UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE JPMORGAN TREASURY FUTURES SPOOFING LITIGATION	Case No.: 1:20 Civ. 03515
THIS DOCUMENT RELATES TO: ALL ACTIONS	Hon. Paul A. Engelmayer

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND PAYMENT OF EXPENSES AND CLASS PLAINTIFFS' REQUEST FOR INCENTIVE AWARDS

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Lowey Dannenberg, P.C. ("Lowey") and Kirby McInerney LLP ("Kirby" and with Lowey "Class Counsel") prosecuted the above-captioned action ("Action") on behalf of Class Plaintiffs[1] and negotiated the Settlement[2] with JPMorgan that, if approved, will create a Settlement Fund of $15,700,000 for the benefit of the Settlement Class. Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Class Counsel respectfully submit this motion for an award of one-third of the Settlement Fund net of Court-approved litigation costs and expense and Incentive Awards ($5,117,163.68) as attorneys' fees and payment of $303,508.96 in litigation costs and expenses, plus interest on the awards at the same rate as earned by the Settlement Fund. The requested awards are based on the high quality and effective representation provided to Class Plaintiffs and the Settlement Class and are supported by Plaintiffs' Counsel's[3] expenses and time incurred in litigating this Action from inception (March 2020) through February 28, 2022.[4] Class Plaintiffs also seek a total of $45,000 as Incentive Awards for their service in the Action.

INTRODUCTION

Class Counsel shouldered considerable litigation risk in bringing this Action on behalf of Class Plaintiffs. Only a handful of private Commodity Exchange Act ("CEA") manipulation class actions have been pursued based on alleged spoofing in the commodity futures markets. As a

[1] "Class Plaintiffs" are Charles Herbert Proctor, III, Synova Asset Management, LLC, Robert Charles Class A, L.P., Thomas Gramatis, Budo Trading LLC, Kohl Trading LLC, M & N Trading L.L.C., Port 22, LLC, and Rock Capital Markets LLC.

[2] Unless otherwise defined herein, all capitalized terms, have the same meaning as set out in the Stipulation and Agreements of Settlement with JPMorgan (ECF No. 69-1) ("Agreement" or "Settlement Agreement"). Unless otherwise noted, internal citations are omitted, and emphasis is added.

[3] "Plaintiffs' Counsel" means Class Counsel, together with Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Cafferty Clobes Meriwether & Sprengel LLP ("Cafferty"), and Freed Kanner London & Millen LLC ("Freed Kanner"). Scott+Scott, Cafferty and Freed Kanner are collectively referred herein as "Supporting Counsel."

[4] In light of the Settlement with JPMorgan, Supporting Counsel submitted time and expenses through the filing of Class Plaintiffs' motion for preliminary approval of the Settlement on September 22, 2021. ECF Nos. 67-70.

result, when the Action commenced in May 2020, the spoofing case law was (and remains) in its infancy.

In the face of this uncertainty, Class Counsel invested significant time and resources to investigate JPMorgan's alleged misconduct and develop the legal arguments to support Class Plaintiffs' claims. These efforts began well before regulators disclosed the results of their investigations of JPMorgan. Class Counsel set out to understand the U.S. Treasury Futures market, including the characteristics of the market that could make it susceptible to manipulation and the techniques (*e.g.*, spoofing) that could be used to move the market.

As they quickly advanced their investigation, Class Counsel analyzed their clients' U.S. Treasury Futures data. Less than three months after JPMorgan's disclosure, Class Counsel filed a complaint months before the United States Department of Justice Criminal Division, Fraud Section ("DOJ"), and the United States Attorneys' Office for the District of Connecticut ("USAOC") filed their Deferred Prosecution Agreement ("DPA") with JPMorgan detailing the facts uncovered during the criminal investigation and before the Commodity Futures Trading Commission ("CFTC") issued an order ("CFTC Order") filing and settling charges against JPMorgan for manipulative and deceptive conduct and spoofing involving, among other products, U.S. Treasury Futures.

Almost immediately after the Court appointed Lowey and Kirby as interim co-lead counsel, Class Counsel began negotiations with JPMorgan. The swiftness with which this case was developed, and with which settlement negotiations began is directly attributable to the high-quality efforts of Class Counsel, with the able assistance of Supporting Counsel, to build a case that would be likely to succeed despite the still-developing case law involving spoofing manipulation. The Settlement is even more significant given that, for some Class Members, it likely provides an

additional source of recovery beyond the victim compensation amount ("VCA") established in connection with the DOJ and USAOC's DPA. To Class Counsel's knowledge, this Settlement is one of only a few private class action settlements that have been achieved in CEA spoofing cases.

As further described herein, the efforts of Class Counsel and the result secured for the Settlement Class support an award of one-third of the Settlement Fund, net of any awards the Court approves for the payment of Plaintiffs' Counsel's litigation costs and expenses and for Class Plaintiffs' Incentive Awards. The fee percentage is objectively fair and reasonable based on Plaintiffs' Counsel's investment of time and resources, the complexity of the litigation, the risks Class Counsel assumed, and the quality of the representation. The fee request is within the range of reasonableness when compared to awards granted in similarly complex, substantial litigation and is also supported by public policy. In addition, the lodestar cross-check further confirms that the request award does not constitute a windfall. Plaintiffs' Counsel's litigation costs and expenses, as described herein and in the declarations of Plaintiffs' Counsel,[5] were reasonably incurred to advance this litigation and should be awarded as well. Finally, in light of their involvement and cooperation in this case, the nine Class Plaintiffs ask for Incentive Awards totaling $45,000, to be shared among them equally.

[5] 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 April 1, 2022 on behalf of Lowey Dannenberg, P.C. in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Briganti Decl."); Declaration of Karen Lerner, dated April 1, 2022 ("Lerner Decl.") (on behalf of Kirby); Declaration of Daryl F. Scott, dated March 29, 2022 ("Scott Decl.") (on behalf of Scott+Scott); Declaration of Jennifer W. Sprengel, dated March 15, 2022 ("Sprengel Decl.") (on behalf of Cafferty); and Declaration of Douglas A. Millen dated March 28, 2022 ("Millen Decl.") (on behalf of Freed Kanner).

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 Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011).

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.").

Class Counsel seek a fee of one-third of the $15,700,000 Settlement Fund less any Court-awarded litigation expenses and Incentive Awards. If the Court grants the requested payment for litigation expenses and the Incentive Awards in full, the amount of the proposed fee is $5,117,163.68, which will 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) (recognizing class counsel may distribute a general fee award in "some relationship to the services rendered"). Given the speedy resolution achieved in this Action, the percentage of the fund method is particularly appropriate for evaluating the fee request and, under that framework, the one-third fee request net of litigation expenses and any Incentive Awards is reasonable. Even

under the lodestar cross-check, the requested fee represents a 1.5 multiplier, further demonstrating the reasonableness of the award.

A. The *Goldberger* Factors Support Awarding 33 1/3 % Attorneys' Fees

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 litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

1. Class Counsel Invested Substantial Time, Labor, and Resources into Prosecuting this Action

Plaintiffs' Counsel have devoted over 4,780 hours of attorney and staff time since the inception of the case to prosecute this Action on behalf of Class Plaintiffs and the Settlement Class. *See* Briganti Decl.; Lerner Decl.; Scott Decl.; Sprengel Decl.; Millen Decl. This time does not include any time associated with briefing and arguing the motion for appointment as interim co-lead counsel, any work associated with preparing this fee motion, or any hours that are inconsistent with the billing protocol attached to Lowey and Kirby's appointment motion (*see* ECF No. 31-3). Class Counsel contributed the significant majority of those hours (3,223.20 hours). *See* Joint Decl. ¶ 62; *see also* Briganti Decl. ¶ 9; Lerner Decl. ¶ 9. Below is a summary of the work performed and the resources devoted to prosecuting this Action.

a. Initial Investigation and Pre-Filing Work

After JPMorgan disclosed in February 2020 that it was being investigated for unspecified trading practices in U.S. Treasury markets, Class Counsel along with Supporting Counsel quickly focused on conducting a robust investigation examining the state of the U.S. Treasury Futures market specifically. Plaintiffs' Counsel reviewed JPMorgan's public disclosures, SEC filings, and

publicly available information, such as press releases, news articles, and media reports related to regulatory and law enforcement investigations into market manipulation, including in the U.S. Treasury Futures market. Plaintiffs' Counsel also consulted with financial and economic experts to analyze the market for U.S. Treasury Futures and Options on U.S. Treasury Futures. Working with these experts, Plaintiffs' Counsel gathered and assessed relevant U.S. Treasury Futures transaction data in support of their allegations. Plaintiffs' Counsel then analyzed their clients' trading records to determine whether the clients had engaged in relevant transactions during the Class Period.

b. The Initial and Consolidated Complaints

Class Counsel prepared the initial pleadings, which incorporated their economic analysis and set forth the findings of their investigation, and filed the first complaint in the action on behalf of Charles Herbert Proctor, III and Synova Asset Management, LLC on May 1, 2020. Joint Decl. ¶ 15. After additional complaints were filed, asserting substantially the same allegations against JPMorgan (*id.* ¶ 17), Class Counsel coordinated the consolidation of the cases. After their appointment as interim co-lead counsel, Lowey and Kirby drafted and filed the Consolidated Class Action Complaint ("CAC") on April 2, 2021. *Id.* ¶ 25; ECF No. 57.

c. JPMorgan Settlement Negotiations

Settlement negotiations with JPMorgan began in October 2020 almost immediately after the Court appointed Lowey and Kirby as interim co-lead counsel, and the process lasted approximately one year, culminating with the execution of the Settlement in September 2021. Joint Decl. ¶¶ 23, 27-43. The Parties agreed to seek mediation and later engaged the services of a well-known, and experienced JAMS mediator, Jed D. Melnick. Prior to the mediation, Class Counsel negotiated for JPMorgan to produce the Mediation Information, which included over 300

gigabytes of trade data for an almost ten-year period that JPMorgan previously provided to regulators concerning U.S. Treasury Futures or Options on U.S. Treasury Futures. *Id*. ¶ 30.

Upon receiving the data, the data was screened and analyzed to determine the total number of alleged spoofing events and the impact of those events on the U.S. Treasury Futures and Options on U.S. Treasury Futures markets. With the Mediation Information and while working closely with consulting experts, Class Counsel identified thousands of instances of JPMorgan's alleged manipulation throughout the Class Period. Class Counsel and their experts developed a damage model that calculated the number and impact of the alleged manipulative events on the U.S. Treasury Futures and Options on U.S. Treasury Futures markets. Joint Decl. ¶ 31. Based on the analysis, Class Counsel concluded that likely thousands of market participants had been harmed by JPMorgan's alleged spoofing, resulting in a preliminary class-wide damages estimate of $50,000,000 to $60,000,000, assuming Class Plaintiffs prevailed in full on all issues. Using the information developed in their analysis and from their ongoing investigation, Class Counsel prepared and exchanged a detailed mediation statement with Mr. Melnick and JPMorgan on February 9, 2021 and prepared a comprehensive presentation for the mediation session.

The mediation occurred on February 16, 2021, via Zoom and involved a robust discussion of the Parties' view of the litigation risks and damages. After a full day of negotiations, the mediation session ended at an impasse. Mr. Melnick continued to engage the Parties over the next month, and on March 10, 2021, he made a "mediator's proposal" for a $15,700,000 settlement that included the exchange of additional Mediation Information that was accepted by both Parties.

After accepting the mediator's proposal, Class Counsel negotiated with JPMorgan over the provisions for a binding settlement term sheet ("Term Sheet"). After several weeks of negotiations, the Parties executed the Term Sheet on May 25, 2021. As memorialized by the Term Sheet,

JPMorgan produced additional Mediation Information, including 167,225 documents consisting of 5,841,744 pages and at least 100,000 e-mails and Bloomberg chats that occurred throughout the relevant time period. Class Counsel and Supporting Counsel reviewed the Mediation Information for several months, to verify relevant representations made during settlement negotiation and to confirm that the proposed settlement amount was reasonably supported.

At the same time, Class Counsel negotiated with JPMorgan over the terms of the Settlement Agreement. After Class Counsel and Supporting Counsel completed their review of the Mediation Information, and after agreement had been reached on key settlement provisions, the Parties executed the Settlement Agreement on September 8, 2021. Assisted by Supporting Counsel, Class Counsel then prepared the motion for preliminary approval of the Settlement, which they filed on September 22, 2021. After the Settlement was preliminarily approved, Class Counsel coordinated with the Settlement Administrator, A.B. Data, to implement the approved Class Notice plan and respond to inquiries from potential Class Members regarding the Settlement. Once the Class Notice plan was implemented, Class Counsel prepared Class Plaintiffs' motion for final approval of the Settlement.[6]

* * * *

The amount of time and effort invested in prosecuting this Action demonstrates that the first *Goldberger* supports the reasonableness of Class Counsel's fee request.

2. 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."); *see*

[6] Class Counsel's fee declarations do not include any time spent in March 2022 preparing the motion for final approval.

also In re NASDAQ Mkt.-Makers Antitrust Litig., 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("*NASDAQ III*") ("[C]lass actions have a well-deserved reputation as being most complex"). 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. Litigation involving commodity futures markets is regarded as challenging because the issues that can arise are often technical and complex. *See, e.g., In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) (detailing the "immense task undertaken and the complexity" of the commodities futures litigation brought under the CEA); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982) (commodity futures markets are "esoteric"); *Arenson v. Bd. of Trade of City of Chi.*, 372 F. Supp. 1349, 1352 (N.D. Ill. 1974) ("It would be difficult to imagine litigation presenting issues of greater subtlety and complexity" than those involving commodity futures markets). This class action is among the most challenging, and such complexity supports a one-third fee award.

To successfully prosecute these relatively novel spoofing claims, Class Counsel needed to build upon their extensive experience in the complex commodities futures market that JPMorgan allegedly manipulated, as well as in the various cutting-edge algorithmic trading strategies that traders used to spoof the market. Class Plaintiffs' allegations concerned thousands of instances of manipulation by JPMorgan traders that caused the prices of U.S. Treasury Futures and Options on U.S. Treasury Futures to be artificial. In cases requiring similar expertise, courts have acknowledged that commodities class actions present complex legal and factual issues. *See, e.g., In re Sumitomo Copper Litig.*, 74 F. Supp. 2d at 395 ("[p]etitioners undertook this complex and difficult litigation on a contingent fee basis …, in circumstances of high risks and almost overwhelming magnitude and complexity," in that claims under the CEA "have been notoriously

difficult to prove, [and] this case was initially greeted with widespread skepticism in the financial community"); *In re London Silver Fixing, Ltd. Antitrust Litig.*, No. 14-MD-02573 (VEC), 2021 WL 3159810, at *1 (S.D.N.Y. June 15, 2021) (noting that "the Action involves numerous complex factual and legal issues and was actively litigated and, in the absence of a settlement, would have involved lengthy proceedings with uncertain resolution of the numerous complex factual and legal issues"); *see also, In re GSE Bonds Antitrust Litig.*, No. 19 Civ. 1704 (JSR), 2020 WL 3250593, at *4 (S.D.N.Y. June 16, 2020) (finding "complexity [is] present [where] plaintiffs claimed that the defendants colluded in the GSE Bond market over more than seven years, involving thousands of bond issuances, and implicating sixteen defendants").

To prosecute the Action, Plaintiffs' Counsel developed a deep understanding of the complex U.S. Treasury Futures market through a substantial investigation, including consultations with industry insiders and assistance in the form of expert analysis. To advance the litigation, Plaintiffs' Counsel engaged experts to prepare detailed analyses of U.S. Treasury Futures and Options on U.S. Treasury Futures, creating sophisticated damages models, and reviewing years of available documents and data in the process. Joint Decl. ¶¶ 31-32. Plaintiffs' Counsel collaborated with their experts to evaluate immense futures and options data sets and other information to identify the effects of Defendants' alleged manipulation and the market-wide damages. *Id*. Critically, this investigative work allowed Plaintiffs' Counsel to develop and allege a comprehensive theory of the case before the DPA between JPMorgan and the DOJ/USAOC disclosed the facts uncovered during the regulatory and criminal investigations.

The issues and challenges described above provide a sufficient basis for finding that the complexity of this case supports a fee award of 33 1/3 %. It is worth noting the above challenges all occurred before the case proceeded beyond the pleading stage. Had the Action continued

beyond the pleadings stage, significant fact and expert discovery would have been involved. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 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, JPMorgan is represented by high quality, sophisticated counsel with significant resources at their disposal, and class and merits issues would have been hotly contested. *See 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."). But for this Settlement, the case would have grown not only in complexity but in its magnitude as well, which supports the reasonableness of a one-third fee award.

3. The Fee Request is Warranted Based on the Level of Risk Undertaken by Class Counsel in this Action

Courts in the Second Circuit have 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.

Class 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 Civ. 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 this Action involved suing against a large global financial institution represented by a highly regarded and sophisticated global law firm and possessing the financial resources to litigate this case for many years at the trial and appellate levels. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (Engelmayer, J.) (noting "substantial risk" where counsel bore the "risk of defeat").

As described in the Final Approval Mem. and the Joint Decl., Class Plaintiffs faced significant *ex ante* litigation risks in proving liability, class-wide impact, and damages. *See In re Platinum and Palladium Commodities Litig.*, No. 10 Civ. 3617 (WHP), 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."). At all times during the litigation, Class Plaintiffs faced uncertainty in their ability to establish JPMorgan's liability related to the alleged spoofing of U.S. Treasury Futures and Options on U.S. Treasury Futures on the Chicago Board of Trade ("CBOT"). Joint Decl. ¶¶ 35-36. When the Action commenced, private CEA class actions related to spoofing were (and still are) relatively novel. As a result, the dearth of case law clearly outlining the viability and scope of private spoofing actions increased the risk of non-recovery. Had the Action continued, Class Counsel would first have to demonstrate that Class Plaintiffs stated a claim for relief under the CEA for spoofing, a hurdle that, in at least one other instance, was not overcome. *See, e.g.*, *In re Merrill, BofA, & Morgan Stanley Spoofing Litig.*, No. 19 Civ. 6002 (LJL), 2021 WL 827190 (S.D.N.Y. Mar. 4, 2021) (dismissing CEA spoofing claims pursuant to Rule 12(b)(6)), *appeal docketed,* No. 21-853 (2d Cir. April 2, 2021).

Had Class Plaintiffs' claims been sustained at the pleadings stage, the risks would only increase as the Action progressed. At class certification, Class Counsel would have to

demonstrate, supported by expert testimony, that JPMorgan's manipulation of the U.S. Treasury Futures market caused a class-wide impact, and the impact of such harm can be determined on a common formulaic basis. JPMorgan would likely counter Class Plaintiffs' arguments with expert opinions of its own, further heightening the uncertainty of certifying a class in this Action.

If Class Plaintiffs were to prevail on certifying a litigation class, they would still need to prove liability and actual damages at trial. A successful *Daubert* challenge or effective cross-examination at trial could result in a significantly reduced verdict even if Class Plaintiffs proved liability. 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. 07 MDL 01827 (N.D. Cal. Sept. 3, 2013), ECF No. 8562. Given the enormous risks Class Counsel undertook to litigate the Action on behalf of the Class Plaintiffs, the 33 1/3 % fee request is appropriate.

4. Class Counsel Provided High-Quality Representation of Class Plaintiffs and the Settlement Class

"[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). Class Counsel's efforts led directly to the $15,700,000 recovery for the Class. Based on the damages analysis performed by Class Plaintiffs' experts, the Settlement represents between roughly 26.2% to 31.4% of recoverable class wide damages in this Action, without considering any potential restitution award available from the DOJ. Joint Decl. ¶ 35. Collectively, the Settlement and the portion of the VCA attributable to U.S. Treasury Futures and Options on U.S. Treasury Futures represent approximately 82% to 98% of estimated class wide damages caused by JPMorgan in the market for U.S. Treasury Futures and Options on U.S. Treasury

Futures. *Id*. The Settlement provides certain recovery for the Settlement Class generally and augments the recovery any Class Member may have received from the VCA. The value of the Settlement secured from JPMorgan 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").

The Settlement Class includes institutional investors, such as Class Plaintiffs, with the sophistication and resources to object to the Settlement 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 no Class Members have opted out of the Settlement. *See* Ewashko Decl. ¶¶ 25, 27. The lack of objections or exclusions is one sign of the Settlement Class's approval of the Settlement and is an indication of Class Counsel's skillful prosecution of this Action.[7]

Class Counsel's extensive experience prosecuting class action cases, including some of the largest class action recoveries under the commodities and antitrust laws, was a critical component of achieving successful settlement results with JPMorgan. The skill and quality of Class Counsel's representation in this Action further support their requested one-third attorneys' fee award.

[7] Should any objections be received, Class Counsel will address them in their reply papers, due on May 26, 2022.

5. Class 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 whether a fee request is reasonable. *Grice*, 363 F. Supp. 3d at 406. For settlements involving the most complex claims, including antitrust, securities, and commodity class actions, as is the case here, "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.); *see also Velez v. Novartis Pharms. Corp.*, No. 04 Civ. 09194 (CM), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) ("[t]he federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the gross settlement benefit"); *In re Warner Commc'n. Secs Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) (same).

Consistent with Judge Gleeson's observation, fee awards above 30% have been awarded in a number of complex class actions in this District where the settlement amount has been $50 million or less. *See, e.g., In re Giant Interactive,* 279 F.R.D. at 165 (Engelmayer, J.) (awarding fee of 33% from a $13 million settlement fund, less expenses and lead plaintiffs' awards); *Spicer v. Pier Sixty LLC*, No. 08 Civ. 10240 (PAE), 2012 WL 4364503, at *4 (S.D.N.Y. Sept. 14, 2012) (Engelmayer, J.) (awarding attorneys' fees of one third from a $8.5 million settlement fund, less expenses and service awards); *Hart v. RCI Hospitality Holdings, Inc.*, No. 09 Civ. 3043 (PAE), 2015 WL 5577713, at *14 (S.D.N.Y. Sept. 22, 2015) (Engelmayer, J.) (awarding attorneys' fee of 34.2% from a $15 million settlement fund less out of pocket expenses); Order Awarding Attorneys' Fees at ¶¶ 2-3, *In re Zinc Antitrust Litig.*, 14 Civ. 3728 (PAE) (S.D.N.Y. Feb. 16, 2022)

(Engelmayer, J.), ECF No. 327 (awarding attorneys' fee of one-third from a $9.85 million settlement fund less expenses and incentive awards).[8]

Moreover, in similar complex commodities manipulation cases, courts routinely grant one-third fee awards. *See, e.g.*, Order, *Boutchard, et al. v. Gandhi*, No. 1:18 Civ. 07041 (JJT) (N.D. Ill. July 30, 2021), ECF No. 154 (awarding attorneys' fee of 33% from gross settlement fund of $15 million); Order, *In re Nat. Gas Commodities Litig.*, No. 03 Civ. 6186 (VM) (S.D.N.Y. May 26, 2006), ECF No. 445 (awarding attorneys' fee of one-third of gross common fund of $72,762,500), Revised Order (Jun. 22, 2007), ECF No. 507 (awarding one-third of $28,087,500 gross settlement as attorneys' fees); *In re Dairy Farmers of Am., Inc*., 80 F. Supp. 3d 838, 862 (N.D. Ill. 2015) (granting fee petition seeking one-third of $46 million common fund).[9] In sum, Class Counsel's request falls in line with the observed attorneys' fees in this District and others, further confirming its reasonableness.

6. Public Policy Supports Approval of the Fee Request

Public policy encourages enforcement of the commodities laws through private civil suits as a deterrent to corporate malfeasance. *See Leist v. Simplot*, 638 F.2d 283, 311 (2d Cir. 1980) ("The 1974 Congress repeatedly expressed its view that the changes [to the CEA] were designed

[8] *See also In re Amaranth Nat. Gas Commodities Litig.,* No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2 (S.D.N.Y. June 11, 2012) (awarding a 30% fee); Order Awarding Attorney's Fees, at 2, *In re London Silver Fixing, Ltd. Antitrust Litig.*, Nos. 14-MD-02573, 14-MC-02573 (S.D.N.Y. Jun. 15, 2021), ECF No. 534 (awarding 30% of the gross $38,000,000 Settlement Fund as attorneys' fees); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05 Civ. 2237 (CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33 1/3 % in fees on a $20 million gross settlement, plus interest); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (awarding 33.33% of the $35 million gross settlement fund as attorneys' fees); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (33.33%); *Maley v. Del Global Tech. Corp*., 186 F. Supp. 2d 358, 370–71 (S.D.N.Y. 2002) (awarding 33.33%; noting "modest multiplier of 4.65 [was] fair and reasonable").

[9] *See also* Final Order and Judgment, *In re Rough Rice Commodity Litig*., No. 11 Civ. 00618 (N.D. Ill. Aug. 25, 2015), ECF No. 178 (awarding attorneys' fee of one-third from $625,000 gross settlement fund); Final Judgment and Order, *In re Soybeans Futures Litig*., No. 89 Civ. 7009 (N.D. Ill. Nov. 27, 1996), Dkt. Nos. 470-71 (33 1/3% fee award plus interest and expenses).

to strengthen commodity futures regulation, a goal that would be ill-served by abolishing the private right of action that everyone had thought to exist."), *aff'd sub nom. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982) (citing CEA legislative history); *Cange v. Stotler & Co., Inc.*, 826 F.2d 581, 584 (7th Cir. 1987) (explaining that Congress depends on the "critical" role of additional private suits to deter violations of the CEA); *see also 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 . . . ."). 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. If attorneys' fees are routinely set too low, particularly in instances where counsel effectively and efficiently litigate a matter, they will be deterred from bringing meritorious cases in the future. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014).

Class Counsel's decision to take on the risk of this lawsuit serves the vital interest of advancing the enforcement of private commodities manipulation suits and protecting market participants who might otherwise be without recourse. *See Espinal v. Victor's Café 52nd St., Inc.*, No. 16 Civ. 8057 (VEC), 2019 WL 5425475, at *3 (S.D.N.Y. Oct. 23, 2019) ("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.").

Private CEA claims based on spoofing manipulation remain novel and are difficult to litigate. However, without lawyers to pursue such claims on behalf of private individuals, such misconduct could continue without an effective deterrent. Private litigation creates a disincentive to market manipulation by ensuring that some portion of the harm suffered by class members is

shifted back onto the offending party in addition to any regulatory fines or punishments that may be instituted. Awarding a reasonable fee will encourage other counsel to further investigate and bring to light any spoofing misconduct in financial markets, which will promote more scrupulous industry practices, increased supervision to prevent misconduct, and ultimately lead to a fairer and more efficient market for all participants.

B. The Lodestar Cross-Check Confirms 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 (noting that the lodestar fee calculation method has "fallen out of favor particularly because it encourages bill-padding and discourages early settlements."). 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.

The cross-check confirms that there is no windfall. In this case, Class Counsel imposed limits to control certain time and hourly rates by developing a billing protocol that was reviewed and considered by the Court when appointing Lowey and Kirby as interim co-lead counsel. *See* ECF No. 31-3. The billing protocol limited the hourly rates of associates and staff engaged in

document review to $400 per hour; limited the hourly rates of paralegals, investigators, and translators to $300 per hour; and required removal of the lodestar of timekeepers that billed less than ten (10) hours or who were summer associates. In addition to the direction provided in the billing protocol, for purposes of providing the Court lodestar information, all Plaintiffs' Counsel removed any time spent working on this motion and the motion for appointment of lead counsel.

Accordingly, Plaintiffs' Counsel report spending 4,780.70 hours litigating the Action through February 28, 2022, resulting in a total lodestar amount of $3,408,509.00. Joint Decl. ¶ 62. The number of hours spent on this Action are reasonable, particularly in light of the level of independent investigation conducted by Class Counsel and Plaintiffs' Counsel to prepare the various complaints; the time and effort invested in negotiating the Settlement, including the drafting of the mediation statement, preparation of damages analysis and settlement presentation, review of the Mediation Information, and the drafting of the term sheet and Settlement Agreement; the work Class Counsel performed to prepare the motions for preliminary and final approval of the Settlement; and the time Class Counsel spent to oversee the Class Notice process and coordinate with A.B. Data regarding settlement administration process. Class Counsel actively managed the case to ensure that resources were adequately and appropriately utilized, audited all time and expenses, and communicated with Plaintiffs' Counsel about the reasonableness of their time and expenses.

The billing rates used to develop the lodestar are also reasonable. The hourly billing rates for attorneys working on this case ranged from $400 to $1,295. *See* Briganti Decl. ¶ 9 (schedule listing attorney rates from $400-$1,295); Lerner Decl. ¶ 9 (schedule listing attorney rates from $400-$995); Scott Decl. ¶ 9 (schedule listing attorney rates from $400-$1,250); Sprengel Decl. ¶ 9 (schedule listing attorney rates from $400-$950); Millen Decl. ¶ 9 (schedule listing attorney rates

from $725-$1,025). 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; *In re Credit Default Swaps Antitrust Litig.,* No. 13md2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. Apr. 26, 2017) ("*CDS*") (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 Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789 (LGS), 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to $1,375 and associate rates of $350 to $700), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *In re Foreign Exchange* (S.D.N.Y. Jan. 12, 2018), ECF No. 939.

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*, 186 F. Supp. 2d at 370. Here, a fee award of one-third of the Settlement Fund less any Court-awarded expenses and Class Plaintiffs' Incentive Awards represents a multiplier of 1.5 and is lower than multipliers regularly accepted in this District and elsewhere in complex commodities class actions. *See, e.g., In re LIBOR-Based Fin. Antitrust Litig.*, No. 11-MD-2262 (NRB), 2018 WL 3863445, at *4 (S.D.N.Y. Aug. 14, 2018) (noting "mean multiplier in this Circuit is approximately 1.55, with multipliers in antitrust and securities cases recently averaging 1.77 and 1.43, respectively"); *see also, In re Sumitomo Copper Litig.*, 74 F. Supp. 2d at 399 (noting that a multiplier of "2.5 times the reported charges" would be reasonable in this particular commodities class action); Order, at ¶¶ 2, 6, 9, *In re Nat. Gas Commodity Litig.*, 03 Civ. 6186, (S.D.N.Y. June 15, 2007), ECF No. 445 (approving a 1.9 multiplier in commodities

class action); *In re Platinum & Palladium Commodities Litig.*, No. 10 Civ. 3617, 2015 WL 4560206, at *4 (S.D.N.Y. July 7, 2015) (approving a 1.9 multiplier in commodities action attorneys representing the Futures Class); *In re BP Propane Direct Purchaser Antitrust Litig.*, No. 06 Civ. 3541, slip op. (N.D. Ill. Feb. 10, 2010) (ECF No. 209) [Joint Decl. Ex. Q, Tab 2] (33% fee award that resulted in a 2.7 lodestar multiplier).[10]

As demonstrated above, the multiplier in this Action is well within, if not substantially below, the range of multipliers approved during lodestar cross checks of percentage-of-fund awards by this Court and courts in this district. *See, e.g.*, *Montalvo v. Flywheel Sports, Inc.*, No. 16 Civ. 6269 (PAE), 2018 WL 7825362, at *6 (S.D.N.Y. July 27, 2018) (Engelmayer, J.) (approving 33% fee request resulting in multiplier of .88 and noting that "courts in this district will often approve lodestar multipliers between two and four times…").[11] 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 Civ. 3431, 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally

[10] Courts in the Second Circuit routinely approve fee awards that result in multiplier between 3 and 5. *See, e.g.*, *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"); *Carlson v. Xerox Corp.*, 355 F. App'x 523, 526 (2d Cir. 2009) ("the resulting multiplier would be 3.59, still below the 3.6 average and in line with the 3.1 median for similar cases"); *In re Fab Universal Corp. S'holder Derivative Litig.*, 148 F. Supp. 3d 277, 283 (S.D.N.Y. 2015) ("In shareholder [class] litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation.").

[11] *See also*, *Bekker v. Neuberger Berman Group 401 (K) Plan Inv. Committee*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) (finding 5.85 is within the range of acceptable multipliers in context of lodestar cross-check); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (S.D.N.Y. 2011) (approving multiplier of 5.3. finding it is "not atypical for similar fee-awards," and collecting cases).

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 Civ. 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. In cases where a large amount of the expenses was paid to experts, courts routinely approve those disbursements. *See, e.g., CDS* , 2016 WL 2731524, at *18 (approving $10 million in expenses where "[m]ost of these expenses were incurred in connection with retention of experts").

As detailed in Plaintiffs' Counsel's individual declarations filed concurrently herewith, Plaintiffs' Counsel incurred litigation expenses in this Action totaling $303,508.96. *See* Briganti Decl. ¶ 13; Lerner Decl. ¶ 13; Scott Decl. ¶ 13; Sprengel Decl. ¶ 13; Millen Decl. ¶ 13. Approximately 83.3% or $252,698.76 of these costs were spent on expert work. As described above, the expert work was critical in assisting Class Counsel with the identification of JPMorgan's alleged spoofing and in assessing the impact of the misconduct on Class Plaintiffs and the Settlement Class. As the expert work helped to both identify and crystallize Class Plaintiffs' claims and to assess the magnitude of the damages which led to reaching the Settlement, 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; *CDS*, 2016 WL 2731524, at *18. Plaintiffs' Counsel incurred $9,343.45 in costs relating to data, legal, and financial computer research. Joint Decl. ¶ 65. Other categories of expenses incurred by Plaintiffs' Counsel include, court costs (filing fees), document production/discovery, mediation fees, process servers, in-house photocopying, telephone, and FedEx/UPS shipping. *Id*. In complex class actions, 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.

Class Counsel's billing protocol also included certain controls on expenses. For example, the billing protocol required all air travel to be pre-approved; hotel and meals would be reimbursed at no more that 200% per day of the U.S. government per-diem approved for selected cities;[12] and in-house copy charges will be capped at $0.10/page. Expenses that were not compensable included expert, document repository or management, and staff overtime that was not previously approved by Class Counsel. ECF No. 31-3 ¶¶ 2-9. The litigation expenses and costs incurred by Plaintiffs' Counsel were reasonable and are therefore appropriately paid for from the Settlement Fund.

III. CLASS PLAINTIFFS' REQUESTED INCENTIVE AWARDS ARE REASONABLE AND SHOULD BE GRANTED

Class Plaintiffs respectfully request that the Court award them a total of $45,000 to be shared equally for their service as class representatives in this Action. Incentive Awards are granted at the discretion of the Court to "compensate class representatives for their services to the class and simultaneously serve to incentivize them to perform this function." WILLIAM B. RUBENSTEIN, 5 NEWBERG ON CLASS ACTIONS § 17:1 (5th ed. 2011); *see also In re Gen. Motors LLC,* 2020 WL 7481292, at *4 ("In the Second Circuit, Plaintiff incentive awards 'are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs.'") (citation omitted). In deciding whether to grant such awards, a court considers "'the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff

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

in assisting in the prosecution of the litigation or in bringing to bear added value (*e.g.*, factual expertise), any other burdens sustained by that plaintiff . . . and, of course, the ultimate recovery.'" *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (quoting *Roberts v. Texaco*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997)); *see also Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 118 (VM), 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) ("Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation."); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 483 (S.D.N.Y. 2013) ("It is important to compensate plaintiffs for the time they spend and the risks they take.").

Class Plaintiffs were essential to the successful prosecution of this case. They willingly took on the risk of participating in this Action knowing that private CEA suits alleging spoofing in futures and options markets were relatively rare. Class Plaintiffs immediately provided access to their data and their knowledge of the market and market conditions at the time their transactions occurred. Class Plaintiffs reviewed their individual complaints and the CAC to confirm the accuracy and provide feedback as to the allegations and claims. Plaintiffs' Counsel were in regular communication with Class Plaintiffs, and after consulting with their respective counsel, each Class Plaintiff signed off on the Settlement, finding it fair, reasonable, and adequate.

The requested Incentive Awards are well in line or below awards granted by courts in this District and others. *See* Order Awarding Attorneys' Fees at ¶ 5, *In re Zinc Antitrust Litig.*, 14 Civ. 3728, ECF No. 327 (awarding "service awards" totaling $20,000); Order at ¶ 7, *Boutchard, et al. v. Gandhi*, No. 18 Civ. 07041 (N.D. Ill. July 30, 2021), ECF No. 154 (awarding Class Plaintiffs $17,500 and $12,500, respectively, in CEA action). Further, as a percentage of the Settlement Fund, the Incentive Awards represent less than 0.3%, on par with awards made in other actions. *See In re Zinc Antitrust Litig.* (incentive award represented approximately 0.2% of settlement

fund); *Boutchard* (incentive award represented approximately 0.6% of settlement fund). The Incentive Awards should be granted in light of their reasonable size and Class Plaintiffs' efforts in this case.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court approve their motion for attorneys' fees and payment of litigation costs and expenses, and Class Plaintiffs' request for Incentive Awards, in the amounts set forth above.

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Respectfully submitted,

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