UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE MEXICAN GOVERNMENT BONDS ANTITRUST LITIGATION	Master Docket No. 18-cv-02830
THIS DOCUMENT RELATES TO: ALL ACTIONS	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES

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Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Plaintiffs' Lead Counsel, Lowey Dannenberg, P.C. ("Lowey" or "Lead Counsel") respectfully submit this motion for an award of 30% ($6,210,000) in attorneys' fees from the $20,700,000 common fund established by the Settlements[1] with (a) Defendants Barclays PLC, Barclays Bank PLC, Barclays Capital Inc., Barclays Capital Securities Limited, Barclays Bank México, S.A., Institución de Banca Múltiple, Grupo Financiero Barclays México, and Grupo Financiero Barclays México, S.A. de C.V. (collectively, "Barclays") and (b) Defendants JPMorgan Chase & Co., J.P. Morgan Broker-Dealer Holdings Inc., J.P. Morgan Securities LLC, JPMorgan Chase Bank, National Association, Banco J.P. Morgan, S.A. Institución de Banca Múltiple, J.P. Morgan Grupo Financiero, and J.P. Morgan Securities PLC (collectively, "JPMorgan" and, with Barclays, the "Settling Defendants") and payment of $328,126.23 (1.59% of the common fund) in litigation costs and expenses, plus interest on the awards at the same rate as earned by the Settlement Fund, reflecting Plaintiffs' Counsel's[2] time and expenses in litigating this Action from inception (June 2017) through May 31, 2020.[3]

INTRODUCTION

Plaintiffs' Settlements with the Settling Defendants are the result of years of hard-fought and complex litigation. This Action formally commenced on March 30, 2018, when Lead Counsel and Berman Tabacco filed the first class action complaint on behalf of Plaintiffs Oklahoma Firefighters Pension & Retirement System ("OFPRS") and Electrical Workers Pension Fund Local

[1] Unless otherwise defined herein, all capitalized terms, have the same meaning as set out in the Stipulation and Agreements of Settlement with Barclays (ECF No. 211-1) ("Barclays Agreement") and JPMorgan (ECF No. 211-2) ("JPMorgan Agreement"). The foregoing stipulations are collectively referred to as the "Agreements" or "Settlement Agreements." Unless otherwise noted, internal citations are omitted, and emphasis is added.

[2] "Plaintiffs' Counsel" means Lead Counsel, Berman Tabacco ("Berman"), Hausfeld LLP ("Hausfeld"), Wolf Haldenstein Adler Freeman & Herz LLP ("Wolf Haldenstein"), Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Radice Law Firm, P.C. ("Radice"), Bleichmar Fonti & Auld LLP ("Bleichmar"), Barrack, Rodos & Bacine ("Barrack"), and Calcaterra Pollack LLP ("Calcaterra Pollack").

[3] Plaintiffs filed their motion for preliminary approval of these Settlements on June 1, 2020.

103, I.B.E.W. ("Local 103") alleging that the Defendants manipulated the prices of Mexican Government Bonds ("MGBs") for their financial benefit, and to the detriment of Plaintiffs and the Class. But Lead Counsel's work to bring the Action began months earlier, after Mexico's antitrust regulator, the Comisión Federal de Competencia Económica ("COFECE"), announced in April 2017 that it had uncovered evidence of anticompetitive conduct in the MGB market. Lead Counsel initiated a robust investigation, procuring MGB trading data from The Bank of Mexico ("Banxico"), engaging economic and industry experts to assist in analyzing the data, filing public records requests with the relevant Mexican regulators and agencies, interviewing industry insiders, and extensively researching the products, pricing, and processes used in the MGB market. *See* Declaration of Vincent Briganti in Support of (A) Plaintiffs' Motion for Final Approval of Class-Action Settlements; and (B) Plaintiffs' Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses, dated September 9, 2021 ("Briganti Decl.") ¶¶ 9-14. The result of these efforts was a comprehensive complaint that from the start put this prosecution on solid legal footing.

By May 2018, five separate class action complaints relating to the same facts and circumstances were filed by six sophisticated public pension funds active in the MGB market: Plaintiffs Manhattan and Bronx Surface Transit Operating Authority Pension Plan, Metropolitan Transportation Authority Defined Benefit Pension Plan Master Trust, Boston Retirement System, Southeastern Pennsylvania Transportation Authority Pension Plan, United Food and Commercial Workers Union and Participating Food Industry Employers Tri-State Pension Fund, and Government Employees' Retirement System of the Virgin Islands. Law firms with vast experience successfully litigating antitrust class actions represented each of the Plaintiffs. *Id.* ¶ 16. After

coordinating with Plaintiffs' Counsel for these Plaintiffs, the actions were consolidated, and Lowey was appointed interim class counsel. *Id.* ¶ 17.

Lead Counsel's collaboration with Plaintiffs' Counsel enhanced Lead Counsel's ability to vigorously prosecute the case. Lead Counsel filed a comprehensive Consolidated Amended Class Action Complaint ("CAC") containing allegations about each Plaintiff's direct MGB transactions impacted by Defendants' alleged conduct as well as additional economic analyses. *Id.* ¶ 18. When it came time to file a Second Consolidated Amended Class Action Complaint ("SAC"), Lead Counsel leveraged the cooperation they negotiated from Settling Defendants and (with help from Plaintiffs' Counsel) addressed the key shortcomings that the Court had originally identified as its basis for dismissing the CAC. *Id.* ¶ 25. Even after the Court dismissed the SAC, Lead Counsel has continued to work with Plaintiffs' Counsel to zealously litigate on behalf of Plaintiffs and the Class, recently filing a motion for reconsideration of the SAC's dismissal in light of new controlling law from the U.S. Supreme Court. *Id.* ¶ 31.

Despite the challenges of the Action, Lead Counsel forcefully advocated for Plaintiffs and the Class. Since the outset of the case, Lead Counsel designed and refined a litigation strategy intended to put Plaintiffs in the best position to prevail on their claims, and it is this strategy that helped to produce the two settlements before the Court for approval, a $5,700,000 settlement with Barclays and a $15,000,000 settlement with JPMorgan, both of which were negotiated *after* the Court granted Defendants' first motion to dismiss. Lead Counsel's work also yielded critical cooperation needed to further advance Plaintiffs' claims. The strategic efforts of Lead Counsel have already provided an immense benefit to Plaintiffs and the Class and are likely to continue producing results should the case continue. The significant recovery Lead Counsel has already

achieved for the Class and the amount of work and resources Lead Counsel has invested in this Action support awarding Lead Counsel a fair and reasonable fee award.

As explained below, Lead Counsel's request for an attorneys' fee award of 30% from the Settlement Fund is reasonable. The fee percentage is objectively fair and reasonable because it represents the market rate for Lead Counsel's work based on a negotiated retainer and is therefore entitled to a presumption of correctness. The fee request is also within the range of reasonableness based on awards granted for similarly complex and substantial litigation. Plaintiffs' Counsel's expenses, as described herein and in the declarations of Plaintiffs' Counsel,[4] were reasonably incurred to advance this litigation and should be awarded as well.

ARGUMENT

I. THE ATTORNEYS' FEE REQUEST IS FAIR AND REASONABLE

In common fund cases, the lawyers that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) ("*Goldberger*"); *Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019) (Oetken, J.). Courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the

[4] Plaintiffs' Counsel have submitted declarations that reflect each firm's respective expenses and lodestar calculations based on current billing rates for contingent (and if applicable non-contingent) matters. *See* Declaration of Vincent Briganti dated September 9, 2021 on behalf of Lowey Dannenberg, P.C. in Support of Plaintiffs' Lead Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Briganti Fee Decl."); Declaration of Todd A. Seaver dated August 23, 2021 ("Seaver Decl.") (on behalf of Berman Tabacco); Declaration of Jeffrey B. Gittleman dated August 31, 2021 ("Gittleman Decl.") (on behalf of Barrack); Declaration of Lesley E. Weaver dated July 26, 2021 ("Weaver Decl.") (on behalf of Bleichmar); Declaration of Scott Martin dated July 26, 2021 ("Martin Decl.") (on behalf of Hausfeld); Declaration of John D. Radice dated July 26, 2021 ("Radice Decl.") (on behalf of Radice); Declaration of Daryl F. Scott dated July 26, 2021 ("Scott Decl.) (on behalf of Scott+Scott); Declaration of Thomas H. Burt dated August 31, 2021 ("Burt Declaration") (on behalf of Wolf Haldenstein); Declaration of Regina Calcaterra dated July 22, 2021 ("Calcaterra Decl.") (on behalf of Calcaterra Pollack).

litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger*, 209 F.3d at 50.

Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method," although "[t]he trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). The percentage method is preferred as it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Grice*, 363 F. Supp. 3d at 406 (quoting *Wal-Mart Stores*, 396 F.3d at 121); MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) ("Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.").

Pursuant to OFPRS' and Local 103's retainers concerning this Action, Lead Counsel seek a fee of 30% of the $20,700,000 common fund, or $6,210,000, to be allocated among Plaintiffs' Counsel in proportion to their contributions to the case. *See In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987). The fee request is presumptively reasonable as it is the result of *ex ante* negotiations with sophisticated clients, and the result of those negotiations reflect a fair market rate for the work of the attorneys in this complex antitrust class action. Further, the requested fee is based on a reasonable baseline percentage that accounts for the magnitude and complexity of this case, the work and risks Lead Counsel and Plaintiffs' Counsel undertook to prosecute the Action, the skill and quality of Lead Counsel's representation, and public policy considerations, thereby satisfying the *Goldberger* factors. *See Grice*, 363 F. Supp. 3d at 406. Using the lodestar approach as a cross-check, the fee request represents just a 0.91 multiplier on

Plaintiffs' Counsel's investment of time and human resources and confirms that the proposed fee will not lead to a windfall.

A. Plaintiffs OFPRS' and Local 103's Retainers Presumptively Support the Reasonableness of Lead Counsel's Fee Request

The touchstone of "reasonableness" when evaluating attorneys' fees is "what a reasonable, paying client would be willing to pay" for counsel's services. *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cty. of Albany & Albany Cty. Bd. of Elections,* 522 F.3d 182, 184 (2d Cir. 2008); *see also Goldberger*, 209 F.3d at 52 ("market rates, where available, are the ideal proxy for [class counsel's] compensation"). Courts accordingly give great weight to negotiated fee agreements because they typically reflect actual market rates. *In re Nortel Networks Corp. Sec. Litig.*, 539 F.3d 129, 133 (2d Cir. 2008) ("In many cases, the agreed-upon fee will offer the best indication of a market rate . . . ."). Additionally, there is "a well-recognized rebuttable 'presumption of correctness' given to the terms of an *ex ante* fee agreement between class counsel and lead plaintiff" applied in cases where the fee was negotiated by a "sophisticated benefits fund with fiduciary obligations to its members and where that fund has a sizable stake in the litigation." *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476, 2016 WL 2731524, at *16 (S.D.N.Y. Apr. 26, 2016) ("*CDS Litig.*") (applying presumption to common fund antitrust class action case). Consequently, "[t]he existence of the [retainer] agreement and the approval of the requested fee by Lead Plaintiff, which was actively involved in the prosecution and settlement of the Action, supports approval of the fee." *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020 WL 4196468, at *17 (S.D.N.Y. July 21, 2020); *accord In re WorldCom Sec. Litig.*, 388 F. Supp. 2d 319, 356 (S.D.N.Y. 2005).

Lead Counsel's fee request in this Action is governed by retainer agreements with Plaintiffs Oklahoma Firefighters Pension & Retirement System and Electrical Workers Pension

Fund Local 103, I.B.E.W. OFPRS is a defined pension plan based in Oklahoma City, Oklahoma that manages approximately $3.7 billion in assets on behalf of over 28,000 members and beneficiaries. Local 103 is a defined benefit plan that was established in 1958 for the benefit of an electrical Workers Union in Eastern Massachusetts. It manages approximately $1 billion in assets and has a dedicated staff to oversee the administration of the plan, which provides a monthly benefit to over 2,500 retired participants. *See* Seaver Decl. ¶ 4. OFPRS and Local 103 negotiated a graduated fee structure at the outset of this litigation that provides for a fee of 30% from the common fund on the first $50 million recovered and have remained active participants in litigating this Action. *Id.* ¶ 5. They reviewed the complaints filed in this Action, the oppositions filed against Defendants' motions to dismiss, and the settlement papers, and approved Lead Counsel's work at each stage. *Id.* ¶ 6. Accordingly, their fee retainer should be granted considerable deference and serve as the baseline for the fee award in this Action.

B. The *Goldberger* Factors Support Awarding 30% Attorneys' Fees

To assess the reasonableness of a fee request under the *Goldberger* factors, courts first "determine a baseline reasonable fee by reference to other common fund settlements of a similar size, complexity and subject matter." *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, No. 13-cv-7789 (LGS), 2018 WL 5839691, at *2 (S.D.N.Y. Nov. 8, 2018), *aff'd sub nom. Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296 (2d Cir. 2019); *accord Grice*, 363 F. Supp. 3d at 406. To make this baseline determination, courts will compare the fees awarded in other similarly sized settlements and assess whether the magnitude and complexity of the case supports the application of the observed baseline. *Grice*, 363 F. Supp. 3d at 406. As part of this analysis, a court will also consider whether the baseline fee is consistent with the public policy of fairly compensating counsel without providing a windfall. *Id*. Second, to determine whether an adjustment to the baseline fee is warranted in the case, courts will consider whether the

remaining *Goldberger* factors, the risk of the litigation, the quality of representation and any other public policy concerns, support increasing or decreasing the baseline fee. *Id.* Applying both steps of this analysis confirm the reasonableness of Lead Counsel's 30% fee request.

1. A 30% fee request is an appropriate baseline fee award.

a. Lead Counsel's fee request is on par with awards granted in similarly complex litigation

Comparable cases serve as guideposts against which a court may determine an appropriate baseline fee. *Grice*, 363 F. Supp. 3d at 406. For settlements involving the most complex claims, including antitrust, securities and commodity class actions, "it is very common to see . . . 30% contingency fees in cases with funds between $10 million and $50 million." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) (Gleeson, J.).

Consistent with Judge Gleeson's observation, fee awards of around 30% have been granted in a number of cases in this District where the settlement amount has been $50 million or less. *See, e.g.,* Order Awarding Attorney's Fees at 2, *In re London Silver Fixing, Ltd. Antitrust Litig.*, Nos. 14-MD-02573-VEC, 14-MC-02573-VEC (S.D.N.Y. Jun. 15, 2021), ECF No. 534 (awarding 30% of a $38,000,000 Settlement Fund as attorneys' fees); *Ferrick v. Spotify USA Inc.*, No. 16-cv-8412 (AJN), 2018 WL 2324076, at *10 (S.D.N.Y. May 22, 2018) (awarding attorneys' fees of 30% of the cash fund consisting of $43.45 million); *In re Sadia S.A. Sec. Litig.*, No. 08-cv-9528 (SAS), 2011 WL 6825235, at *3 (S.D.N.Y. Dec. 28, 2011) (30% of a $27 million settlement awarded to class counsel as fees); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05-cv-2237 (CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33 ⅓% in fees on a $20 million settlement); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (one-third of $35 million settlement fund awarded as attorneys' fees); *Cent.*

States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C., 504 F.3d 229, 249 (2d Cir. 2007) (affirming district court attorneys' fees award of 30% of $42.5 million settlement fund).

Courts also have awarded fees of 30% or more even in cases where the common fund is much greater than $50 million. *See, e.g.*, *In re Amaranth Nat. Gas Commodities Litig.*, No. 07-cv-6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. Jun. 11, 2012) (awarding attorneys' fees of 30% on a $77.1 million settlement); *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-1884 (AVC), 2007 WL 2115592, at *5 (D. Conn. July 20, 2007) (awarding 30% of a $80 million settlement as attorneys' fees); *In re Bisys Sec. Litig.*, No. 04-cv-3840 (JSR), 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007) (granting attorneys' fee award of 30% of $65.87 million settlement).

In *Grice*, involving a claim under the Fair Credit Report Act, 15 U.S.C. § 1681b(b)(2), the Court established a baseline fee award of 27% of the common fund despite finding that the case was not very complex. 363 F. Supp. 3d at 407-08. Given the magnitude and complexity of this action (discussed *infra*), setting the baseline fee award at 30% is appropriate.

Empirical studies by legal scholars studying attorneys' fee awards in class action cases further support a 30% baseline fee award in this case. *See, e.g.*, *Grice*, 363 F. Supp. 3d at 407 (citing research on settlements and fee awards by, among others, Brian T. Fitzpatrick, Theodore Eisenberg and Geoffrey P. Miller in determining attorneys' fee benchmark); *accord In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020 WL 3250593, at *5 (S.D.N.Y. June 16, 2020). In the most recent update to Professors Eisenberg and Miller's study, which analyzed class action recoveries and fee awards nationwide between 2009 and 2013, the authors found that the average fee award increased from 23% in the 1993 to 2008 period, to 27% during the 2009 to

2013 period. *See* Theodore Eisenberg, Geoffrey Miller & Roy Germano, *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. LAW J. 937, 947 (2017) ("Eisenberg & Miller III"). In the latest data, the mean settlement recovery in antitrust cases was $501 million and the median recovery of $37.3 million. Over the same time period, the mean antitrust fee award in those cases was 27% of the recovery, and 30% was the median fee award. *Id.* at 952 tbl. 4 (analysis of fee and class recoveries by category). Their analysis of attorneys' fees awards in this District and this Circuit indicates that 30% to 31% is the observed median fee, with the mean fee ranging between 27% and 28%. *Id.* at 950 tbl. 2, 951 tbl. 3. Lead Counsel's request falls right in line with the median observed attorneys' fees and is just slightly greater than the mean attorneys' fee award, further confirming its reasonableness.

b. The magnitude and complexity of the Action

A greater fee award is warranted for counsel prosecuting complex class action cases. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award."). Antitrust class actions are among the most "complex, protracted, and bitterly fought.'" *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 669 (S.D.N.Y. 2015); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019) ("Numerous federal courts have recognized that federal antitrust cases are complicated, lengthy, and bitterly fought as well [] as costly"). Complex cases require a greater level of investment, in terms of effort, expertise and resources, by counsel to competently litigate the claims and issues at stake on behalf of plaintiffs and the class. This case is among the most challenging, and such complexity supports a 30% fee award.

In the Action, Plaintiffs alleged that numerous Defendants colluded in the bond market for more than a decade, manipulating the prices of thousands of bond issuances. *See GSE Bonds*,

2020 WL 3250593, at *4 (finding "complexity [is] present [where] plaintiffs claimed that the defendants colluded in the GSE Bond market over more than seven years, involving thousands of bond issuances, and implicating sixteen defendants"); *see also Citigroup,* 988 F. Supp. 2d at 379 (finding the broad scope of time and bonds involved contributed to the complexity of the case).

To prosecute the Action, Lead Counsel developed a deep understanding of the complex MGBs market through a substantial investigation, including interviews with industry insiders and assistance in the form of expert analysis. To advance the litigation, Lead Counsel engaged experts to prepare detailed analyses of MGBs, creating sophisticated damages models, and reviewing years of available documents and data in the process. Briganti Decl. ¶¶ 9-13. Critically, this investigative work allowed Lead Counsel to develop and allege a comprehensive theory of the case long before any of COFECE's conclusions about the alleged misconduct had been revealed. Lead Counsel (assisted by Plaintiffs' Counsel) performed all of this work from case inception, years before COFECE concluded its investigation. *See In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-CIV-8557 CM, 2014 WL 7323417, at *15 (S.D.N.Y. Dec. 19, 2014) (complexity evident where "Lead Counsel did not have the benefit of a 'road map' established by a government investigation . . . but instead independently developed factual allegations and legal theories sufficient to survive the [] pleading standards.").

Further, the Court's rulings in this case reinforce the complexity of the Action. Plaintiffs' CAC was dismissed on September 30, 2019 for lack of sufficient evidence to link the Defendants named in this suit to the alleged conspiracy. ECF No. 158. This holding demonstrates that the information made public by COFECE was not nearly enough to justify Plaintiffs' recovery. It was only through the skillful investigation and diligent efforts of Lead Counsel and Plaintiffs' Counsel, including securing the use of relevant cooperation materials from the Settling

Defendants before the Settlements were formally executed, that Plaintiffs could file their SAC curing the deficiencies identified in the Court's prior holding. Briganti Decl. ¶¶ 24-26, 33-37, 41-43. Nonetheless the SAC was dismissed on personal jurisdiction grounds. ECF No. 222. The U.S. Supreme Court only recently addressed the complexity of personal jurisdiction law in a ruling that may impact this litigation. *See Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021) ("*Ford*").

The issues described above provide a sufficient basis for finding that the complexity of this case supports a baseline fee award of 30%. It is worth noting the above challenges all occurred before the case proceeded beyond the pleading stage. Should the Action continue beyond the pleadings stage, significant fact and expert discovery would be involved. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-cv-2207(JGK), 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010) (describing the work undertaken by class counsel in a "complicated and difficult class action" that involved "significant discovery [and] complicated statistical analysis"). Moreover, Defendants are represented by high quality, sophisticated counsel with significant resources at their disposal, and class and merits issues will be hotly contested. *In re Gen. Motors LLC Ignition Switch Litig*. No. 14-MD-2543 (JMF), 2020 WL 7481292, at *2 (S.D.N.Y. Dec. 18, 2020) (litigating against sophisticated opposing counsel with a well-funded defendant are some of "the hallmarks of a challenging case."). The case would grow not only in complexity but in its magnitude as well, and thus the 30% baseline award is appropriate.

c. Setting 30% as the baseline fee award for these Settlements does not create a windfall for Lead Counsel

The determination of baseline fee also considers the policy interest of avoiding windfalls to counsel when awarding a fee. *See Grice*, 363 F. Supp. 3d at 406. In approaching this concern, courts are often focused on ensuring that a "sliding scale approach" is used to avoid

overcompensating counsel at the expense of the class. *See McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017). However, this concern tends to primarily impact megafund settlements. *See GSE Bonds*, 2020 WL 3250593, at *5 ("In megafund settlements of more than $100 million, fee awards will frequently follow a sliding-scale as the settlement size increases . . . . This avoids windfalls for attorneys in large settlements."). The Settlements are well below the megafund threshold and thus the concern that a fee award at the baseline would nonetheless result in a windfall is much reduced. Any future settlements reached in this Action would be governed by the retainers with OFPRS and Local 103, which provide for a sliding scale approach as contemplated by the courts.

2. The remaining *Goldberger* factors support granting a fee award at or above the comparable baseline awards in this District

After determining the baseline fee award, the Court "examines the three remaining *Goldberger* factors—the risk of the litigation, the quality of representation and any remaining policy considerations—in order to consider whether there is any basis for further adjusting the reasonable baseline fee" *Grice*, 363 F. Supp. 3d at 408. These factors further support the requested 30% fee award.

a. The fee request is warranted based on the level of risk undertaken by Lead Counsel in this Action

The Second Circuit has described assessing "risk of the litigation" as "perhaps the foremost factor to be considered in determining" a reasonable fee award. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009); *see also In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02 Civ. 5575 (SWK), MDL 1500, 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 25, 2006) (the judiciary's focus is on "fashioning a fee" that encourages lawyers to "undertake future risks for the public good"). The risk of undertaking litigation is "measured as of when the case is filed." *Goldberger*, 209 F.3d at 55.

Lead Counsel took this case on a fully contingent basis and invested significant time, money, and resources to advance the Action. *See City of Providence v. Aeropostale, Inc.*, No. 11-cv-7132, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award."). This risk was more significant because the Action involved litigating against large global financial institutions represented by highly regarded and sophisticated global law firms, and the institutions have the ability to litigate this case for many years at the trial and appellate levels. Defendants' successes in their motions to dismiss Plaintiffs' CAC and SAC are just two examples that highlight the risk of pursuing Plaintiffs' antitrust claims. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting "substantial risk" where counsel bore the "risk of defeat").

There was also significant risk relating to Plaintiffs' ability to demonstrate the Court's personal jurisdiction over the Defendants. Prior to commencing the Action, it was uncertain whether and under what conditions foreign-based defendants could be subject to personal jurisdiction in U.S. courts for overseas conduct that impacted financial transactions of class members who were domiciled in or transacted through the United States. In its November 30, 2020 opinion, the Court declined to exercise specific personal jurisdiction over Defendants because Plaintiffs had not sufficiently demonstrated a causal relationship between the Defendants' U.S. contacts and the transactions involved in the suit. *In re Mexican Gov't Bonds Antitrust Litig.*, No. 18-CV-2830 (JPO), 2020 WL 7046837 (S.D.N.Y. Nov. 30, 2020) ("*MGB II*"). It still remains to be seen whether the Supreme Court's decision in *Ford* supports finding personal jurisdiction in this Action. But it nonetheless reinforces one of the risks Lead Counsel have taken to vindicate the claims of Plaintiffs and the Class.

In addition to the risks relating to establishing jurisdiction, Plaintiffs faced risks relating to proving liability, class-wide impact and damages. *See In re Platinum and Palladium Commodities Litig.*, No. 10-CV-3617, 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). Plaintiffs needed to prove an overarching conspiracy involving Defendants' manipulation of the MGBs market and establish that the elements of an antitrust claim have been satisfied. At class certification, Plaintiffs would have to prove, in part through expert testimony, that Defendants' conduct caused a class-wide anticompetitive impact, and the impact of such harm can be determined on a common formulaic basis.

If Plaintiffs were to prevail on certifying a litigation class and proving liability, they would still have the burden of proving actual damages. A successful *Daubert* challenge or effective cross-examination at trial could result in a significantly reduced verdict even if liability has been proved. Even where regulators or law enforcement agencies have secured a guilty plea, civil juries have found no damages. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827 SI (N.D. Cal. Sept. 3, 2013), ECF No. 8562. "Indeed, the history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal." *In re NASDAQ Mkt.-Makers Antitrust Litig.* ("*NASDAQ III*"), 187 F.R.D. 465, 476 (S.D.N.Y. 1998) (citing *United States Football League v. Nat. Football League,* 644 F. Supp. 1040, 1042 (S.D.N.Y.1986), *aff'd*, 842 F.2d 1335, 1377 (2d Cir. 1988) (jury awarded $1.00 in damages despite plaintiffs' verdict on antitrust claim)). Given the risks Lead Counsel undertook to litigate the Action on behalf of the Plaintiffs, the 30% fee request is appropriate.

b. Lead Counsel provided high-quality representation of Plaintiffs and the Class

The Class includes institutional investors, such as Plaintiffs, with the sophistication and resources to object to the Settlements or opt out to pursue their own claims. While the deadline to object or opt out of the case has not yet passed, it is notable that, so far, not a single Class Member has chosen to object, and only one Class Member has opted out of the Settlements. Straub Decl. ¶ 27. The lack of objections or opt outs is one sign of the Class' approval of the Settlements and is an indication of Lead Counsel's skillful prosecution of this Action.

"[T]he quality of representation is [also] best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). Lead Counsel's efforts led directly to the $20,700,000 recovery for the Class *after the Court had dismissed the CAC*. The Settlements provide the Class certainty in terms of recovering some portion of their losses, and still allow Plaintiffs to aggressively pursue claims against the non-Settling Defendants. The valuable Settlements that Lead Counsel secured from the Settling Defendants cannot be understated given the caliber of defense counsel in this Action. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries"); *NASDAQ III*, 187 F.R.D. at 488 (approving attorneys' fee award where defendants were represented by "several dozen of the nation's biggest and most highly regarded defense law firms").

Lead Counsel's extensive experience prosecuting class action cases, including some of the largest class action recoveries under the antitrust and commodity laws, was a critical component of achieving successful settlement results with Barclays and JPMorgan. Critically,

Lead Counsel secured these Settlements after the Court granted Defendants' motion to dismiss, negotiating access to significant cooperation materials that directly addressed the deficiencies raised in the Court's decision on Defendants' initial motion to dismiss. *In re Mexican Gov't Bonds Antitrust Litig.*, 412 F. Supp. 3d 380 (S.D.N.Y. 2019) ("*MGB I*"). The skill and quality of Lead Counsel's representation in this Action further support their requested 30% attorneys' fee award.

c. Public policy supports approval of the fee request

Public policy encourages enforcement of the antitrust laws through private civil suits as a deterrent to anticompetitive conduct. *See Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes, including the federal antitrust laws.").

Lead Counsel's decision to take on the risk of this lawsuit serves the vital interest of advancing the enforcement of private antitrust suits and protecting investors who might otherwise be without recourse. *See GSE Bonds*, 2020 WL 3250593, at *5 ("Congress has encouraged enforcement of the antitrust laws through private civil suits to deter infringing conduct in the future."); *see also Espinal v. Victor's Café 52nd St., Inc.*, No. 16-CV-8057 (VEC), 2019 WL 5425475 (S.D.N.Y. Oct. 23, 2019), at *3 ("The Second Circuit and courts in this District have taken into account the 'social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation' as a basis for increasing the percentage of the fund awarded to Class Counsel."); *CDS Litig.*, 2016 WL 2731524, at *18 ("Our antitrust laws address issues that go to the heart of our economy. Our economic health, and indeed our stability as a nation, depend upon adherence to the rule of law and our citizenry's trust in the fairness and transparency of our marketplace.").

Public policy dictates that a substantial fee is appropriate to reward Lead Counsel for taking on risky litigation and to encourage counsel to take on such risks in the future. *See e.g., In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014) ("Counsel's fees should reflect the important public policy goal of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest"). It has been acknowledged by this Circuit that awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51.

C. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request

1. Plaintiffs' Lead Counsel invested substantial time, labor and resources into prosecuting this Action

Plaintiffs' Counsel have devoted over 10,000 hours of attorney and staff time from inception of the case through May 31, 2020 prosecuting this Action on behalf of Plaintiffs and the Settlement Class, with Lead Counsel investing the majority of that time (6,578.60 hours). Briganti Decl. ¶ 54; *see also* Briganti Fee Decl. ¶ 7.

a. Initial Investigation and Pre-Filing Work

Lead Counsel performed the initial investigation for this Action which yielded many documents and data that were not publicly available and required translation, including bidding data from MGB market makers through Banxico. *See id.* ¶¶ 11-13. Lead Counsel and their experts used this bidding data to analyze the range of bids in Mexican Government Bond auctions, which helped Lead Counsel identify Defendants' collusive conduct. *Id.* ¶ 11. The data showed that the MGB Market Maker Defendants'[5] auction bids were substantially closer

[5] MGB Market Maker Defendants" are defined in the SAC as Santander Mexico, BBVA-Bancomer, HSBC Mexico, Citibanamex, Bank of America Mexico, Barclays Mexico, JPMorgan Mexico, and Deutsche Bank Mexico.

together prior to the announcement of investigation into the MGB market by the COFECE than they were after the announcement. *Id.* The investigation also showed that, before the COFECE announcement, the normalized spot price of MGBs increased dramatically following MGB auctions. *Id.* Additionally, after the COFECE announcement, the median bid-ask spread for long-tenor MGBs significantly tightened. *Id.* These dramatic price abnormalities in the data substantiated Plaintiffs' claim of a conspiracy among the Defendants.

Lead Counsel inspected their clients' trading data to ensure that Plaintiffs engaged in relevant transactions to support their claim of injury from Defendants' activities. *Id.* ¶ 14. Lead Counsel also requested records from numerous Mexican government regulators and banks. *Id.* ¶ 12. Several of these records requests were denied and required Lead Counsel to litigate the requests through appeal, ultimately resulting in the reversal of one of the denials and the production to Plaintiffs' of anonymized MGB auction bid data and syndication placement data, as well as evidence of which Defendants were market makers in MGBs during the relevant time period. *Id.*

b. Complaints and Motions to Dismiss

Lead Counsel prepared the pleadings, incorporating their proprietary economic analysis and setting forth the findings of their investigation, and filed the first complaint in the action. *Id.* ¶ 15. After five additional complaints were filed, asserting substantially the same allegations against the same defendants (*id.* ¶ 16), Lead Counsel coordinated the consolidation of the case, and as the appointed interim class counsel, drafted and filed the CAC on July 18, 2018. *Id.* ¶¶ 17-18; ECF No. 75.

On September 17, 2018, Defendants filed their motions to dismiss the CAC with two separate memoranda of law. Briganti Decl. ¶ 19. Lead Counsel filed their opposition to Defendants' motions to dismiss on November 16, 2018. ECF Nos. 113, 144, 145-46. Lead

Counsel's attorneys drafted the opposition briefing, with assistance and contributions from other Plaintiffs' Counsel. The process included extensive legal research, consultation with expert economic consultants, and incorporation of revisions and inserts by Plaintiffs' Counsel. Briganti Decl. ¶¶ 20. After the Court granted Defendants' first motion, Lead Counsel obtained leave to file the SAC, and prepared an amended complaint that supplemented their allegations with information from the Barclays and JPMorgan cooperation materials that evidenced collusion among the Defendants in the MGB market. *Id.* ¶¶ 24-26; ECF No. 163.

On February 21, 2020, Defendants filed their motions to dismiss the SAC. Briganti Decl. ¶ 27. Plaintiffs filed their opposition to Defendants' motions to dismiss the SAC on April 21, 2020. ECF Nos. 176, 178, 185, 199, 201, 203. At this stage again, Lead Counsel's attorneys drafted the opposition briefing, with research and drafting help provided by Plaintiffs' Counsel. Briganti Decl. ¶ 28. The process included a new round of extensive legal research and incorporation of revisions and inserts by Plaintiffs' Counsel. *Id.*

c. Barclays and JPMorgan Settlement Negotiations and Cooperation

The JPMorgan Settlement is the result of negotiations that began in March 2019 and lasted approximately one year, ending with the execution of the Settlement in March 2020. Briganti Decl. ¶¶ 40-44. The Barclays Settlement is the result of negotiations over a period of six months, with discussions beginning in September 2019 and culminating with executing the Settlement in March 2020. *Id.* ¶¶ 32-38. Each of the negotiations was challenging and required both a focus on getting the best recovery for the Class while also obtaining documents that would help advance the litigation. The settlement process resulted in among other things a combined $20.7 million and cooperation.

Lead Counsel spent significant time analyzing the cooperation materials provided by Barclays and JPMorgan. The cooperation material included two proffers from Barclays, three

proffers from JPMorgan, and the production of thousands of pages of additional documents including transaction data, communications, and other information from the Class Period relevant to the allegations in this Action. *Id.* ¶ 42. Lead Counsel also reviewed the Statement of Objections ("SOO") from the investigation made by Mexico's antitrust regulator, COFECE, which indicated that Defendants in this Action engaged in anticompetitive conduct in the MGB market. *Id.* ¶ 25. The SAC incorporated Plaintiffs' experts' extensive economic analysis along with in-depth factual and legal research. *See* ECF No. 163 (SAC) ¶¶ 429-63. Uncovering the specific conduct by Defendants relevant to Plaintiffs' allegations of the manipulation of Mexican Government Bonds required significant time, effort, and resources.

2. Lead Counsel's investment of time and resources resulted in a reasonable lodestar which further supports the reasonableness of the fee request

When using the percentage method, courts in this Circuit use the lodestar calculation "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall," for example, if the multiplier is too large and "grossly disproportionate to the percentage fee award . . ." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. Courts compare the resulting award to the reasonable time and labor expended to confirm that the fee award is reasonable. *Grice*, 363 F. Supp. 3d at 406.

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

Including the work described above, Plaintiffs' Counsel have spent 10,472.15 hours litigating the Action through May 2020, resulting a total lodestar amount of $6,806,349.50. Briganti Decl. ¶ 54. The number of hours spent on this Action are reasonable, particularly in light of the level of independent investigation conducted by Lead Counsel and Plaintiffs' Counsel to prepare the various complaints, oppose two motions to dismiss, and negotiate two settlements that included the early production of cooperation material. Lead Counsel actively managed the case to ensure that resources were adequately and appropriately utilized and has required Plaintiffs' Counsel to provide monthly time and expense reports for review.

The billing rates used to develop the lodestar are also reasonable. The hourly billing rates for attorneys working on this case ranged from $340 to $1,295. *See* Briganti Fee Decl. ¶ 7 (schedule listing attorney rates from $350-$1,025); Seaver Decl. ¶ 13 (schedule listing attorney rates from $450-$1,035); Gittleman Decl. ¶ 8 (schedule listing attorney rates from $710-$800); Weaver Decl. ¶ 8 (schedule listing attorney rates from $360-$885); Martin Decl. ¶ 8 (schedule listing attorney rates from $530-$1,150); Radice Decl. ¶ 8 (schedule listing attorney rates from $350-$795); Scott Decl. ¶ 9 (schedule listing attorney rates from $350-$1,295); Burt Declaration ¶ 8 (schedule listing attorney rates from $340-$945); Calcaterra Decl. ¶ 8 (schedule listing attorney rates from $655-$900). Billing rates in the same range have been previously approved as reflective of market rates in New York for work of comparable size and complexity. *See, e.g., GSE Bonds,* 2020 WL 3250593, at *1 (granting fee award using partner rates of $675 to $980 and associate rates of $365 to $820), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *GSE Bonds* (S.D.N.Y. Apr. 13, 2020), ECF No. 393; *CDS Litig.*, 2016 WL 2731524, at *17 (granting fee award using partner rates of $834 to $1,125 and associate rates of $411 to $714. *see* ECF No. 482); *In re Foreign Exchange*, No. 13-cv-7789, 2018 WL 5839691 (granting

fee award using partner rates up to $1,375 and associate rates of $350 to $700), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *In re Foreign Exchange* (S.D.N.Y. Jan. 12, 2018), ECF No. 939. Lead Counsel also imposed a billing cap of $350 per hour for first-level document review, and $300 per hour for work performed by paralegals, in-house translators, and in-house investigators.

Once the lodestar figure is determined, courts typically enhance it by a positive multiplier "to reflect consideration of a number of factors, including the contingent nature of success and the quality of the attorney's work." *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002). A fee award of 30% of the settlement fund represents a multiplier of 0.91 (a negative multiplier) and is much lower than multipliers accepted in this District and elsewhere. *See Wal-Mart*, 396 F.3d at 123 (upholding a multiplier of 3.5 as reasonable and observing that "multipliers of between 3 and 4.5 have become common"). Accordingly, the lodestar cross-check further supports the fee request.

II. THE REQUEST FOR PAYMENT OF LITIGATION EXPENSES IS REASONABLE AND SHOULD BE GRANTED

The attorneys whose work leads to the creation of "a common settlement fund for a class are entitled to reimbursement of [reasonable] expenses that they advance to a class." *Meredith Corp.*, 87 F. Supp. 3d at 671; *see also In re Arakis Energy Corp. Sec. Litig.*, No. 95-cv-3431(ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192-CM, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019). When "a class plaintiff successfully recovers a common fund for the benefit of a

class, the costs of litigation should be spread among the fund's beneficiaries." *Maley*, 186 F. Supp. 2d at 369.

As detailed in Plaintiffs' Counsel's individual declarations filed concurrently herewith, through May 31, 2020, Plaintiffs' Counsel incurred litigation expenses in this Action totaling $328,126.23. *See* Briganti Fee Decl. ¶ 11; Seaver Decl. ¶ 17; Gittleman Decl. ¶ 12; Weaver Decl. ¶ 12; Martin Decl. ¶ 12; Radice Decl. ¶ 12; Scott Decl. ¶ 13; Burt Decl. ¶ 12; Calcaterra Decl. ¶ 12. Approximately 84.5% or $277,192.74 of these costs were spent on expert work. As the expert work performed in this case helped to both identify and crystallize Plaintiffs' claims and to assess the magnitude of the damages which led to reaching the Settlements, this work was unquestionably "critically important" to the prosecution of this Action, and of the type of reimbursement that "[c]ourts routinely award." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. Plaintiffs' Counsel incurred $19,519.88 in costs relating to data, legal, and financial research. Plaintiffs' Counsel further incurred $2,028.33 in costs for document production. Briganti Decl. ¶¶ 51-52. Other categories of expenses incurred by Plaintiffs' Counsel include travel, in-house and outside photocopying, telephone, and FedEx/UPS shipping. Briganti Decl. ¶¶ 55-56. In complex antitrust litigation such as this Action, costs related to initial investigations and research, testifying and consultant experts, discovery expenses, travel, postage and mailing, and copying costs are considered reasonable and necessary expenses. *Meredith Corp.* 87 F. Supp. 3d at 671; *see also Guevoura*, 2019 WL 6889901, at *22. Additionally, Lead Counsel imposed limits to control expenses where possible, including by limiting air travel of less than four hours to coach class only, and capping hotel and meal charges to no more than twice the U.S. government's per-diem rates approved for selected cities.[6] Expenses that were not compensable

[6] Per diem rates are available at http://www.gsa.gov.

included expert, document repository or management, and staff overtime that was not previously approved by Lead Counsel, and the purchase of deposition and hearing transcripts, which were only to be purchased by Lead Counsel. Briganti Decl. ¶ 53.

CONCLUSION

Lead Counsel respectfully submit that, in light of benefits created through the Settlements for Plaintiffs and the Settlement Class, their request of 30% of the settlement fund is reasonable. For the foregoing reasons, Lead Counsel respectfully request that the Court approve their motion for attorneys' fees and payment of expenses in the amounts set forth above.

Dated: September 9, 2021
White Plains, New York

Respectfully submitted,

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