation Nortel Networks, No.: 500-06-0002316-017 (Superior Court of Québec).***

***Jeffery v. Nortel Networks Corporation et al., Court File No.: S015159 (Supreme Court of British Columbia).***

***Gallardi v. Nortel Networks Corporation, No. 05-CV-285606CP (Ontario Superior Court).***

***Skarstedt v. Corporation Nortel Networks, No. 500-06-000277-059 (Superior Court of Québec).***

### **SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE**

***SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).***

The Notice program included publication in 11 different countries and eight different languages.

***SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)***



### **FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE**

***FTC v. TracFone Wireless, Inc.***, Case No. 15-cv-00392-EMC.

***FTC v. Skechers U.S.A., Inc.***, No. 1:12-cv-01214-JG (N.D. Ohio).

***FTC v. Reebok International Ltd.***, No. 11-cv-02046 (N.D. Ohio)

***FTC v. Chanery and RTC Research and Development LLC [Nutraquest]***, No :05-cv-03460 (D.N.J.)

### **BANKRUPTCY EXPERIENCE**

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

**In Re: Purdue Pharma L.P., No. 19-23649 Bankr. SDNY 2020.** Omnibus Hearing, Transcript of Hearing p. 24:11, the Honorable Dennis Drain said, ***“this is an amazingly comprehensive and expansive notice program. As is set forth in the papers, we’re looking to reach, 95 percent or more of the entirety of the adult population in the United States.”***

**In Re: PG&E Corporation Case No . 19-30088 Bankr. N.D. Cal. 2019.** Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated: ...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...*

***In re AMR Corporation [American Airlines], et al.***, No. 11-15463 (SHL) (Bankr. S.D.N.Y.) (***“due and proper notice [was] provided, and ... no other or further notice need be provided.”***)

***In re Jackson Hewitt Tax Service Inc.***, et al., No 11-11587 (Bankr. D.Del.) (2011). The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.



***In re: Nutraquest Inc.***, No. 03-44147 (Bankr. D.N.J.)

***In re: General Motors Corp. et al***, No. 09-50026 (Bankr. S.D.N.Y.). This case is the 4<sup>th</sup> largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

***In re: ACandS, Inc.***, No. 0212687 (Bankr. D.Del.) (2007) (“***Adequate notice of the Motion and of the hearing on the Motion was given.***”).

***In re: United Airlines***, No. 02-B-48191 (Bankr. N.D Ill.). Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL’s advertising team to select the appropriate media and to negotiate the most favorable advertising rates. [www.pd-ual.com](http://www.pd-ual.com).

***In re: Enron***, No. 01-16034 (Bankr. S.D.N.Y.). Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

***In re: Dow Corning***, No. 95-20512 (Bankr. E.D. Mich.). Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

***In re: Harnischfeger Inds.***, No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.). Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

***In re: Keene Corp.***, No. 93B 46090 (SMB), (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

***In re: Lamonts***, No. 00-00045 (Bankr. W.D. Wash.). Ms. Finegan designed and implemented multiple bankruptcy notice programs.

***In re: Monet Group Holdings***, Nos. 00-1936 (MFW) (Bankr. D. Del.). Ms. Finegan designed and implemented a bar date notice.

***In re: Laclede Steel Co.***, No. 98-53121-399 (Bankr. E.D. MO.). Ms. Finegan designed and implemented multiple bankruptcy notice programs.

***In re: Columbia Gas Transmission Corp.***, No. 91-804 (Bankr. S.D.N.Y.). Ms. Finegan developed multiple nationwide legal notice notification programs for this case.



***In re: U.S.H. Corp. of New York, et al.*** (Bankr. S.D.N.Y.). Ms. Finegan designed and implemented a bar date advertising notification campaign.

***In re: Best Prods. Co., Inc.***, No. 96-35267-T, (Bankr. E.D. Va.). Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

***In re: Lodgian, Inc., et al.***, No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y.).

***In re: Internat'l Total Servs, Inc., et al.***, Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y.).

***In re: Decora Inds., Inc. and Decora, Incorp.***, Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.).

***In re: Genesis Health Ventures, Inc., et al***, No. 002692 (PJW) (Bankr. D. Del.).

***In re: Tel. Warehouse, Inc., et al***, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.).

***In re: United Cos. Fin. Corp., et al***, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.).

***In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al.***, No. 95-B44080 (JLG) (Bankr. S.D.N.Y.).

***In re: Physicians Health Corp., et al.***, No. 00-4482 (MFW) (Bankr. D. Del.).

***In re: GC Cos., et al.***, Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.).

***In re: Heilig-Meyers Co., et al.***, Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

### **PRODUCT RECALL AND CRISIS COMMUNICATION EXPERIENCE**

***Reser's Fine Foods.*** Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

***Gulf Coast Claims Facility Notice Campaign.*** Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in



newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

***City of New Orleans Tax Revisions, Post-Hurricane Katrina.*** In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.

#### **ARTICLES/ SOCIAL MEDIA**

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editorandpublisher.com/ (February 4, 2020).

Tweet Chat: Contributing Panelist #Law360SocialChat, A live Tweet workshop concerning the benefits and pit-falls of social media, Lexttalk.com, November 7, 2019.

Author, “Top Class Settlement Admin Factors to Consider in 2020” Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, “Creating a Class Notice Program that Satisfies Due Process” Law360, New York, (February 13, 2018 12:58 PM ET).

Author, “3 Considerations for Class Action Notice Brand Safety” Law360, New York, (October 2, 2017 12:24 PM ET).

Author, “What Would Class Action Reform Mean for Notice?” Law360, New York, (April 13, 2017 11:50 AM ET).

Author, “Bots Can Silently Steal your Due Process Notice.” Wisconsin Law Journal, April 2017.

Author, “Don’t Turn a Blind Eye to Bots. Ad Fraud and Bots are a Reality of the Digital Environment.” LinkedIn article March 6, 2107.

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Author, “Think All Internet Impressions Are The Same? Think Again” – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, “Why Class Members Should See an Online Ad More Than Once” – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

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Co-Author, “New Media Creates New Expectations for Bankruptcy Notice Programs,” ABI Journal, Vol. XXX, No 9, (November 2011).

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Quoted Expert, “Communication Technology Trends Pose Novel Notification Issues for Class Litigators,” BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, “Legal Notice: R U ready 2 adapt?” BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, “On Demand Media Could Change the Future of Best Practicable Notice,” BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, “Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty,” Warranty Week, [warrantyweek.com/archive/ww20070228.html/](http://warrantyweek.com/archive/ww20070228.html/) February 28, 2007.





Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

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Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

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**SPEAKER/EXPERT PANELIST/PRESENTER**

Chief Litigation Counsel  
Association (CLCA)

Speaker, "Four Factors Impacting the Cost of Your Class Action Settlement and Notice," Houston TX, May 1, 2019



CLE Webinar	“Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?” October 23, 2018, <a href="https://bit.ly/2RIRvZq">https://bit.ly/2RIRvZq</a>
American Bar Assn.	Faculty Panelist, 4 <sup>th</sup> Annual Western Regional CLE Class Actions, “Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape” San Francisco, CA June, 2018.
Miami Law Class Action & Complex Litigation Forum	Faculty Panelist, “Settlement and Resolution of Class Actions,” Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, “Class Action Settlements: Hot Topics 2016 and Beyond,” Live Webcast, <a href="http://www.theknowledgegroup.org">www.theknowledgegroup.org</a> , October 2016.
ABA National Symposium	Faculty Panelist, “Ethical Considerations in Settling Class Actions,” New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, “How a Class Action Notice can Make or Break your Client’s Settlement,” San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, “Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities,” Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar “Media Relevant in the Class Notice Context.” July, 2014.
Bridgeport Continuing Ed.	Faculty Panelist, “Media Relevant in the Class Notice Context.” Los Angeles, California, April 2014.
CASD 5 <sup>th</sup> Annual	Speaker, “The Impact of Social Media on Class Action Notice.” Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, “Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media.” Chicago, IL, October 2011. <b>*Voted by attendees as one of the best presentations given.</b>
CASD 4 <sup>th</sup> Annual	Faculty Panelist, “Reasonable Notice - Insight for practitioners on the FJC’s <i>Judges’ Class Action Notice and Claims Process Checklist</i> ”



	<i>and Plain Language Guide</i> . Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.
CASD	Faculty Panelist, “21 <sup>st</sup> Century Class Notice and Outreach.” 3 <sup>rd</sup> Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, “The Future of Notice.” 2 <sup>nd</sup> Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, “Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard.” Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles “The Anatomy of a Class Action.” Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11 <sup>th</sup> Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.
Weil, Gotshal & Manges	Presenter, CLE presentation, “A Scientific Approach to Legal Notice Communication.” New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, “A Scientific Approach to Legal Notice Communication.” Los Angeles, May 2003.



Kirkland & Ellis	Speaker to restructuring group addressing “The Best Practicable Methods to Give Notice in a Tort Bankruptcy.” Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: “What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated,” Mass Tort Litigation Institute. Washington D.C., November, 2001.
American Bar Association	Presenter, “How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice,” ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. <a href="http://www.irmi.com">www.irmi.com</a> .
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. <a href="http://www.abi.org">www.abi.org</a> .

### **BACKGROUND**

Ms Finegan’s past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (“GCG”) and Poorman-Douglas Corp., (“EPIQ”). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation’s leading legal notice communication agencies.



Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

#### **MEMBERSHIPS, PROFESSIONAL CREDENTIALS**

**APR** Accredited. Universal Board of Accreditation Public Relations Society of America

- **Member of the Public Relations Society of America**
- **Member Canadian Public Relations Society**

#### **Board of Directors - Alliance for Audited Media**

Alliance for Audited Media ("AAM") is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

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#### **SOCIAL MEDIA**

**LinkedIn:** [www.linkedin.com/in/jeanne-finegan-apr-7112341b](http://www.linkedin.com/in/jeanne-finegan-apr-7112341b)

# Exhibit B

FX Indirect Antitrust Settlement  
c/o Claims Administrator  
P.O. Box 0000  
Philadelphia, PA 00000-0000

FIRST CLASS MAIL  
U.S. POSTAGE PAID  
CITY, ST  
PERMIT NO. XXXX

**If You Purchased A Foreign  
Currency Instrument From  
Certain Individuals And  
Entities, A \$23.63 Million  
Class Action Settlement  
May Affect You.**

Register to Receive a Claim Form at  
**[FXIndirectAntitrustSettlement.com](http://FXIndirectAntitrustSettlement.com)**

<<Barcode>>

Class Member ID: <<Refnum>>

<<FirstName>> <<LastName>>

<<Address>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<zip4>>

[BARCODE AREA]

**What is this About?**

This lawsuit alleges Citigroup, MUFG Bank, Standard Chartered, Société Générale, Bank of America, Barclays, BNP Paribas, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, RBC, RBS, and UBS (the “Defendants”) conspired to fix foreign currency (“FX”) instrument prices causing people to be overcharged when purchasing an FX Instrument from an individual or entity and that individual or entity transacted in an FX Instrument directly with a Defendant or one of Defendants’ alleged co-conspirators. Defendants maintain that these claims lack merit. The settlements are not evidence of liability or wrongdoing. The Court has not decided who is right.

**Who’s Included?**

You are if: (1) you purchased an FX Instrument from an individual or entity from December 1, 2007 through [DATE OF PAO], and that individual or entity in turn transacted in an FX Instrument directly with a Defendant or alleged co conspirator; and (2) you lived in NY, AZ, CA, FL, IL, MA, MN, or NC at the time of the transaction.

**What do the Settlements provide?**

The \$23,630,000 Settlement Fund, less court-approved fees and costs, will be distributed based on the greater of (1) a *pro rata* award based on transaction volume of FX Instrument purchases with a discount applied for purchases after December 31, 2013, or (2) a *de minimis* award. See the Plan of Allocation at [FXIndirectAntitrustSettlement.com](http://FXIndirectAntitrustSettlement.com) for detailed payout information.

**How can I get payment?**

If the Settlements are approved, you will receive a claim form in the mail or by email explaining the calculation of Settlement awards for eligible claimants. Claim forms will also be available on the settlement website. You can also submit documents showing your FX Instrument

purchases to the Settlement Administrator, Heffler Claims Group, to substantiate your claim. The deadline to file a claim will be 120 days after the Court grants final approval of the Settlements.

**What are my Rights?**

**Do nothing** - If you do nothing, you will get no settlement proceeds but will be legally bound by all Court judgments and you won’t be able to sue, or continue to sue, Defendants for the same claims in this action.

**Object** - If you want to remain in the Settlements but wish to object to the Settlements or any aspect of them, you must submit your objection by [50 DAYS PRIOR TO FAIRNESS HEARING].

**Exclude** - If you want to maintain your right to sue the Defendants, you must exclude yourself from the Settlements by [50 DAYS PRIOR TO FAIRNESS HEARING]. If you exclude yourself, you will not get a payment from these Settlements. If you do not exclude yourself, you will remain a member of a Settlement Class and your legal claims will be released even if you do not submit a claim.

**When will the Court decide?**

A Fairness Hearing will be held on [MONTH, DAY, YEAR (date set by Court)] at time at the Thurgood Marshall US Courthouse, 40 Foley Square, NY, NY 10007, in Courtroom 1106 to consider whether to approve the Settlements and fee application. You may, at your own expense, appear at the hearing, but you do not have to. Class Counsel will ask the Court to approve an award of attorneys’ fees of up to 26.21% of the Settlement Fund, plus service awards for the class representatives and reimbursement of costs and expenses not to exceed \$1,825,000. The fee application will be available on the settlement website when filed.

*This is only a summary.* For more information, including Settlement Agreements and release of claims, instructions on filing a claim (when available), and details on how to exclude or object to the Settlements, visit [FXIndirectAntitrustSettlement.com](http://FXIndirectAntitrustSettlement.com) or call 1-844-245-3777.



Iaq9ush1

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
UNITED STATES OF AMERICA,

3 v.

17 Cr. 19 (RMB)

4 RICHARD USHER,  
5 ROHAN RAMCHANDANI, and  
6 CHRISTOPHER ASHTON,

7 Defendants.  
-----x

New York, N.Y.  
October 26, 2018  
1:20 a.m.

9 Before:

10 HON. RICHARD M. BERMAN,

District Judge

11 APPEARANCES

12 U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION (NY)  
13 Attorneys for the USA  
14 CARRIE A. SYME  
15 JEFFREY D. MARTINO  
16 DAVID CHU  
BRYAN CHRISTOPHER BUGHMAN

17 WHITE & CASE LLP  
Attorneys for Defendant Usher  
18 MICHAEL D. KENDALL  
ANDREW TOMBACK  
19 JOHN MARK GIDLEY

20 WILMER CUTLER PICKERING HALE AND DORR LLP  
Attorneys for Defendant Ramchandani  
21 ANJAN SAHNI  
HEATHER S. TEWKSBURY

22 SCHERTLER & ONORATO, LLP  
Attorneys for Defendant Ashton  
23 DAVID SCHERTLER  
24 LISA MANNING

Iaq9ushf

1 THE COURT: The jury has advised us that they have a  
2 verdict.

3 (Time noted: 1:20 p.m.)

4 THE COURT: Please be seated. So the process that we  
5 use, I'm advised that you have reached a verdict. And  
6 Christine is going to return your verdict to the foreperson and  
7 then she's going to ask some questions of him and then ask some  
8 questions of each of you.

9 THE DEPUTY CLERK: Could the foreperson please stand.

10 In the matter of United States v. Richard Usher, Rohan  
11 Ramchandani, and Christopher Ashton, how do you, the jury, find  
12 as to the following question.

13 Count One, conspiracy to violate the Sherman Act as to  
14 Richard Usher.

15 JUROR: Not guilty.

16 THE DEPUTY CLERK: As to Rohan Ramchandani.

17 JUROR: Not guilty.

18 THE DEPUTY CLERK: As to Christopher Ashton.

19 JUROR: Not guilty.

20 THE DEPUTY CLERK: You may be seated. Ladies and  
21 gentlemen --

22 THE COURT: Christine, wait a minute.

23 (Pause)

24 THE DEPUTY CLERK: Ladies and gentlemen of jury,  
25 please listen to your verdict as it stands recorded. Count

Iaq9ushf

1 One, conspiracy to violate the Sherman Act.

2 Richard Usher, not guilty.

3 Rohan Ramchandani, not guilty.

4 Christopher Ashton, not guilty.

5 Juror number one, is this your verdict?

6 JUROR: Yes.

7 THE DEPUTY CLERK: Jury number two, is this your  
8 verdict?

9 JUROR: Yes.

10 THE DEPUTY CLERK: Jury number three, is this your  
11 verdict?

12 JUROR: Yes.

13 THE DEPUTY CLERK: Jury number four, is this your  
14 verdict?

15 JUROR: Yes.

16 THE DEPUTY CLERK: Jury number five, is this your  
17 verdict?

18 JUROR: Yes.

19 THE DEPUTY CLERK: Jury number six, is this your  
20 verdict?

21 JUROR: Yes.

22 THE DEPUTY CLERK: Jury number seven, is this your  
23 verdict?

24 JUROR: Yes.

25 THE DEPUTY CLERK: Jury number eight, is this your

Iaq9ushf

1 verdict?

2 JUROR: Yes.

3 THE DEPUTY CLERK: Jury number nine, is this your  
4 verdict?

5 JUROR: Yes.

6 THE DEPUTY CLERK: Jury number ten, is this your  
7 verdict?

8 JUROR: Yes.

9 THE DEPUTY CLERK: Jury number eleven, is this your  
10 verdict?

11 JUROR: Yes.

12 THE DEPUTY CLERK: Jury number twelve, is this your  
13 verdict?

14 JUROR: Yes.

15 THE DEPUTY CLERK: Your Honor, jury polled. Verdict  
16 is unanimous.

17 THE COURT: So all that is left for me to do is to  
18 thank you once again for your jury service. You were very  
19 attentive, very timely, and very thoughtful, and excuse you as  
20 jurors and you don't have to come back at 9:15 Monday or any  
21 other day.

22 And if you would, if you'd wait in the -- you're free  
23 to go home but if you wanted to wait in the jury room for a  
24 minute I'd just come back there and thank you myself  
25 personally. OK. So the jury is excused.

Iaq9ushf

1 (Jury excused)

2 THE COURT: So please be seated if you would for just  
3 a minute it's my practice to go back and thank the jurors  
4 personally. I'll be right back.

5 (Recess)

6 JUROR: There's really not much or anything left for  
7 me except to say this. The jury did express that they wanted  
8 to leave before everybody else does and I guess the media has  
9 already gone out there. They're not very interested in talking  
10 to the media, but anyway.

11 MR. SCHERTLER: Are we allowed to speak to the jurors?

12 THE COURT: You are. If they want to speak to you --  
13 they've indicated that they really didn't want to, so. But  
14 certainly they're free to talk to you if they want to.

15 MR. SAHNI: Judge, we would just ask that the bail  
16 orders be vacated.

17 THE COURT: OK. Application granted.  
18 Have a great weekend.

19 (Adjourned)

20

21

22

23

24

25

IAPYUSH1

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
UNITED STATES OF AMERICA,

3 v.

17 Cr. 19 (RMB)

4 RICHARD USHER,  
5 ROHAN RAMCHANDANI, and  
6 CHRISTOPHER ASHTON,

7 Defendants.  
-----x

New York, N.Y.  
October 25, 2018  
9:00 a.m.

9 Before:

10 HON. RICHARD M. BERMAN,

District Judge

11 APPEARANCES

12 U.S. DEPARTMENT OF JUSTICE, ANTITRUST DIVISION (NY)  
13 Attorneys for the USA  
14 CARRIE A. SYME  
15 JEFFREY D. MARTINO  
16 DAVID CHU  
BRYAN CHRISTOPHER BUGHMAN

17 WHITE & CASE LLP  
Attorneys for Defendant Usher  
18 MICHAEL D. KENDALL  
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19 JOHN MARK GIDLEY

20 WILMER CUTLER PICKERING HALE AND DORR LLP  
Attorneys for Defendant Ramchandani  
21 ANJAN SAHNI  
HEATHER S. TEWKSBURY

22 SCHERTLER & ONORATO, LLP  
Attorneys for Defendant Ashton  
23 DAVID SCHERTLER  
24 LISA MANNING

IAPYUSH1

1 (Trial resumed)

2 THE COURT: So this is a supplemental charge  
3 conference following the one we had yesterday. This issue that  
4 we are going to primarily talk about today was not raised in  
5 the charge conference yesterday, the part that was off the  
6 record that came up first in the afternoon when defense was  
7 lodging its objections.

8 But be that as it may, it's an important issue. I  
9 asked for briefing last night, short briefing, and received  
10 letter briefs from each side. I'm happy to hear you each out.

11 What I did was eliminated one of the jurisdictional  
12 options for the conspiracy. I think it's found on page 15 of  
13 the latest jury instructions which we handed out this morning,  
14 page 15 under the heading Sherman "Act Conspiracy Third Element  
15 Commerce."

16 And it now reads that that third element is satisfied  
17 if you find beyond a reasonable doubt that the charged  
18 conspiracy had a direct, substantial, and reasonably  
19 foreseeable effect in the U.S.

20 It had two options before. So the idea here is not to  
21 advantage or disadvantage any party but to get the law as  
22 correct as we can. So I'm happy to hear from both sides.

23 MS. TEWKSBURY: Thank you, your Honor. We appreciate  
24 the Court's efforts here, and we think that we're almost all  
25 the way there, but to get the law entirely correct, it looks

IAPYUSH3

Summation - Mr. Schertler

1 to fight this case. He did so because he believed that you  
2 would reach the right, the fair, and the just result, the only  
3 verdict, the only verdict that's consistent with the evidence,  
4 your common sense, and with justice is that Rohan is  
5 not guilty.

6 Ladies and gentlemen, he's in your hands now. Please  
7 end this. Send him home. Thank you.

8 THE COURT: Thanks, counsel.

9 MR. SCHERTLER: Thank you, your Honor.

10 Your Honor, may I have 30 seconds here to set up the  
11 easel?

12 THE COURT: Sure.

13 MR. SCHERTLER: Thank you. Ladies and gentlemen, good  
14 morning. My name is David Schertler, and I represent Chris  
15 Ashton, along with my colleague, Lisa Manning. And I've been  
16 waiting for this opportunity to be able to talk to you about  
17 the case.

18 By now, you've probably learned more about the foreign  
19 exchange trading business than you ever thought you'd know or  
20 ever wanted to know. And I submit to you that that is one of  
21 the problems in this case.

22 This is a very complicated business. And I submit to  
23 you that the government doesn't really understand it, and it  
24 really doesn't understand what these traders were able to do  
25 and what they couldn't do.



IAPYUSH3

Summation - Mr. Schertler

1           We're talking about an antitrust case here, and when  
2 you talk about your typical antitrust case, it's like the  
3 example I tried to raise with Matt Gardiner.

4           The typical cartel is the OPEC oil cartel. As we all  
5 know, those are countries that control the majority of the  
6 world's supply of oil. When they get together and they want to  
7 increase the price, what they do is they say, okay. We're all  
8 going to cut back the amount of oil we're going to produce, and  
9 they cut back the supply, and the price goes up, and that's how  
10 they do it.

11           If they want the price to go down, they do the  
12 opposite. They all get together. And they say, let's increase  
13 our supply. You increase this much, you increase this much,  
14 and they flood the market, and the price goes down. That's not  
15 what foreign exchange is.

16           These men as traders at the banks -- they had no  
17 control over the supply and demand. That was all dictated to  
18 them by the customer orders that the bank received. They had  
19 no control over the price. They couldn't affect the price.  
20 And that's the basic misconception that I think the government  
21 has in this case.

22           I think the best way for me to try to explain the case  
23 to you from Chris Ashton's perspective is to go through an  
24 outline that I've prepared, and the outline goes through seven  
25 different points.

IAPYUSH3

Summation - Mr. Schertler

1           And I'll leave my chart up on the easel so you can  
2 follow along with my closing argument. I believe that this  
3 will show you why Chris Ashton -- why the evidence exonerates  
4 Chris Ashton and why you should find him not guilty. And I'll  
5 respond to everything that Ms. Syme said about Chris Ashton.

6           So let me get right to it. Ms. Manning said it in her  
7 opening statement to you, but a trial has two things. A trial  
8 has the law -- and as you've been told, Judge Berman will  
9 explain the law to you after we finish our closing arguments --  
10 and it has the facts.

11           As Judge Berman told you, you, the ladies and  
12 gentlemen of the jury, based on what you've seen and heard in  
13 the last two weeks -- you'll decide the facts.

14           A simple analogy, maybe not the best one, but you're  
15 watching a football game and the receiver catches a ball and  
16 he's right on the sideline. It looks like a beautiful catch.  
17 You're watching it. You're the fact-finder, and you say, wow.  
18 He caught the ball, and he goes out of bounds. Those are the  
19 facts. The guy was on the sidelines, he threw the pass, and he  
20 caught the ball.

21           What's the rule? The rule is that you have to have  
22 your two feet inside the sideline in order for it to be a good  
23 catch. So that's the rule. That's the law. That's what  
24 Judge Berman will tell you about.

25           But in order to understand the facts and how the facts

IAPYUSH3

Summation - Mr. Schertler

1 apply to this case, you've got to understand the law. You've  
2 got to understand the rules.

3 And I want to emphasize -- I want to go through some  
4 of those rules with you. Now, Judge Berman is going to give  
5 you a much longer explanation of the rules, but I think there  
6 are a few rules that are extremely important in this case and  
7 that I want to bring to your attention.

8 You've already heard about reasonable doubt, the  
9 highest standard that we have in our legal system. At the end  
10 of the day, at the end of the day, whatever facts you decide,  
11 if you're not sure or if you're not certain or if you're not  
12 confident or if you think maybe a crime was committed or you  
13 think possibly a crime was committed, you must find them  
14 not guilty. That's reasonable doubt.

15 But here is another rule of law that I think is  
16 important in this case, and it's important because there is no  
17 dispute that Rohan, Richard, Chris, and Matt Gardiner were in a  
18 chatroom together and that they shared information in that  
19 chatroom together and that they traded with one another in that  
20 chatroom.

21 This is the rule that I expect Judge Berman will  
22 instruct you. Here is what it says: You may not -- you may  
23 not -- infer the existence of an illegal agreement -- and  
24 that's what this case is all about, an illegal agreement --  
25 solely from the fact that the defendants exchanged information

IAPYUSH3

Summation - Mr. Schertler

1 about currency prices, which they did; exchanged information  
2 about quantities, which they did; exchanged information about  
3 customer orders and identities, which they did, with each  
4 other. That sharing of information is not an illegal  
5 agreement, and you may not infer the existence of an illegal  
6 agreement from those facts.

7 And this goes hand in hand with another instruction  
8 that I expect Judge Berman to give you. The independent  
9 actions of a person or business do not constitute a restraint  
10 of trade in violation of the Sherman Act.

11 Ladies and gentlemen, I think this gets to the crux of  
12 this case. We submit that they shared information, they traded  
13 with one another, but they never coordinated their trading in  
14 any effort to try to impact the price. And independent  
15 actions, independent trading by these traders, does not  
16 constitute a violation of the Sherman Act.

17 Finally, one more. Judge Berman I expect will  
18 instruct you on this one as well, people responding to common  
19 perceptions of the market -- now we're talking about the  
20 foreign exchange market -- may take independent actions that  
21 are similar or parallel. Parallel conduct alone is not  
22 sufficient to prove an illegal agreement.

23 You know how that translates to our case? If you're  
24 in the chatroom together and everybody is -- what do we call  
25 it? -- the same way, and they say, we're all the same way. So

IAPYUSH3

Summation - Mr. Schertler

1 maybe that's good information that the price is going to go in  
2 that direction.

3 So if they trade their independent quantities in a  
4 similar or parallel way because they all think the same thing,  
5 common perception of the market that the price is going to go  
6 this way, that is not sufficient to prove an illegal agreement.

7 So the exchange of information, information about  
8 quantities, information about customer orders and identities,  
9 independent trading decisions, even if they're trading with one  
10 another or matching off, it's still their own independent  
11 trading decision.

12 Even parallel conduct, if they decide to go the same  
13 way because they have the same perception of the market based  
14 on information they received in the chat, is not illegal. And  
15 that is precisely what these men were doing in this case and  
16 nothing more.

17 So, ladies and gentlemen, let me -- one final rule.

18 If we can go to the next one.

19 I expect Judge Berman is going to instruct you as  
20 follows: If you find that the agreement -- this is the illegal  
21 agreement -- charged in the indictment did not exist, you  
22 cannot find any of the defendants guilty.

23 In a minute, I'll explain to you why I believe the  
24 evidence shows you that no such illegal agreement existed. So  
25 I'm going to move on to the facts and what did the evidence