

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

IN RE:

COMMODITY EXCHANGE, INC., GOLD
FUTURES AND OPTIONS TRADING
LITIGATION

This Document Relates To All Actions

Case No. 14-MD-2548 (VEC)
14-MC-2548 (VEC)

Hon. Valerie E. Caproni

**JOINT DECLARATION OF DANIEL L. BROCKETT AND MICHAEL C.
DELL'ANGELO IN SUPPORT OF (1) PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF THE THIRD SETTLEMENT AGREEMENT; AND (2) CO-LEAD
COUNSEL'S MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, AND
INCENTIVE AWARDS**

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Pursuant to 28 U.S.C. § 1746, we, Daniel L. Brockett and Michael C. Dell'Angelo, declare as follows:

1. We are, respectively, partners of the law firms of Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) and Berger Montague PC (“Berger Montague”). Our firms are interim co-lead counsel (“Co-Lead Counsel”) for the class in the above captioned action (the “Action”). We have been actively involved in prosecuting and resolving this Action since late 2013, are familiar with its proceedings, and have personal knowledge of the matters set forth herein.

2. The Third Settlement Agreement provides for \$50 million in cash payments, and, if finally approved, would fully resolve the Action. The Third Settlement Agreement provides an immediate cash benefit to the Settlement Classes while avoiding the substantial risk, expense, and delay of taking this Action to trial against the Newly Settling Defendants, including the risk that the Settlement Class would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation.

3. The Third Settlement Agreement is the product of hard-fought, arm's-length negotiations among experienced counsel. Based on our extensive pre-suit investigation, a thorough analysis of the record, and familiarity with the challenges the Action faces after litigating it for over seven years, we believe the Third Settlement Agreement is an outstanding result for the Settlement Class in light of the substantial litigation risks.

4. We believe the Third Settlement Agreement should be approved. We therefore respectfully submit this declaration in support of Plaintiffs' motion for final approval of the Third Settlement Agreement, and for Co-Lead Counsel's second motion for an award of attorneys' fees and expenses, and for incentive awards to class representatives.

I. CO-LEAD COUNSEL’S CONTINUED PROSECUTION OF THE ACTION

5. Co-Lead Counsel’s prior joint declaration (ECF No. 569, the “2021 Joint Decl.”) outlined the history of this action from the start of our investigation in November 2013 to the execution of the HSBC settlement agreement in November 2020. Accordingly, herein we focus on the subsequent history of our work. As detailed further below, our efforts for the benefit of the class after November, 11, 2020, included:

- moving forward with the Original Settlements, from preliminary approval, through the notice phase, the plan of allocation, analyzing and responding to the objection, negotiating a resolution, and preparing a plan for implementing that proposal;
- continuing to engage in detailed data-discovery efforts both of Defendants and third parties, to obtain information likely necessary for, among other things, class certification—work that required constant coordination with our non-testifying expert consultants to ensure we were receiving data needed to certify and try the case;
- continuing to propound written discovery including serving interrogatories on Barclays seeking information on its data production and serving Requests for Admission and contention Interrogatories on all parties;
- continuing to engage with Defendants over documents improperly withheld and listed on privilege logs, including engaging in numerous meet and confers and correspondences to obtain the withheld documents;

- continuing to engage with Defendants regarding deposition agreements including disputes over Plaintiffs' requests for Rule 30(b)(6) depositions of certain Defendants and a dispute over cross-noticed depositions;
- continuing to engage with Defendants and counsel for third parties regarding deposition agreements for individuals residing in foreign jurisdictions, including propounding Letters Rogatory and a subpoena where necessary, and developing voluntary agreements with third-party counsel in lieu of seeking a court order;
- communicating with both Defendants Bank of Nova Scotia and Deutsche Bank and third-party data-producer CME Group Inc. ("CME") to identify special account numbers and resolve confidentiality issues necessary to CME's production of the requested trade data;
- continuing to seek important audio data from Defendants, and reviewing those and already produced audio for possible use at depositions, and reviewing to identify other participants and speakers and for evidentiary use in demonstrating how Fix participants communicated and whether rules/guidelines applicable to the call process were or were not followed;
- continuing to demand additional data from Defendants including trade confirmations, information on open positions, and information on risk-bearing trades;
- preparing written Rule 30(b)(6) deposition questions, and reviewing and analyzing Defendants' subsequent written responses to the same;
- continuing to work extensively with our non-testifying consultants to respond to Defendants' ongoing quest to engage in discovery into their work, including filing

motion papers in opposition to Defendants' request for depositions of the consultants;

- continuing to work with our non-testifying expert consultants to identify and align Plaintiffs' trades in the CME trade data with those of Plaintiffs' records, including assessing the extent to which certain Plaintiffs traded during the Fix, to prepare Plaintiffs for deposition;
- continuing to work with our non-testifying expert consultants and our potential testifying expert regarding potential methodologies for demonstrating manipulation, impact, and damages;
- continuing to review the millions of documents produced in the action;
- preparing for and participating in dozens of depositions;
- preparing Plaintiffs for deposition, including reviewing documents and conferring with each potential deponent;
- researching and preparing to respond to invocations of Fifth Amendment assertions; and
- negotiating the Third Settlement Agreement, and then moving towards approval of that agreement as well, again beginning with preliminary approval, through the notice phase, and now into the final approval process.

A. **Co-Lead Counsel Take 26 Defendant and Third-Party Witnesses During the Pandemic**

6. The long history of this case overlaps, of course, with the COVID pandemic.

This shifted the way the case was litigated in numerous ways. Most directly, the case schedule was extended numerous times as the parties and the Court paused in immediate response to the shocking events unfolding, and then tried to get the case moving again in the new "remote"

reality. *See* 2021 Joint Declaration ¶ 75. The pandemic also required Co-Lead Counsel to shift their internal operations. While Co-Lead Counsel of course adapted, litigating during a pandemic is another example of the unexpected complexity of this case, which also led to making the case last even longer.

7. The COVID pandemic also had a direct impact on the carrying out of depositions. Most immediately, the pandemic required Co-Lead Counsel to engage in extensive negotiations with Defendants over how “remote” depositions would be conducted. This was not, of course, as simple as setting up a “Zoom” conference. The parties had to sort out, among other things: the legality and admissibility of videotaped “testimony”; what technological platforms to use; how to show the witness documents given they could not simply be handed over as with an in-person deposition; ensuring the witnesses had access to appropriate devices, while agreeing the witnesses would not access outside information during the deposition; standardized lighting, camera, and background protocols to provide assurance the witness was not being coached by someone present in the room; and many other logistical issues. Many of these issues were documented, after extensive negotiation, in an agreed-upon “protocol.” *See* ECF No. 447-1. But many other details had to just be worked out on the fly, adding to the complexity of this case.

8. This not only required Co-Lead Counsel to invest in negotiating the protocol and handling the details great and small in carrying out remote depositions, but also impacted the way Co-Lead Counsel (and, presumably, Defendants’ counsel) approached depositions. For instance, in order to ensure the witness could access the documents in a smooth way, the parties agreed to send preview files days before the actual deposition—requiring advanced preparation and a more stringently planned deposition. By way of another example, the likelihood for live in-person *trial* testimony could have been seen as being reduced. This not only put more

pressure on the taking of the depositions themselves, but may have also contributed to Defendants' practice of serving cross-notices for witnesses, complicating the negotiation process over things like scheduling of the witness and the allotment of time between the sides.

9. Co-Lead Counsel took the depositions of 26 Defendant and third-party witnesses.¹

10. The depositions consisted of one or more fact witnesses from each Defendant Bank and The London Gold Market Fixing Limited ("LGMF"). Accordingly, Co-Lead Counsel had to prepare detailed information about each Defendant, and specific information about each deponent, including not only reviewing several years' worth of documents and chats related to that deponent, but studying the individual trading patterns of each deponent and those of their institution as a whole.

11. To prepare for these depositions, Co-Lead Counsel reviewed extensive communications produced by Defendants to identify interbank chats, trading patterns, and evidence of alleged manipulation.

12. Co-Lead Counsel also reviewed each Defendant's compliance and risk management policies, and reviewed documents to determine witness adherence to such policies. Co-Lead Counsel also researched the Fix process and each Defendant's policies, or lack thereof, regarding the Fix.

13. Where applicable, such as for a deposition of a trader participating on the Fix call, Co-Lead Counsel also determined whether an audio recording of a specific PM call should be played during a deposition. In addition to playing the audio during the deposition, a pre-

¹ Defendants cross-noticed many of these witnesses, who were often their former employees. This led to numerous conferrals, including because the need to account for time by both sides made it harder to schedule the depositions. Herein, we speak in terms of the number of people giving testimony, not how that testimony "counted" during the litigation for purposes of deposition limits, for example.

prepared transcript of the call was provided to the deponent to help him follow along. Utilization of selected Fix calls was helpful in establishing, among other things, how defendants communicated during a Fix call and whether rules governing the Fix call process were or were not followed.

14. As part of the deposition push, Co-Lead Counsel prosecuted requests to allow for the deposition of witnesses located abroad in accordance with the Hague Convention. In January 2021, Co-Lead Counsel submitted an application requesting the examination of two former employees of Defendants Barclays and one former employee of Defendant Société Générale, all of whom who lived abroad. ECF No. 511. Similarly, in February 2021 Co-Lead Counsel filed a 7-page memorandum, along with multiple supporting documents, seeking the deposition of another former bank employee. ECF No. 526. Concurrently, Co-Lead Counsel was working to secure agreements with third-party counsel representing certain former employees to consent to deposition as to avoid the need for further Court intervention.

15. Co-Lead Counsel expended significant effort developing Rule 30(b)(6) deposition notices for certain Defendants in this action. Defendants then objected on numerous grounds. Co-Lead Counsel had to engage in a variety of conferrals—through numerous written communications as well as teleconferences—to negotiate the scope of the Rule 30(b)(6) depositions and/or obtain information from Defendants in written form instead, to avoid motion practice over such depositions.

16. Co-Lead Counsel spent significant time engaged in these discussions, revising requests, and negotiating deposition dates and written responses to deposition questions with defense counsel, all while also preparing to take the depositions. For instance, Plaintiffs and Defendant Barclays exchanged at least fourteen substantive communications with each other and

this Court before the conferral process resulted in an agreed-to and finalized the scope of the Rule 30(b)(6) deposition. After Barclays submitted written responses to certain topics, the deposition was limited to four topics. Even after the agreement on the scope was reached, it took an outsized effort just to agree to a schedule—at least 10 communications due to various claims of availability and requested extensions. The deposition ended up taking place the very last day of fact discovery.

17. Plaintiffs were able to obtain the required information from Société Générale without the necessity of a corporate deposition. While the bank initially objected to every topic enumerated in the Rule 30(b)(6) notice, its objections pointed to alternative sources of the requested information. This included prior communications or deposition testimony, or testimony expected from then-forthcoming fact witnesses. In addition, certain of the deposition topics were narrowed after review with the data consultants and information was provided by letter.

18. With similar negotiations, all issues with the Bank of Nova Scotia concerning the Rule 30(b)(6) deposition were similarly resolved without the need for a formal corporate deposition. After the bank served its initial objections to the notice, the parties engaged in substantive written communications and conferrals. The Bank of Nova Scotia eventually agreed to provide written responses to certain agreed-upon topics.

19. For foreign depositions, Co-Lead Counsel not only had to work with Defendants to schedule the deposition, but also with the Foreign Examiner required to be present at depositions in the U.K. taken under the Hague; as a result, the scheduling process itself was complicated and time-consuming. And other complications arose in the scheduling process. For instance, after initially seeking the deposition of Douglas Beadle—the only individual likely to

have knowledge and to be deposed from Defendant LGMF—in October 2020, Co-Lead Counsel was forced to engage in five meet-and-confers, exchange numerous letters with defense counsel, and send a technician to Mr. Beadle’s address to conduct field tests of internet connectivity. All of this before counsel finally agreed to put an April 2021 date on the schedule.

20. During this time, Co-Lead Counsel also engaged in communications with Defendants and the Court regarding an extension of the discovery schedule for a particular deposition, and to receive outstanding information from Defendants relating to Co-Lead Counsel’s request for Rule 30(b)(6) depositions of the Bank of Nova Scotia and Société Générale.

21. The deposition effort and other ongoing discovery issues also required Co-Lead Counsel to continue working with Defendants in the filing of regular joint status letters, which were often heavily negotiated and lengthy as they brought to a head simmering discovery disputes. *See, e.g.*, ECF Nos. 511, 528, 533, 541, 553, 559, 583. In particular, the parties’ ongoing disputes over Barclays’ data production, including Plaintiffs’ continuing request for opening position information, resulted in contentious disputes before agreements could be reached.

22. Because of the inability to timely resolve all such disputes, Co-Lead Counsel were forced to request a limited extension to the fact discovery deadline in a May 2021 two-page letter-motion. ECF No. 548. The Court granted the request, ECF No. 549, but Defendants later filed an opposition anyway, requiring Co-Lead Counsel to respond on the issue again, ECF No. 551. The Court denied Defendants’ *de facto* request for reconsideration. ECF No. 552. Co-Lead Counsel later sought clarification of the Court’s limited extension, in another multi-page letter-brief. ECF No. 555.

23. As fact-discovery wound down and this litigation entered its next phase, Co-Lead Counsel engaged in a series of negotiations with Defendants, including at least one meet and confer and an exchange of at least five substantive written communications, regarding the post-fact-discovery schedule in anticipation of a joint filing for the Court related to the same. To that end, Co-Lead Counsel engaged in research and consulted with our experts to assess the prudence of pursuing Summary Judgment or Class Certification first. A joint letter was prepared presenting each parties' views. *See* ECF No. 570. Thereafter, following a conference with the Court in July 2021, a joint proposed schedule negotiated by the parties was submitted. ECF No. 573.

B. Co-Lead Counsel Defend 11 Depositions

24. Co-Lead Counsel handled the overall preparation and defending of the depositions of the class representatives.²

25. Preparation included selecting and providing each deponent with copies of documents the witness was on, and other documents Co-Lead Counsel thought might be shown to them in discovery. Preparation also included reviewing items such as discovery responses and versions of complaints.

26. Conferences were held with each deponent to prepare more generally for expected areas of examination. This included the duties of a class representative, the nature of the claims in the litigation, and damages suffered by class members. It also included areas specific to each Plaintiff such as how each became a Plaintiff, that Plaintiff's trading strategy, the Plaintiff's understanding of the PM Fix, how the Fix price affected gold prices, and whether that Plaintiff made or lost money on gold trading.

² In certain situations, the personal counsel of the Plaintiff was also involved.

27. Multiple conferences were required, including because most preparations and all of the depositions were done remotely due to COVID-19, and because of the importance of Plaintiffs' testimony to issues such as adequacy, standing, injury, damages, and fraudulent concealment.

28. Co-Lead Counsel also helped prepare errata sheet issues, which were more common than usual, likely because of the additional difficulties court reporters face in handling remote depositions.

C. Co-Lead Counsel Continue With Document Discovery

29. Co-Lead Counsel's extensive document gathering and review efforts are discussed in Section I.B of the 2021 Joint Declaration. Those efforts continued beyond November 2020.

30. For example, Co-Lead Counsel continued to review and produce data and related documents from third parties, including the large trader reports, cleared, executed trade data, unmasked Globex Order Entry data, and user guides produced by the CME. This included destroying an original improperly masked production received from CME, and replacing it with a revised production, as well as liaising with Defendants about the same.

31. Co-Lead Counsel continued to work with Defendants to identify and provide necessary information to CME to allow CME to unmask and/or produce relevant data. For instance, Co-Lead counsel served as a liaison between Deutsche Bank and CME, working with the bank to identify the special account numbers needed by CME to identify the bank's trades in the data.

32. Co-Lead Counsel continued to request additional documents from Defendants, including, for instance, seeking Société Générale's trader handbook and code of conduct. Co-Lead Counsel also sought to obtain documents relating to Defendants' transaction data positions,

trade confirmations, information to distinguish Barclay's risk-bearing trades, and explanatory information relating to Defendants' trading data to enable Plaintiffs' experts to understand the meaning of certain fields in the transaction data.

33. Co-Lead Counsel continued to respond to Defendants' requests for additional information about class plaintiffs' document productions, first made in 2017, and continued requests for verifications of their completeness. Co-Lead Counsel continued to dispute Defendants' assertions that there was a method to collect information from the records in class Plaintiffs' records revealing the time of their trades, or that timestamps were the only method available by which to establish the trades occurred on days and times where prices were suppressed.

34. Co-Lead Counsel drafted and served substantive written discovery including requests for admissions and contention-related interrogatories on the four bank defendants and separately on the LGMF. The extensive requests for admissions, based on key documents and deposition testimony, were carefully tailored to obtain admissions on important liability subjects such as the rules or lack of rules guiding the Fixing process. The interrogatories were geared to explore what contentions defendants may or not be pursuing in moving for summary judgment or opposing class certification. The objection-laden responses required Co-Lead Counsel to hold a meet-and-confer regarding these requests as well.

35. Co-lead Counsel engaged in extensive negotiations with Defendants over a period of many months regarding Defendants' withholding of documents as listed in categorical privilege logs, metadata logs for commercial transaction documents, and traditional privilege logs. The utilization of metadata was suggested by Co-Lead Counsel during a meet and confer and allowed for a more precise determination which documents of a commercial nature needed

additional scrutiny, after Defendants argued that traditional categorization of such routine commercial documents was unwieldy and disproportional.

36. The painstaking review of the document-by-document itemization of the more traditional logs was followed up with various questions such as the sufficiency of a claim of privilege where sufficient information was not provided, where an attorney was not a party, where independent consulting firms were on the emails and where the purpose of a document did not reflect provision of legal advice. Co-Lead Counsel were able to resolve outstanding privilege-related issues to our satisfaction without resorting to Court intervention, even though the Court had agreed to extend the discovery schedule to aid the parties' efforts. *See* ECF No. 549.

37. For instance, after LGMF deponent Douglas Beadle testified at deposition that he was not an employee of LGMF and did not have access to privileged information, Plaintiffs challenged LGMF's withholding of documents relating to Mr. Beadle on the basis of privilege. The ensuing discussion over this issue between the parties consisted of an exchange of at least seven written communications and two meet and confers before the issue was resolved.

38. In the case of Bank of Nova Scotia for example, Co-Lead Counsel exchanged at least ten substantive communications over a period of several months raising issues such as the sufficiency of the attorney-identifying information, documents withheld despite no apparent attorney involvement, and withholding on the basis of investigatory privileges. Plaintiffs reviewed thousands of entries on the privilege logs and identified specific documents at issue, including documents redacted for privilege. As a result, the bank provided additional identifying information for in-house and outside attorneys, revised certain privilege logs and produced certain withheld documents.

39. Similarly, Co-Lead Counsel exchanged over nine substantive communications with counsel for Barclays involving issues such as emails to which an independent consulting firm was copied and documents to which no attorney was a party. The efforts eventually resulted in further explanation by Barclays for asserting privilege and the production of various documents originally withheld.

D. Co-Lead Counsel Continue to Defend Their Pre-Pleading Consultant Work from Intrusive Discovery Requests

40. As summarized in the 2021 Joint Declaration, Section I.C.2, Defendants waged a years-long battle trying to re-open the pleading stage by seeking an ever-increasing amount of discovery regarding our pre-pleading non-testifying expert consultant work. Those battles continued past the HSBC settlement.

41. In November 2020, Plaintiffs made an additional production of non-testifying expert consultant memoranda and accompanying materials, totaling over 110 files and over 120 megabytes.

42. In November 2020, Defendants wrote a letter under seal to the Court arguing that several of Plaintiffs' studies underlying the complaint were misleading. Co-Lead Counsel were forced to respond yet again to the consultant-discovery issue, eventually filing a 13-page letter-brief and two consultant declarations explaining that Defendants' attacks were off-base. Co-Lead counsel also assembled and provided to the Court a compendium of over 50 consultant memoranda as well as an exhibit with quotes from samples of documentary evidence supporting the allegations. ECF No. 477. The Court initially denied Plaintiffs' request to seal the aforementioned materials. ECF No. 480.

43. In mid-November 2020, Co-Lead Counsel requested—pursuant to the Court's order that the parties “meet and confer to determine what, if any, underlying datasets, computer

programs, code, or other materials Defendants are missing that is preventing them from replicating the charts and data analyses in the Third Amended Complaint, Dkt. 266”—that Defendants identify the 32 analyses for which they previously claimed they are missing data and code. Defendants later purported to identify the missing information.

44. But in yet another conferral letter on the subject, Co-Lead Counsel pointed out that Defendants’ attempt to identify the supposedly missing information only confirmed that Defendants had all they needed. In early December, Defendants in turn again denied they had the materials they needed. All of this spilled over into December’s five-page “joint” status report, which, as with other status reports, itself became a battleground as the parties jockeyed to present their respective positions on the brewing dispute. ECF No. 481.

45. In mid-December 2020, Co-Lead Counsel prepared a five-page letter-brief renewing the request to keep certain previously filed materials regarding this dispute under seal. ECF No. 492.

46. In early January 2021, after consulting with their non-testifying expert consultants, Co-Lead Counsel wrote a letter again rebutting Defendants’ criticisms of Plaintiffs’ studies and productions. Defendants then again raised the consultant-discovery issue with the Court, demanding that they be given the right to depose Plaintiffs’ consultants. ECF No. 500. Co-Lead Counsel responded by requesting the right to brief what the Court called Defendants’ “novel” request. ECF No. 502.

47. In late January 2021, Defendants filed a 15-page opening memorandum, with numerous accompanying exhibits, seeking the right to depose Plaintiffs’ non-testifying expert consultants. ECF No. 507. In early February 2021, Co-Lead Counsel filed a 15-page

memorandum in opposition to the request, also attaching numerous exhibits. The Court later denied Defendants' request. ECF No. 557.

E. Co-Lead Counsel Continue Work With Consultants and Experts in This Data-Driven Case

48. As outlined in our 2021 Joint Declaration, Section I.C.2, part of our non-testifying expert consultant work was done in response to Defendants' push for discovery into their pre-pleading work. As discussed above, that work continued, requiring work from both attorneys and counsel.

49. As outlined in the 2021 Joint Declaration, Section I.C.3, extensive attorney and non-testifying expert consultant coordination was required in order to identify, gather, analyze, and prepare for use the large amounts of data involved in this case. Similar work continued past November 2020.

50. Plaintiffs' non-testifying expert consultants also assisted with the extensive deposition program, summarized above. This included, for example, reviewing trading records of specific traders, breaking down the deponent's personal trading decisions versus the client orders. It also including trying to reconcile trading records coming from different sources, such as brokerage statements as opposed to CME transactional records.

51. While the Third Settlement Agreement was reached before expert reports were due, Co-Lead Counsel, Plaintiffs' non-testifying expert consultants, and Plaintiffs' potential testifying expert were all also working hard towards that eventual deadline. The groundwork was laid in earlier data-gathering efforts, but over time the projects became more and more also about turning the data into potential models, theories, and case strategies. This pre-preparation was required for many obvious reasons. Only by beginning the actual work would we have comfort we actually had the data that we would need. Indeed, in some sense in this case "expert

discovery” was ongoing throughout “fact discovery,” as we had to plot out what our data needs were in order to know what to even ask for. Also, much expert and consultant work had to be done in advance to have a chance of being ready when we expected the Court would want us to be ready. We also pushed forward with this work as part of our ongoing assessment of the merits and risks of the case. Hypothetically speaking, we would not want to only learn just before the certification deadline that the data would not show what we expected it to show.

52. All this preparation for expert discovery included extensive consideration of the ways the data could potentially be used to assist in showing conspiratorial conduct, measuring its impact, and translating that into a class-wide damages model. Trying to turn 600 million transactional records, some with over 100 fields, into a workable and persuasive model was, of course, a monumental undertaking. Complicating matters, we were also trying to line the data up across multiple sources—CME data, Defendants’ data, audio recordings, and trading records could each give a view of the events of even just one day. Even something as simple as identifying Defendants’ fixed-link trades, or recreating who did what as a result of the Fixing auction, required extensive analysis and customized algorithms. Trying to measure the impact and project that out to the other instruments in the class was yet another layer of complexity.

F. Co-Lead Counsel Secure Final Approval of the Original Settlements

53. In connection with the Original Settlements, Co-Lead Counsel spent months working with Defendants regarding their readiness and willingness to assist in the providing of notice in connection with the Original Settlements. This involved multiple group and individual conferrals. *See, e.g.*, ECF No. 489 at 15-16.

54. In December 2020, concurrently with the filing of the motion to preliminary approve the HSBC agreement, Co-Lead Counsel also filed a 16-page brief seeking preliminary approval of the plan to notify the class and the Plan of Allocation for the HSBC and Deutsche

Bank settlements. ECF No. 489. The supporting papers also included proposed long and short-form notices and the plan of allocation. *See* ECF No. 490. Co-Lead Counsel proposed therein a deadline for Defendants to finalize their preparations to assist in the giving of notice.

55. In January 2021, the Court held oral argument on the pending settlement-related motions, which Co-Lead Counsel had to prepare for and conduct.

56. Following the conference, Co-Lead Counsel prepared new versions of all the supporting materials pursuant to the Court's requests and pursuant to additional negotiations with Defendants regarding their readiness to provide assistance with the notice program. Co-Lead Counsel prepared a three-page letter, approved by the relevant Defendants, summarizing the changes that were (or were not) being made. ECF No. 512.

57. In February 2021, the Court granted the motion to preliminarily approve the proposed plans for notice and allocation of the settlement amounts. ECF No. 516.

58. Starting in March 2021, notice was given to class members pursuant to the preliminarily approved notice plan. *See, e.g.*, ECF No. 562. Co-Lead Counsel continually worked with the Settlement Administrator, such as for instance reviewing and revising the advertisements to be used, reviewing and revising the text for the settlement website, and reviewing and revising the scripts used for the automated answering system.

59. Co-Lead Counsel also worked with the Administrator in responding to class member inquiries. These inquiries covered a variety of topics.

60. For instance, certain class members inquired about additional ETFs that they believed should be allowed. Co-Lead Counsel researched each one, working with our non-testifying consultants, to determine if the proposed ETFs actually met the definition in the Plan of Allocation.

61. By way of another example, the Administrator received very large requests for additional notice packets. Co-Lead Counsel worked with the Settlement Administrator to help balance the need for fulsome notice against the additional printing and mailing costs. *See* ECF No. 562 ¶ 11.

62. In July 2021, Co-Lead Counsel filed, among other things, a 20-page memorandum in support of the motion to give final approval to the Original Settlements and almost 60 pages of declarations, plus exhibits. *See, e.g.*, ECF Nos. 561-63.

63. In August 2021, the initial deadline for the submission of claims in connection with the Original Settlements closed. Co-Lead Counsel continued work with the Settlement Administrator to process, analyze, and categorize the approximately 80,000 claims that were filed.

64. In September 2021, Co-Lead Counsel filed a 25-page omnibus reply memorandum in support of, among other things, final approval of the Original Settlements. ECF No. 587. The memorandum served as a response to the lone objection that had been filed, which went solely to the Plan of Allocation. That objection, on behalf of certain day-traders, appended several exhibits from other cases and required analysis and consultation with Plaintiffs' consultants. At the time, Co-Lead Counsel also filed numerous, lengthy proposed orders relating to the Original Settlements. *See, e.g.*, ECF Nos. 588-93. Co-Lead Counsel also filed a supplemental declaration by the Settlement Administrator, which we helped the Administrator draft. *See* ECF No. 593.

65. In October 2021, due to scheduling conflicts, the Court moved the Fairness Hearing in connection with the Original Settlements. ECF No. 594. Co-Lead Counsel worked

with the Settlement Administrator in updating the website to inform class members of the change, and confirmed to the Court we had done so. ECF No. 595.

66. Prior to the rescheduled hearing, Co-Lead Counsel informed the Court of a compromise regarding the objection to the Plan of Allocation. ECF No. 598. The Court adjourned the Fairness Hearing and requested certain further information about our intentions to notify class members of the change. ECF No. 599. Co-Lead Counsel worked with the Settlement Administrator in updating the website to inform class members of the change, and confirmed to the Court we had done so. ECF No. 600.

67. In November 2021, Co-Lead Counsel filed three related motions: (1) a 23-page memorandum in support of a request to preliminary approve the Third Settlement Agreement, ECF No. 606, along with a supporting attorney declaration; (2) a 9-page memorandum in support of a request to preliminary approve a notice plan, ECF No. 609, along with a supporting attorney declaration with approximately 100 pages in exhibits laying out, among other things, the documents to be used in the notice plan; and (3) a 9-page memorandum in support of the request to give final approval to the Original Settlements, and preliminary approval to a plan to provide notice of the proposed change to the original Plan of Allocation, ECF No. 611.

68. In December 2021, the Court rescheduled the Fairness Hearing for January 4, 2022. ECF No. 612. Co-Lead Counsel worked with the Settlement Administrator in updating the website to inform class members of the change, and confirmed to the Court we had done so. ECF No. 613.

69. On December 30, 2021, just days prior to the hearing, attorneys representing plaintiffs in another case submitted a four-page letter requesting a “carve out” to the Third Settlement Agreement. ECF No. 619. As referenced therein, Co-Lead Counsel had conferred

with the intervening counsel previously on that issue, and also had conferred with Defendants about that issue. On December 31, 2021, Co-Lead Counsel filed a three-page response, but also had to prepare for oral argument in the event it was raised at the hearing. ECF No. 620. On January 3, 2022, the Court denied the request for relief. ECF No. 621.

70. On January 4, 2021, the Court held the rescheduled Fairness Hearing regarding the Original Settlements, and at the same time heard arguments with respect to the Third Settlement Agreement. The Court requested certain changes to the proposed notice materials, including specifically extending the opt-out deadline for the Original Settlements. Less than two weeks later, Co-Lead Counsel filed a responsive letter with almost 100 pages of revised proposed materials in response to the events at the hearing. ECF No. 623.

71. On April 19, 2022, the extended deadline for requesting exclusion from the Original Settlements passed. On May 3, 2022, the parties informed the Court of the final lists of class members that had requested exclusion and submitted proposed final judgments relating to the Original Settling Defendants. ECF No. 635. The Court entered those final judgments shortly thereafter. ECF Nos. 636, 637.

72. The Plan of Allocation regarding the Original Settlement, however, remains an open issue that Co-Lead Counsel is still responsible for litigating. Co-Lead Counsel is filing a motion for final approval for the Plans of Allocation concurrently with this joint declaration.

II. THE THIRD SETTLEMENT AGREEMENT

73. After extended arm's-length negotiations, in October 2021, Plaintiffs and the Newly Settling Defendants executed the Third Settlement Agreement. ECF No. 607-1.

74. As discussed above, in November 2021 Co-Lead Counsel prepared and filed motions to preliminary approve the Third Settlement Agreement, as well as the related plans for allocating the settlement funds and notifying class members.

75. As also discussed above, those motions were heard by the Court in January 2022, after which Co-Lead Counsel filed voluminous revised materials. Shortly thereafter, the Court granted those motions. *See* ECF No. 625 (notice and allocation plans), 628 (Third Settlement Agreement).

III. CO-LEAD COUNSEL’S APPLICATION FOR AN AWARD OF ATTORNEYS’ FEES, LITIGATION EXPENSES, AND INCENTIVE AWARDS

76. Notice of the Third Settlement Agreement was published and sent to potential claimants around February 2022. The Notices each advised potential members of the Settlement Class that Co-Lead Counsel would submit a second application for an award of attorneys’ fees, in an amount not to exceed \$16,640,000 and expenses in the amount of no more than \$3,500,000; that Co-Lead Counsel would also be seeking interest on the foregoing amounts; and that Plaintiffs may request “Incentive Awards” (also known as “service awards”). Our fee and expense application is fully consistent with that Notice.

A. Co-Lead Counsel’s Fee Request as Compared to Our Significant Time In This Action

77. Co-Lead Counsel seek a fee award of \$16,640,000 of the Settlement Fund, plus interest.

78. As detailed in our concurrently filed individual declarations, through March 2022 Co-Lead Counsel have invested 119,568 hours in this Action over the course of eight years.

79. Our individual declarations also identify the attorneys and support staff who worked on the Action, their hourly rates and number of hours billed, and the lodestar value of their time.

80. Using the conservatively adjusted rate structures and making other downward adjustments as set forth in our individual declarations, this amounts to an investment of \$47,424,337 in the time of Co-Lead Counsel’s attorneys and professional support staff.

81. If granted, the requested fee would award Co-Lead Counsel a multiplier of approximately 0.945 ($\$44,840,000/\$47,424,337=0.945506$) over the lifetime of the action, taking into account both the lifetime fee requests and the lifetime lodestar.

82. As the lodestar method is intended to be merely used to ensure counsel is not getting a “windfall,” we calculated the above figures using the same conservative methodologies used in our prior application. This had a substantial impact on our calculated lodestar. If calculations were run using our rates used with clients paying by the hour, using our rates contemporaneous for the work performed, we approximate our lodestar calculation would show a “multiplier” of 0.86. And if we instead used our *current* rates projected backwards for all the work in the case, we approximate the calculation would show a “multiplier” 0.57.

83. In addition, the attorneys and staff from other firms have also performed work, at our direction, for the benefit of the Settlement Class. Co-Lead Counsel may provide payment to some other firms out of our fee awards. However, Co-Lead Counsel’s above calculations rely *entirely* on our *own* work.

84. Co-Lead Counsel took this case on a fully contingent basis. To the extent our engagements with our clients provided for a limit on our contingency rate, those agreements provided for rates higher than the effective 29.5% being requested in this action—typically 33%.

B. Co-Lead Counsel’s Request for Litigation Expenses

85. Co-Lead Counsel seek expenses in the amount of \$2,091,999.60, plus interest. This amount consists of consists of 1) \$14,398 directly incurred by Berger Montague, *see* Dell’Angelo 2022 Decl. Ex. B; 2) \$2,042,171.19 incurred by way of a common litigation fund administered by Berger Montague, *see* Dell’Angelo 2022 Decl. Ex. C; and 3) \$35,430.41 incurred directly by Quinn Emanuel, *see* Brockett 2022 Decl. Ex. C.

86. For the sake of clarity, these amounts a) were not part of our initial expense request, b) do not include amounts incurred by firms other than Co-Lead Counsel, and c) do not include amounts associated with electronic research.

87. The categorization of all expenses incurred by Co-Lead Counsel and explanations as to how they were arrived at, as well as other details, are provided in our respective concurrently filed individual declarations.

C. Requests for Incentive Awards

88. Co-Lead Counsel seek awards of \$1,500, \$3,000, or \$7,500, for twenty-seven named plaintiffs, depending on their level of participation in the litigation.

89. The importance of class-representatives to the success of this litigation cannot be underestimated. Literally without plaintiffs willing to put their name on a complaint, class action cases cannot exist. And these Plaintiffs in particular not only provided information early in the case, and reviewed and/or approved the consolidated complaints before their filing, but they made available transactional documents which were utilized in drafting the consolidated complaints. Thus, when Defendants argued about Plaintiffs' lack of antitrust standing in moving to dismiss the case, Co-Lead Counsel were able to point to two exhibits to the SAC which "specifically identifies days when manipulation occurred and matches those days when plaintiffs transacted." *See* ECF No. 82 at 37 (citing Appendices A and B of the SAC).

90. Discovery obligations were imposed on the class representatives, including the production of various documents in response to document requests. These included transactional documents and those reflecting trading strategies and articles plaintiffs may have read reflecting on the Fix. In addition, Plaintiffs were required to create, review, and verify answers to interrogatories, which included identifying those involved in, or with knowledge of, their gold

transactions. For Plaintiffs that participated in formal discovery but were not deposed, Co-Lead Counsel seek awards of \$3,000 each.³

91. Eleven Plaintiffs remained in the case through its eight-year history.⁴ For these Plaintiffs, Co-Lead Counsel request an award of \$7,500 each. They each spent significant time on this matter. This included significant time in the process of preparing for, practicing remote practices regarding, and sitting for depositions. This included review of documents and conferences with counsel to review potential areas of deposition—on such varied topics as the types of claims alleged, the Fix process mechanics, damages sought, the Plaintiffs’ motivations for trading in gold, their trading strategies, and whether they made or lost money trading in gold. The preparation was more intensive given the conditions imposed during the pandemic, and the absence of counsel in the deposition room. Their testimony was important to such areas as their adequacy for class certification and the merits, including standing, damages, and fraudulent concealment. There was no guarantee they would be able to appear live at trial, even though they were willing. Thus, their deposition testimony was crucial.

92. Three Plaintiffs were part of the case originally, but had their ETF-based claims dismissed. They thus did not participate in formal discovery, but remained willing to assist including in any eventual appeal. They also were made parties to the Third Settlement

³ The thirteen current or former Plaintiffs that fall into this category are: American Precious Metals, Ltd.; Norman Bailey; Patricia Benvenuto; Michel de Chabert-Ostland; Edward R. Derksen; Thomas Galligher; David Markun; Eric Nalven; Nando, Inc.; Albert Semrau; Richard White; and White Oak Fund LP; and Blanche McKennon. Most of these Plaintiffs were not deposed because at points during the litigation, for various reasons, they withdrew themselves from the case. Blanche McKennon was not deposed because her husband, co-Plaintiff Kelly McKennon, was.

⁴ The eleven current or former Plaintiffs that fall into this category are: Thomas Moran; Robert Marechal; KPFF Investments by its owner Ken Peters; Frank Flanagan; Kevin Maher; David Windmiller; Scott Nicholson; Compañía Minera Dayton SCM by Peter Babin; Duane Lewis; Larry Dean Lewis; and Kelly McKennon.

Agreement at the Newly Settling Defendants' insistence. For these Plaintiffs, Co-Lead Counsel seek awards of \$1,500 each.⁵

93. We also note that the class representatives invested their time and took on the risks the litigation would not succeed. Those risks were present early on in the case, and are discussed in our papers requesting final approval of the Third Settlement Agreement. In addition, as discussed by this Court in its opinion denying the motion to depose plaintiffs non-testifying experts, defendants had raised the specter of Rule 11; no matter how baseless we thought that threat was, the class representatives were exposed to it.

* * *

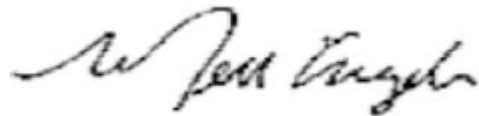
I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed June 3, 2022
New York, New York



Daniel L. Brockett

Executed June 3, 2022
New York, New York



Michael C. Dell'Angelo

⁵ The three current or former Plaintiffs that fall into this category are: Steven Summer, Santiago Gold Fund LP, and Quitman D. Fulmer.