UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SONTERRA CAPITAL MASTER FUND, LTD., RICHARD DENNIS, and FRONTPOINT EUROPEAN FUND, L.P., on behalf of themselves and all others similarly situated, Plaintiffs, -against- BARCLAYS BANK PLC, COOPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A., DEUTSCHE BANK AG, LLOYDS BANKING GROUP PLC, THE ROYAL BANK OF SCOTLAND PLC, UBS AG, JOHN DOE NOS. 1-50, and BARCLAYS CAPITAL, INC., Defendants.	Docket No. 15-cv-3538 (VSB)

MEMORANDUM OF LAW
IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT WITH DEUTSCHE BANK AG

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INTRODUCTION

Pursuant to the Court's opinion and order preliminarily approving the class action settlement (the "Settlement") in this Action (ECF Nos. 266, 268) (the "Preliminary Approval Orders") and FED. R. CIV. P. 23, Representative Plaintiffs[1] respectfully submit this memorandum of law in support of their motion seeking final approval of their proposed Settlement with Deutsche Bank AG ("Deutsche Bank"),[2] final certification of the Settlement Class in connection with this Settlement, and approval to apply the proposed Distribution Plan to the Settlement. If finally approved, this Settlement will recover a non-reversionary all-cash payment of $5,000,000 for the benefit of the Class and, as an "ice breaker," may facilitate future settlements with the remaining non-settling Defendants in this Action.

After the Court's entry of the Preliminary Approval Orders, Plaintiffs' Counsel and the settlement administrator, A.B. Data, Ltd. ("Settlement Administrator") implemented the approved notice plan to apprise potential Class Members of their rights and options under the Settlement. The Class Notice plan, filed as Exhibit 2 to the July 2022 Joint Decl. (ECF No. 262-2), included (1) direct mailing of the Class Notice to potential Class Members; (2) a media plan that involved distributing a summary form of notice through print publications, an internet and social media notice campaign, and a press release; (3) creation of a Settlement website to provide key dates, documents and information to potential Class Members; and (4) a toll-free telephone number and interactive voice response system to accommodate inquiries from potential Class Members. The present motion is being filed before the deadline to object or opt out of the Settlement. To date,

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[1] "Representative Plaintiffs" or "Plaintiffs" are Richard Dennis and Fund Liquidation Holdings LLC. Unless noted, ECF citations are to the docket in this Action and internal citations and quotation marks are omitted.

[2] The Stipulation and Agreement of Settlement as to Deutsche Bank (the "Settlement Agreement") is attached to the Joint Declaration of Vincent Briganti and Christopher Lovell previously filed in this Action on July 29, 2022 ("July 2022 Joint Decl."). *See* ECF No. 262-1. Unless otherwise defined, capitalized terms in this memorandum of law have the same meaning as in the Settlement Agreement.

there are no objections to the Settlement and Plaintiffs' Counsel's request for attorneys' fees and expenses, and one opt-out request(s).

Consistent with the Class Notice, Plaintiffs' Counsel's request an attorneys' fee award of one-third of the Settlement Fund and reimbursement of $375,536.24 in expenses. *See* Joint Declaration of Vincent Briganti and Christopher Lovell dated October 5, 2023 ("October 2023 Joint Decl."), ¶ 7. Should there be any objections filed to any aspect of the Settlement, Representative Plaintiffs will separately address them in accordance with the schedule set by the Court in the Preliminary Approval Orders. Nevertheless, the lack of objections and opt-out requests to date demonstrates the Class's favorable reaction to the Settlement and provides sufficient additional validation in support of the Settlement's final approval.

For the same reasons detailed in Representative Plaintiffs' brief in support of their motion for preliminary approval of the Settlement (*see* ECF No. 261) and as discussed below, the Settlement is fair, reasonable, and fully satisfies the requirements for final approval under FED. R. CIV. P. 23. The Settlement is procedurally fair, as Representative Plaintiffs and Plaintiffs' Counsel are adequate representatives for the Settlement Class, and the Settlement resulted from hard-fought arm's length negotiations with Deutsche Bank. The terms of the Settlement are substantively fair, providing considerable relief to eligible Class Members in the form of a $5,000,000 cash Settlement Fund, and valuable cooperation to allow Plaintiffs' Counsel to continue to litigate on behalf of the Class against the remaining non-settling Defendants.

When the Court preliminarily approved the Settlement, it found that it would likely be able to finally approve the Settlement and certify the Settlement Class. The evidence in support of the Court's preliminary determination has only strengthened following notice to the Class of the Settlement. As described herein, the Settlement is in the best interest of the Class. Representative

Plaintiffs respectfully request that the Court grant final approval of the Settlement, approve the application of the Distribution Plan to the Settlement, finally certify the Settlement Class, and enter Final Judgment dismissing the claims against Deutsche Bank with prejudice on the merits, in the form of the proposed order and judgment filed herewith.

ARGUMENT

I. THE SETTLEMENT MEETS THE REQUIREMENTS FOR FINAL APPROVAL UNDER RULE 23(e)(2)

A. The Final Approval Standard

Public policy favors the resolution of class actions through settlement. *Bano v. Union Carbide Corp.*, 273 F.3d 120, 129-30 (2d Cir. 2001); *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 455 (S.D.N.Y. 2004) ("*Global Crossing*") (noting that courts favor settlement, especially in complex disputes).

Under Rule 23, the Court may approve the settlement upon a showing that the settlement is "fair, reasonable, and adequate . . . ." FED. R. CIV. P. 23(e)(2) (2018). In deciding motions for final approval, courts assess the negotiations that lead to the settlement and the substantive terms of the settlement. *Flores v. CGI Inc.*, No. 22-cv-350 (KHP), 2022 WL 13804077, at *3 (S.D.N.Y. Oct. 21, 2022); *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 343 F. Supp. 3d 394, 408 (S.D.N.Y. 2018), *aff'd sub nom. In re Facebook, Inc.*, 822 F. App'x 40 (2d Cir. 2020) ("*Facebook*"). Rule 23 sets out the factors that guide the Court's analysis, with the factors in Rule 23(e)(2)(A) and (B) focusing on procedural fairness and those in Rule 23(e)(2)(C) and (D) focusing on substantive fairness. The factors in Rule 23(e) complement the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), which courts in this Circuit have long used to assess the fairness of a class settlement. *See, e.g.*, *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 381-84 (S.D.N.Y. 2013).

B. The Settlement Is Procedurally Fair

To assess procedural fairness, Rule 23(e)(2) requires the Court to find that "the class representatives and class counsel have adequately represented the class [and] the proposal was negotiated at arm's length." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000), *aff'd sub nom.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). Those criteria have been satisfied.

1. The Class has been adequately represented

Adequate representation under Rule 23(e)(2)(A) (and 23(a)(4))[3] requires that plaintiffs "demonstrate that: (1) the class representatives do not have conflicting interests with other class members; and (2) class counsel is qualified, experienced and generally able to conduct the litigation." *Flores*, 2022 WL 13804077, at *4. This is met when the class representative's interests are not antagonistic to those of the class and their chosen counsel is qualified, experienced, and able to conduct the litigation. *See Soler v. Fresh Direct, LLC*, No. 20-cv-3431 (AT), 2023 WL 2492977, at *3 (S.D.N.Y. Mar. 14, 2023); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 106–07 (2d Cir. 2005) ("*Wal-Mart*") (adequate representation is established "by showing an alignment of interests between class members, not by proving vigorous pursuit of that claim.").

Representative Plaintiffs' interests are aligned with those of the Settlement Class since all suffered injuries due to transacting in a non-competitive Sterling LIBOR-Based Derivatives market during the Class Period, and all seek to obtain the largest possible monetary recovery due to Deutsche Bank's alleged manipulation of Sterling LIBOR and the prices of Sterling LIBOR-

[3] Courts analyze the adequacy of representation requirement of Rule 23(e)(2)(A) using the same considerations for representative adequacy under Rule 23(a)(4). *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 30, n.25 (E.D.N.Y. 2019) *("Payment* Card") ("This adequate representation factor [under Rule 23(e)(2)(A)] is nearly identical to the Rule 23(a)(4) prerequisite of adequate representation in the class certification context. As a result, the Court looks to Rule 23(a)(4) case law to guide its assessment of this factor."); *see also In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 701 (S.D.N.Y. 2019) ("*GSE Bonds*").

Based Derivatives. The impact of Defendants' alleged misconduct would have been felt market wide, causing members of the Class, including Representative Plaintiffs, to pay more or receive less for their Sterling LIBOR-Based Derivatives transactions than they would have in a competitive marketplace. Further, there are no conflicting interests among Representative Plaintiffs and the Settlement Class that would impede Representative Plaintiffs' ability to act in the best interest of the Class. *See Wal-Mart*, 396 F.3d at 110–11 (class representatives are adequate if their injuries encompass those of the class they seek to represent); *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1175 (JG)(VVP), 2014 WL 7882100, at *34 (E.D.N.Y. Oct. 15, 2014) ("Even if there was a conflict [relating to the assignment of recovery rights] (and there is not), it would under no conceivable circumstances be so 'fundamental'" to cause class representatives to be inadequate), *report and recommendation adopted*, 2015 WL 5093503 (E.D.N.Y. Jul. 10, 2015).

Plaintiffs' Counsel has diligently represented the Class by, *inter alia*: (i) conducting a thorough prefiling investigation; (ii) drafting the initial and amended complaints; (iii) opposing Defendants' motions to dismiss; (iv) appealing the dismissal of the Action; (v) negotiating the proposed Settlement; and (vi) developing the proposed Distribution Plan. Plaintiffs' Counsel were well informed about the strengths and weaknesses of the claims and defenses presented in this Action. Both before and during settlement negotiations with Deutsche Bank, Plaintiffs' Counsel analyzed the documents and information obtained throughout the course of Plaintiffs' Counsel's extensive investigation, including: (i) government settlements involving Defendants and the U.S. Commodity Futures Trading Commission, U.S. Department of Justice, and the U.K. Financial Services Authority as they may relate to Sterling LIBOR, or other benchmarks; (ii) publicly available information relating to the conduct alleged in Representative Plaintiffs' complaints; (iii)

expert and industry research regarding Sterling LIBOR and Sterling LIBOR-Based Derivatives; and (iv) prior decisions of this Court and others deciding similar issues. *See, e.g.*, October 2023 Joint Decl. ¶¶ 15-16. At the time of the Settlement, Plaintiffs' Counsel had developed a "comprehensive understanding of the key legal and factual issues in the litigation and . . . had a clear view of the strengths and weaknesses of their case and of the range of possible outcomes at trial." *City of Providence v. Aeropostale, Inc.*, No. 11-cv-7132 (CM)(GWG), 2014 WL 1883494, at *7 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

In addition, Plaintiffs' Counsel brought to the case significant experience and qualifications to this prosecution. They serve as lead, co-lead, or additional plaintiffs' counsel in at least eight class actions (including this one) bringing antitrust and/or Commodity Exchange Act claims against financial institutions for the manipulation of global benchmark interest rates. *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (GBD) (S.D.N.Y), and *Sonterra Capital Master Fund, Ltd. v. UBS AG*, No. 15-cv-5844 (GBD) (S.D.N.Y.) (involving the London Interbank Offered Rate ("LIBOR") for Japanese Yen ("Yen-LIBOR") and the Tokyo Interbank Offered Rate ("Euroyen TIBOR")); *Sullivan v. Barclays plc,* No. 13-cv-2811 (PKC) (S.D.N.Y.) (involving the Euro Interbank Offered Rate ("Euribor")); *Dennis, et al. v. JPMorgan Chase & Co., et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) (involving the Australian Bank Bill Swap Rate ("BBSW")); *Fund Liquidation Holdings LLC, et al. v. Citibank, N.A., et al.*, No. 16-cv-05263 (AKH) (S.D.N.Y.) (involving the Singapore Interbank Offered Rate ("SIBOR") and the Singapore Swap Offer Rate ("SOR")); *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-00871 (SHS) (S.D.N.Y.) (involving Swiss franc LIBOR); *In re LIBOR-Based Financial*

Instruments Antitrust Litigation, No. 11-md-2262 (NRB) (S.D.N.Y.) (involving Eurodollar futures contracts and options ("USD LIBOR")). *See* October 2023 Joint Decl. ¶ 34.

In the Euroyen, Euribor, BBSW, SIBOR/SOR, Swiss franc and USD LIBOR litigations, Plaintiffs' Counsel have obtained substantial court-approved settlements totaling more than $1,457,000,000 and have achieved an additional settlement pending final approval in the Euribor case. *See*, *e.g.*, *Sullivan v. Barclays plc*, No. 13-cv-2811 (PKC) (S.D.N.Y.) ECF Nos. 424, 498, 548, 564; *Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419 (S.D.N.Y.), ECF Nos. 720, 838, 891, 1013-14, 1101-03; *Dennis et al. v. JPMorgan Chase & Co. et al.*, No. 16-cv-06496 (LAK) (S.D.N.Y.) ECF Nos. 603, 605, 612-15, 617-18; *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-00871 (SHS) (S.D.N.Y.), ECF Nos. 159, 426, 428-29, 440, 457; *see also* Declaration of Vincent Briganti in support of Plaintiffs' Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses dated October 5, 2023 ("Briganti Fee Decl."), Ex. A; Declaration of Benjamin Jaccarino in support of Plaintiffs' Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses dated October 5, 2023, Ex. A (Plaintiffs' Counsel's firm resumes) filed concurrently herewith. Plaintiffs' Counsel's extensive class action, antitrust, CEA and benchmark manipulation litigation experience provides further compelling evidence that the Settlement is procedurally fair. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 122 (S.D.N.Y. 2009) ("*Currency Conversion*") (noting the "extensive" experience of counsel in granting final approval of settlement), *aff'd sub nom. Priceline.com, Inc. v. Silberman*, 405 F. App'x 532 (2d Cir. 2010); *Shapiro v. JPMorgan Chase & Co.*, Nos. 11-cv-8331 (CM)(MHD), 11-cv-7961 (CM), 2014 WL 1224666, at *2 (S.D.N.Y. Mar. 24, 2014) (giving "great weight" to experienced class counsel's opinion that the settlement was fair).

2. The Settlement is the product of arm's length negotiations

A strong presumption of procedural fairness "attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations, and great weight is accorded to counsel's recommendation." *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-cv-07192 (CM), 2019 WL 6889901, at *6 (S.D.N.Y. Dec. 18, 2019); *see also* FED. R. CIV. P. 23(e)(2)(B) (courts must consider whether the settlement "was negotiated at arm's length"). That presumption applies here, as the Settlement was negotiated between knowledgeable counsel on both sides. Deutsche Bank was represented by one of the top law firms in the country, and their attorneys have decades of experience litigating complex class actions. This Settlement involved lengthy negotiations in which the Parties discussed their views of the factual and legal issues in the case. The Settlement took nearly seven months to negotiate, and the Parties took nearly three months to finalize the terms of the Settlement Agreement. October 2023 Joint Decl. ¶¶ 10, 37-39, 41. The result was an "ice breaker" settlement that provides for a payment of $5,000,000, plus substantial cooperation that will assist in the prosecution of the claims against the non-settling Defendants. These long, hard-fought negotiations indicate that the Settlement is procedurally fair. *See, e.g.*, *Romero v. La Revise Assocs.*, 58 F. Supp. 3d 411, 420 (S.D.N.Y. 2014) (applying the presumption of procedural fairness because the parties engaged in months of negotiations); *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 133 (S.D.N.Y. 2008) (finding procedural fairness when the settlement "was the result of lengthy negotiations between Plaintiffs' Lead counsel and Defendants' counsel over several months" and counsel for both sides were experienced in complex securities litigation).

Plaintiffs' Counsel brought their considerable prior experience in complex class action litigation involving antitrust and CEA claims and benchmark manipulation (among others) to bear for the benefit of the Class. Their extensive work during the Action allowed them to develop a deep understanding of the strengths and weaknesses of Representative Plaintiffs' claims and

undertake extensive arm's-length negotiations with Deutsche Bank. October 2023 Joint Decl. ¶¶ 11-16; 34-42. Based on Plaintiffs' Counsel's significant investment of work and resources into the Action, the posture of the case, and the excellent result for Settlement Class, the Settlement is entitled to a presumption of procedural fairness.

C. The Settlement Is Substantively Fair

Under Rule 23(e), the substantive fairness of a settlement is assessed by considering whether "the relief provided for the class is adequate," in light of "(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified" under FED. R. CIV. P. 23(e)(2)(C). The Court is also required to confirm that the Settlement "treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). In the Second Circuit, courts also consider the factors provided in *Grinnell,* 495 F.2d at 463, which overlap with the consideration of Rule 23(e)(2)(C)-(D). *See Payment Card*, 330 F.R.D. at 29. Both the Rule 23(e)(2)(C)-(D) and *Grinnell* factors support approval of the Settlement.[4]

If the Settlement is finally approved, $5,000,000 will be recovered from Deutsche Bank on behalf of the Settlement Class. Representative Plaintiffs successfully negotiated with Deutsche Bank that the Settlement Amount will **not** revert, regardless of how many Class Members submit

[4] The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *See Grinnell*, 495 F.2d at 463.

proofs of claim. *See* Settlement Agreement § 3. Because claim rates typically fall below 100%, the non-reversion term will enhance Authorized Claimants' recovery.[5]

Under the Settlement Agreement, Deutsche Bank provided cooperation that has been used to facilitate the issuance of notice. Additionally, Deutsche Bank will provide cooperation that can be used to further validate the Distribution Plan (should Plaintiffs' Counsel consider it necessary) and inform Representative Plaintiffs' litigation strategy against the non-settling Defendants should the Action be remanded to this Court. In exchange, Deutsche Bank will receive a release from claims based on the alleged manipulation of Sterling LIBOR-Based Derivatives, and the Action will be dismissed with respect to Deutsche Bank with prejudice. As described below, the Settlement reflects all of the characteristics of a substantively fair and reasonable agreement.

1. The costs, risks, and delay of trial and appeal favor the Settlement

To determine whether a settlement provides adequate relief to the class, the Court must evaluate "the costs, risks, and delay of trial and appeal," FED. R. CIV. P. 23(e)(2)(C)(i), "to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." *Payment Card*, 330 F.R.D. at 36. Satisfying this factor "implicates several *Grinnell* factors, including: (i) the complexity, expense, and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial." *Id.* Relatedly, to assess whether the recovery is within the range of reasonableness, courts weigh the relief against the strength of the plaintiff's case, including the likelihood of recovery at trial. *See Grinnell*, 495 F.2d at 463.

[5] *See Guerrero v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2014 WL 1365462, at *2 (N.D. Cal. Apr. 7, 2014) (finding the lack of reversion of remaining portions of the net settlement an important benefit to the class); *see also Cunningham v. Suds Pizza, Inc.*, 290 F. Supp. 3d 214, 221 (W.D.N.Y. 2017) (describing negative impact of a reversion clause on the monetary value of the settlement to the class).

Representative Plaintiffs faced significant litigation risks, which were increased by the complex nature of the alleged manipulation of Sterling LIBOR-Based Derivatives. The factual and legal issues in this Action are complex and expensive to litigate. *See GSE Bonds*, 414 F. Supp. 3d at 693 (recognizing the complexity of federal antitrust claims); *Park v. The Thomson Corp.*, No. 05-cv-2931 (WHP), 2008 WL 4684232, at *3 (S.D.N.Y. Oct. 22, 2008) (same); *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) ("The case involves claims of commodity price manipulation in violation of the CEA. Such claims have been notoriously difficult to prove . . . ."). This Action alleged manipulative and collusive conduct between and among at least six institutions over a six-year time period. Deutsche Bank (and the other Defendants) fiercely challenged the sufficiency of Representative Plaintiffs' allegations. October 2023 Joint Decl. ¶¶ 21, 26; ECF Nos. 66, 68, 100, 103, 120-21. The numerous arguments raised by Defendants provides clear evidence of the complexity of this case.

Plaintiffs' Counsel anticipate discovery will be lengthy and costly if this Action proceeds. The duration of the Action will depend in part on the time that Defendants require to produce documents, the time required to review Defendants' and non-party productions, and the time required to use those documents to depose witnesses, conduct expert analyses, and prepare for trial.

Conducting discovery in this Action will require the collection and analysis of at least six years of documents and data to understand the impact of Defendants' alleged manipulation of Sterling LIBOR and Sterling LIBOR-Based Derivatives and to develop a sophisticated damages model. Relevant transactional data and documents, including chat room transcripts involving industry jargon, will have to be deciphered and contextualized, and Representative Plaintiffs would need to prove the meaning and significance of instant messages, trading patterns, and other facts

to prove their claims. Defendants would undertake discovery with the aim of refuting or weakening Representative Plaintiffs' evidence of collusion and market manipulation. *See GSE Bonds*, 414 F. Supp. 3d at 694 ("Given that [ ] defendants contend that they can present a strong case against plaintiffs after discovery, there is no guarantee that plaintiffs will be able to prove liability.").

Representative Plaintiffs (and the remaining non-settling Defendants) will likely engage experts to provide econometric and industry analysis, adding to the cost and duration of the case. *See Facebook*, 343 F. Supp. 3d at 410 (experts "increase both the cost and duration of litigation"). Expert discovery will lead to *Daubert* motions, increasing the litigation costs and risks, and delaying any resolution. The proposed Settlement exchanges the immense cost and time associated with discovery with negotiated cooperation, allowing Representative Plaintiffs to focus their resources against the remaining non-settling Defendants.

Certifying a litigation class may raise complex legal and factual issues given the financial products and markets involved. *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 327 F.R.D. 483, 494 (S.D.N.Y. 2018) (stating that "the certainty of maintaining a class action is by no means guaranteed" and noting that maintaining the action as a class requires proving the 16-bank conspiracy that was alleged); *Currency Conversion*, 263 F.R.D. at 123 ("the complexity of Plaintiffs' claims *ipso facto* creates uncertainty"). While Representative Plaintiffs are confident the Court will certify a litigation class should the Action continue, such motion will be vigorously opposed by the remaining non-settling Defendants. *See GSE Bonds*, 414 F. Supp. 3d at 694 (the risk of maintaining a class through trial "weighs in favor of settlement where it is likely that defendants would oppose class certification if the case were to be litigated"). The losing party would likely seek interlocutory review, extending the timeline of the litigation. *See In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 986 F. Supp. 2d 207, 222 n.13 (E.D.N.Y.

2013) ("twenty months elapsed between the order certifying the class and the Second Circuit's divided opinion affirming [the *Wal-Mart*] decision").

Deutsche Bank almost certainly would have pursued extensive pre-trial motions, including summary judgment and motions *in limine*. Upon overcoming these motions, Representative Plaintiffs would still bear the risk of establishing liability at trial and proving actual damages. *See Bolivar v. FIT Int'l Grp. Corp.*, No. 12-cv-781 (PGG)(DCF), 2019 WL 4565067, at *1 (S.D.N.Y. Sept. 20, 2019) ("Plaintiffs [ ] bear the burden of establishing their claimed damages to a reasonable certainty"). There is a substantial risk that a jury might accept Deutsche Bank's damages arguments and award nothing or less than the $5,000,000 that, if approved, would be available to the Settlement Class. Even if Representative Plaintiffs were to prevail at trial, "post-trial motions and the potential for appeal could prevent the class members from obtaining any recovery for several years if at all." *See GSE Bonds*, 414 F. Supp. 3d at 693. These and other risks[6] weigh in favor of finally approving the Settlement.

2. The *Grinnell* factors not addressed above also support approval

a. The reaction of the Settlement Class to the Settlement

Grinnell requires the Court to consider "the reaction of the class to the settlement." *Grinnell*, 495 F.2d at 463. In accordance with the Preliminary Approval Orders, the Class Notice plan has been carried out as described in the Declaration of Jack Ewashko on behalf of A.B. Data, Ltd. Regarding Notice Administration ("Ewashko Decl."), ¶¶ 4-24. To provide additional information for Class Members to evaluate the Settlement, we have filed this motion in advance of the deadline for objecting and may supplement this argument to address any objections.

[6] Plaintiffs' Counsel must be wary in describing in detail its risks in the event any Settlement is not approved. *See In re Prudential Secs. Inc. Ltd. P'ships Litig.*, No. M-21-67 (MP), 1995 WL 798907, at *15 (S.D.N.Y. Nov. 20, 1995) (Pollack, J.) (where non-settling defendants are present, class counsel appropriately omitted detailed discussion of all risks to recovery, the reasons for such risks, and their relative seriousness).

It is understood that the class's reaction to the settlement is "perhaps the most significant factor to be weighed in considering its adequacy." *See Facebook*, 343 F. Supp. 3d at 410. Further, the "absence of objections by the class is extraordinarily positive and weighs in favor of settlement." *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 431 (S.D.N.Y. 2016).

As of this filing, there have been no objections and one opt-out request to the Settlement, while 8,001 Notice Packets have been sent to Class Members. *See* Ewashko Decl. ¶¶ 13, 27, 29. Representative Plaintiffs have approved the Settlement, and their reaction is highly probative of the likely reaction of other Class Members upon reviewing the Settlement. Representative Plaintiffs are sophisticated investors with the financial expertise to assess the benefits of the Settlement. Thus, the lack of objections (and opt-outs) to date is a strong indication of support.

b. The stage of the proceedings

"[C]ourts encourage early settlement of class actions . . . because early settlement allows class members to recover without unnecessary delay and allows the judicial system to focus resources elsewhere." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 474-75 (S.D.N.Y. 2013). The relevant inquiry, therefore, is "whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." The parties to a settlement are not required to complete discovery for the Court to approve the settlement. *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176 (finding that it is enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to intelligently make . . . an appraisal of the Settlement.").

Plaintiffs' Counsel drew on a wealth of experience, independent investigation and research, expert resources, and information gained during numerous confidential settlement negotiations with Deutsche Bank to assess the Settlement's fairness—far exceeding the standard of "whether

the parties had adequate information about their claims." *Global Crossing*, 225 F.R.D. at 458; October 2023 Joint Decl. ¶¶ 34-36, 38. Plaintiffs' Counsel's well-informed views of the Settlement's merits weigh strongly in favor of its approval.

c. The ability of Deutsche Bank to withstand greater judgment

While Deutsche Bank likely can withstand a greater judgment, this *Grinnell* factor alone does impact approval. *Global Crossing*, 225 F.R.D. at 460 ("[T]he fact that a defendant is able to pay more than it offers in settlement does not, standing alone, indicate that the settlement is unreasonable or inadequate"); *In re Tronox Inc.*, No. 14-cv-5495 (KBF), 2014 WL 5825308, at *6 (S.D.N.Y. Nov. 10, 2014) ("The law does not require a defendant to completely empty its pockets before a settlement may be approved–indeed, if it did, it is hard to imagine why a defendant would ever settle a case."). This factor alone is not enough to contradict the fairness and reasonableness of this Settlement. *See D'Amato*, 236 F.3d at 86 (noting the District Court's acknowledgement that defendants could withstand a higher judgment, but finding that this factor did not suggest that the settlement was unfair where other *Grinnell* factors weighed heavily in favor of settlement); *In re Vitamin C Antitrust Litig.*, No. 06-md-1738 (BMC)(JO), 2012 WL 5289514, at *6 (E.D.N.Y. Oct. 23, 2012) (stating that "in any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and, against the weight of the remaining factors, this fact alone does not undermine the reasonableness of the instant settlement.").

d. The Settlement is reasonable in light of the risks and potential range of recovery

The reasonableness factor weighs the settlement relief against the case's strength, including the likelihood of recovery at trial. The relevant inquiry for the Court regarding reasonableness is not whether the Settlement represents the best possible recovery, but rather how it relates to the strengths and weakness of plaintiffs' claims and the continued litigation risks. *Shapiro v.*

JPMorgan Chase & Co., Nos. 11-cv-8331 (CM)(MHD), 11-cv-7961 (CM), 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014).

The $5,000,000 Settlement provides an excellent recovery for the Settlement Class. *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 195 (S.D.N.Y. 2012) (stating "recommendations of experienced counsel are entitled to great weight" in evaluating a proposed class action settlement because they are "most closely acquainted with the facts of the underlying litigation"), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013). This is without accounting for the cooperation received from Deutsche Bank to allow Representative Plaintiffs to effectuate notice, and future cooperation that will be provided to help validate the Distribution Plan (if needed) and continue to litigate the Action against the remaining non-settling Defendants.

Aside from the instant recovery, because the Action is an antitrust matter, liability is joint and several and each Class Member may recover his or her full loss from any defendant who has participated in the alleged conspiracy to manipulate Sterling LIBOR and Sterling LIBOR-Based Derivatives. *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 169 F.R.D. 493, 519 (S.D.N.Y. 1996) (stating that each Class Member has an interest in establishing the liability of each Defendant as liability for antitrust violations is joint and several and thus, each class member may recover the full loss from any defendant who can be shown to have participated in the alleged conspiracy); *see also New York v. Hendrickson Bros.*, 840 F.2d 1065, 1086 (2d Cir. 1988) (holding that an amount recovered by a plaintiff from a co-conspirator in settlement of antitrust claims is not deductible from the amount of damages determined by the jury). Accordingly, the Settlement preserves the potential that Class Members may ultimately be fully compensated for their loss should the litigation continue against non-settling Defendants.

The Settlement's value is also enhanced in that it serves as an "ice-breaker" and may facilitate future settlements in the Action. *See GSE Bonds*, 414 F. Supp. 3d at 697 ("[Deutsche Bank] has offered cooperation which has added significant value to its settlement agreement . . . . DB also added 'significant value' by being a settlement 'ice-breaker,' or first party to settle, potentially helping to spur other parties to settlement.").

Had the Action continued against Deutsche Bank, Representative Plaintiffs would have to navigate the risks posed by, among others, jurisdictional and merits-based defenses, Defendants' inevitable challenges to the certification of a litigation class, and counterarguments disputing Representative Plaintiffs' proposed damages methodology arising from their claim that Defendants' alleged manipulation of Sterling LIBOR affected the prices of Sterling LIBOR-Based Derivatives. The Settlement provides a tremendous recovery to the Settlement Class as an alternative to the uncertainty created by these and other risks present in the Action. In light of the value provided, the Settlement amply satisfies the *Grinnell* factors.

3. The Distribution Plan satisfies Rule 23(e)(2)(C)(ii)

Pursuant to Rule 23, "[t]o warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized—namely, it must be fair and adequate." *Payment Card*, 330 F.R.D. at 40. "[I]n determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel." *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011).

Representative Plaintiffs propose the same Distribution Plan that the Court preliminarily approved. *See* ECF Nos. 266, 268. Plaintiffs' Counsel consulted with experts to develop the proposed Distribution Plan, which is structured to be efficient to administer and simple for Class Members, encouraging participation. *See* William B. Rubenstein, 4 NEWBERG ON CLASS ACTIONS § 13:53 (6th ed. 2022) ("the goal of any distribution method is to get as much of the available

damages remedy to class members as possible and in as simple and expedient a manner as possible"). This distribution method is similar to plans approved in other cases. *See, e.g.*, Distribution Plan, *Fund Liquidation Holdings LLC et al. v. Citibank, N.A. et al.*, No. 16-cv-5263 (S.D.N.Y. May 13, 2022), ECF No. 473-11; Final Approval Orders of Class Action Settlements, *Fund Liquidation Holdings LLC et al. v. Citibank, N.A. et al.*, No. 16-cv-5263 (S.D.N.Y. June 9, 2022), ECF Nos. 555-56, 558, 561, 563. 566. 570; Distribution Plan, *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-00871 (S.D.N.Y. June 29, 2022), ECF No. 384-7; Final Approval Orders of Class Action Settlement, *Sonterra Capital Master Fund Ltd., et al. v. Credit Suisse Group AG, et al.*, No. 15-cv-00871 (S.D.N.Y.) (Sept. 28, 2023), ECF Nos. 501, 503, 504-05, 508; Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Mar. 30, 2018), ECF No. 602-1; Plan of Distribution, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. Sept. 28, 2018), ECF No. 681-1; Final Judgments and Orders of Dismissal at ¶ 16, *Alaska Elec. Pension Fund, et. al., v. Bank of Am., N.A., et. al.*, No. 14-cv-7126 (S.D.N.Y. June 1, 2018), ECF Nos. 648-57 (approving plan of distribution as fair, reasonable, and adequate); Distribution Plan, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 25, 2020), ECF No. 451-5; Final Approval Order, *In re London Silver Fixing, Ltd. Antitrust Litig.,* Nos. 14-md-2573, 14-mc-2573 (S.D.N.Y. June 15, 2021), ECF No. 536 (approving plan of distribution). Accordingly, the Distribution Plan should be approved for use with the Settlement.

The Distribution Plan calculates a score (the "Transaction Claim Amount") that represents an estimate of the impact of Defendants' alleged market manipulation on the payment streams for Sterling LIBOR-Based Derivatives eligible Class Members transacted during the Class Period. *See* ECF No. 262-7 at ¶¶ 6-31. The Distribution Plan allocates the Net Settlement Fund on a *pro rata*

basis based on each claimant's Transaction Claim Amount. Authorized Claimants whose expected distribution based on their *pro rata* fraction is less than the costs of administering the Claim will instead receive a Minimum Payment Amount in an amount to be determined after the Claim Forms are reviewed, calibrated to ensure that a minimal portion of the Net Settlement Fund is reallocated towards the Minimum Payment Amounts. October 2023 Joint Decl. ¶ 48.

The Settlement Administrator will scrutinize the claims submitted by the Class to ensure that the claims are valid and reflect accurate information. *See* ECF No. 262-6 (Proof of Claim and Release), at 5-6, 10. The Settlement Administrator has the right to and will request additional information to verify any claims where necessary. *Id.* This type of work is performed both by automated screens and human intervention to ensure, to the best of the Settlement Administrator's ability, that only those Class Members who have been harmed by Deutsche Bank's alleged misconduct will receive proceeds from the Net Settlement Fund.

The Distribution Plan satisfies Rule 23(e)(2)(C)(ii). It is a fair and adequate allocation of the Net Settlement Fund that ensures that the Settlement does not favor or disfavor any Class Members, create any limitations, or exclude from payment any persons within the Class.

4. The requested attorneys' fees and other awards are limited to ensure that the Settlement Class receives adequate relief

Plaintiffs' Counsel are seeking attorneys' fees of $1,666,666.66, one-third of the total Settlement Fund, which may be paid upon final approval. October 2023 Joint Decl. ¶ 23; *see In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987). As more fully described in Plaintiffs' Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Expenses, this fee request is comparable to the fees awarded in other cases of similar size and complexity. In addition to attorneys' fees, Plaintiffs' Counsel are seeking $375,536.24 as reimbursement for litigation costs and expenses. *See In re GSE Bonds Antitrust Litig.*, No. 19-cv-1704 (JSR), 2020

WL 3250593, at *6 (S.D.N.Y. June 16, 2020) (reasonable expenses may be reimbursed from the settlement); *In re Arakis Energy Corp. Sec. Litig.*, No. 95-cv-3421 (ARR), 2001 WL 1590512, at *17 n. 12 (E.D.N.Y. Oct.31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course.").

Other Courts in this District have routinely awarded similar or larger fee percentages in cases of similar size and complexity. *See, e.g.*, Order Awarding Attorneys' Fees at 2, *In re JPMorgan Treasury Futures Spoofing Litig.*, 20-cv-3515 (PAE) (S.D.N.Y. June 3, 2022), ECF No. 96 (approving attorneys' fees of one-third of $15.7 million settlement); *Maley v. Del Glob. Techs. Corp.,* 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (approving attorneys' fees of 33.3% of $11.5 million settlement fund); *Velez v. Novartis Pharms. Corp.*, No. 04-cv-09194 (CM), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) ("District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater." (collecting cases)); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) ("[I]t is very common to see 33% contingency fees in cases with funds of less than $10 million"); *see also* Order Awarding Attorneys' Fees at 2, *Boutchard, et al. v. Gandhi, et al.*, 18-cv-7041 (JJT) (N.D. Ill. Jul. 30, 2021), ECF No. 154 (approving attorneys' fees of 33% of $15 million settlement). Further, Plaintiffs' Counsel will continue to face substantial risks. Absent a successful trial to verdict and/or another settlement in this Action, Plaintiffs' Counsel is not entitled to any further payments. Consequently, Plaintiffs' Counsel will continue to experience a growing lodestar that it must absorb in its entirety. The impact of an award of attorneys' fees on the relief for the Class is therefore reasonable.

5. There are no agreements that impact the adequacy of the Settlement

Rule 23(e)(3) requires that "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, the Settlement Agreement

specifically identifies the other agreement that relates to the Settlement, namely, the Supplemental Agreement. *See* Settlement Agreement, § 23. The Supplemental Agreement provides Deutsche Bank a qualified right to terminate the Settlement Agreement under certain circumstances before final approval. *Id.* This type of agreement is standard in complex class action settlements and does not impact the fairness of the Settlement.[7] *See Mikhlin v. Oasmia Pharm. AB*, No. 19-cv-4349 (NGG)(RER), 2021 WL 1259559, at *7-8 (E.D.N.Y. Jan. 6, 2021) (holding that "the general contours of the supplemental agreement are not incompatible with class members' receipt of adequate relief" because "in the event that Defendants' termination right is activated, and that Defendants exercise such right, Plaintiffs would be still be in a position to pursue relief through litigation").

6. The Settlement treats the Settlement Class equitably

The Settlement also "treat class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(D). The Distribution Plan provides for a *pro rata* distribution of the Net Settlement Fund. *See, e.g., In re Namenda Direct Purchaser Antitrust Litig.*, 462 F. Supp. 3d 307, 316 (S.D.N.Y. 2020) (stating that courts uniformly approve *pro rata* distribution of funds among class members as equitable). All Class Members would release Deutsche Bank for claims based on the same factual predicate of this Action. The proposed Class Notice provides information on how to opt out of the Settlement; absent opting out, each Class Member will be bound by the release. Because

[7] These types of qualified rights to terminate are generally included based on the defendant's desire to quiet the litigation through a class-wide settlement, without leaving open any material exposure. *See, e.g., In re 3D Sys. Sec. Litig.*, No. 21-cv-1920 (NGG)(TAM), 2023 WL 4621716, at *8 (E.D.N.Y. July 19, 2023) (describing mechanics of supplemental agreement and defendants' termination option); *accord Christine Asia Co. v. Yun Ma*, No. 15-MD-2631 (CM)(SDA), 2019 WL 5257534, at *15 (S.D.N.Y. Oct. 16, 2019) (stating that this type of agreement is standard in class action settlements and "has no negative impact on the fairness of the Settlement."); MANUAL FOR COMPLEX LITIGATION (FOURTH) § 21.631 (2004) (noting that opt-out agreements may warrant confidential treatment and explaining that "[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out.").

the Settlement's release and the Distribution Plan do not include any improper intra-class preferences or prejudice, the Court should find that the Settlement satisfies this factor.

II. THE SETTLEMENT CLASS SATISFIES ALL REQUIREMENTS OF RULE 23

For all of the reasons detailed in the Preliminary Approval Motion and as held in the Court's Preliminary Approval Orders, the Settlement Class satisfies all requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy—as well as the predominance and superiority requirements of Rule 23(b)(3). The preliminarily certified Settlement Class should therefore be granted final certification for settlement purposes.[8]

There are at least hundreds, if not thousands, of geographically dispersed persons and entities that fall within the Settlement Class. *See* ECF No. 262 ¶ 19. The Settlement Administrator mailed 7,842 Notice Packets between August 22, 2023 and September 20, 2023 and 8,001 overall in connection with the Settlement. Ewashko Decl. ¶¶ 11-13. Commonality is easily satisfied here where Representative Plaintiffs and all Settlement Class members transacted Sterling LIBOR-Based Derivatives and were injured by the alleged manipulation of Sterling LIBOR. There are numerous common questions of law and fact, including which Defendants conspired to manipulate Sterling LIBOR and what was the impact of the manipulation of Sterling LIBOR, whose answers would be common to the claims of each Plaintiff and Settlement Class Member and developed from the same body of common class-wide proof. *See, e.g.*, ECF No. 261, at 20.

Representative Plaintiffs' claims are typical of those of the entire Settlement Class because Representative Plaintiffs' and Class members' claims all arise from the same course of conduct involving Defendants' alleged manipulation of Sterling LIBOR and Sterling LIBOR-Based

[8] Deutsche Bank has consented to certification of the Settlement Class solely for the purpose of the Settlement and without prejudice to any position each may take with respect to class certification in any other action or in the event that the Settlement is terminated. *See* Settlement Agreement § 22.

Derivatives. Further, the named Plaintiffs in this action are adequate representatives because they share the same overriding interest in obtaining the largest financial recovery possible. *See* Argument I.B *supra*. In addition, Plaintiffs' Counsel are highly experienced attorneys who have litigated these and other complex class actions, including numerous other benchmark manipulation cases, for decades. *Id.*

Lastly, as required by Rule 23(b)(3), common questions predominate, and a class action is the superior method for resolving this case. Predominance exists because common questions, such as whether Defendants engaged in the alleged false reporting to the Sterling LIBOR panel and manipulation of Sterling LIBOR and the prices of Sterling LIBOR-Based Derivatives (and the corresponding artificial values that resulted), and other forms of generalized proof will determine the outcome of this litigation rather than individualized proof issues. A class action is superior because Settlement Class members have no substantial interest in proceeding individually in this case, given the complexity and expense of the litigation.

III. THE APPROVED CLASS NOTICE WAS ADEQUATE AND SATISFIED DUE PROCESS

Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the [settlement]." FED. R. CIV. P. 23(e)(1). The standard for adequacy of the notice to the class is reasonableness. FED. R. CIV. P. 23(c)(2)(B) (for actions certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must 'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart*, 396 F.3d at 114.

The Settlement Class Members here have received adequate notice and have been given sufficient opportunity to weigh in on or exclude themselves from the Settlement.

The Class Notice plan has been fully implemented by Settlement Administrator. *See generally* Ewashko Decl. A.B. Data has produced and mailed 8,001 copies of the Notice Packet to potential Class Members including: (i) Deutsche Bank's known counterparties that transacted in Sterling LIBOR-Based Derivatives; (ii) the Settlement Administrator's proprietary list of banks, brokers, and other investors; and (iii) executives at hedge funds, investment banks, traders, and real-estate companies. *See* Ewashko Decl. ¶¶ 5-13 (describing direct mail portion of notice plan). In addition, Deutsche Bank has sent notice via third party agents to 580 potential Class Members. *See* Declaration of Declaration of Ajmal Choudry on behalf of Deutsche Bank.

The Settlement Administrator caused the publication notice to be published in *The Wall Street Journal* and *Financial Times*, and banner ads were placed on websites including Investing.com, LATimes.com, WSJ.com, reuters.com, NewYorkTimes.com, and finance.yahoo.com, among others. The Settlement Administrator also disseminated a news release via PR Newswire's US Newsline distribution list announcing the Settlement, which was distributed to the news desks of approximately 5,000 general media (print and broadcast) outlets, and approximately 4,500 digital websites, online databases, and internet networks across the United States. *See* Ewashko Decl. ¶¶ 14-19. The Settlement Administrator continues to maintain a Settlement Website (www.sterlingliborsettlement.com), where class members can review and obtain: (i) the Settlement Agreement; (ii) the full-length mail, postcard, and publication notices; (iii) Court orders and key pleadings; (iv) the Distribution Plan; and (v) a Proof of Claim and Release form. *Id.* ¶ 20. The Settlement Administrator will operate a toll-free telephone number and is available to answer Class Members' questions and facilitate claims filing. *Id.* ¶ 23.

The Supreme Court has consistently found that mailed notice satisfies the requirements of due process. *See, e.g.*, *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 319 (1950). Class Members that do not receive the Class Notice via direct mail likely will receive notice via the publications or word of mouth. The mailed notice, postcard notice, and publication notice are written in clear and concise language, and reasonably conveyed the necessary information to the average class member. *See Wal-Mart*, 396 F.3d at 114. The Class Notice plan's use of mailed, published and online notice easily satisfies the Rule 23(c)(2)(B) factors and due process. *See In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 WL 2731524, at *5 (S.D.N.Y. Apr. 26, 2016) (notice adequate where counsel mailed notice to the identified Class members, published the summary notice, and launched a settlement website which posted key relevant information); *see also*, Final Approval Order of Class Action Settlement, *Fund Liquidation Holdings LLC, et al. v. Citibank, N.A., et al.*, No. 16-cv-05263 (AKH) (S.D.N.Y. Nov. 29, 2022), ECF Nos. 555-56, 558, 561, 563, 566, (Dec. 1, 2022), ECF No. 570 (holding similar notice plan met requirements of Rule 23 and due process); *Sullivan v. Barclays plc,* No. 13-cv-2811 (PKC) (S.D.N.Y. Nov. 15, 2022), ECF No. 548 (same).

The Court should find that the Class Notice plan as implemented was reasonable and satisfied due process.

CONCLUSION

For the foregoing reasons, Representative Plaintiffs respectfully request that the Court: (i) grant Final Approval of the Settlement; (ii) certify the Settlement Class; (iii) approve the Distribution Plan for use with this Settlement; and (iv) overrule any objections that are received. A Proposed Final Approval Order and Proposed Final Judgement and Order of Dismissal have been filed herewith.

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Respectfully submitted,

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