UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE JPMORGAN PRECIOUS METALS SPOOFING LITIGATION	Case No.: 1:18-cv-10356
THIS DOCUMENT RELATES TO: ALL ACTIONS	Hon. Gregory H. Woods

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

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Lowey Dannenberg, P.C. ("Class Counsel") prosecuted the Action[1] on behalf of Class Plaintiffs[2] and negotiated the Settlement with JPMorgan that, if approved, will create a Settlement Fund of $60,000,000 for the benefit of the Settlement Class. Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, Class Counsel respectfully submit this motion for an award of one-third of the Settlement Fund ($20,000,000) as attorneys' fees, and payment of $400,078.86 in litigation costs and expenses, plus interest at the same rate as earned by the Settlement Fund. The requested awards are based on the high quality and effective representation provided to Class Plaintiffs and the Settlement Class and are supported by Plaintiffs' Counsel's[3] expenses and time incurred in litigating this Action from inception (November 2018) through March 31, 2022.[4] The eleven Class Plaintiffs also seek $110,000 as Incentive Awards for their service in the Action.

INTRODUCTION

Class Counsel shouldered considerable litigation risk in bringing this Action. Only a handful of private Commodity Exchange Act ("CEA") manipulation class actions have been pursued based on alleged spoofing in commodity futures markets. When the Action commenced in November 2018, the spoofing case law was (and remains) in its infancy.

Despite this uncertainty, Class Counsel invested considerable time and resources to investigate JPMorgan's alleged misconduct and develop the factual and legal arguments to support

[1] Unless otherwise defined herein, all capitalized terms, have the same meaning as set out in the Stipulation and Agreements of Settlement with JPMorgan (ECF No. 79-1) ("Agreement" or "Settlement Agreement"). Unless otherwise noted, internal citations are omitted, and emphasis is added.

[2] "Class Plaintiffs" are Dominick Cognata, Melissinos Trading, LLC, Casey Sterk, Kevin Maher, Kenneth Ryan, Robert Charles Class A, L.P., Robert L. Teel, Mark Serri, Yuri Alishaev, Abraham Jeremias, and Morris Jeremias.

[3] "Plaintiffs' Counsel" means Class Counsel, together with Girard Sharp LLP ("Girard Sharp"), Scott+Scott Attorneys at Law LLP ("Scott+Scott"), Hausfeld LLP ("Hausfeld"), Robins Kaplan LLP ("Robins Kaplan"), Weiss Law LLP ("Weiss Law"), and Nussbaum Law Group, P.C. ("Nussbaum"). Girard Sharp, Scott+Scott, Hausfeld, Robins Kaplan, Weiss Law, and Nussbaum are collectively referred herein as "Supporting Counsel."

[4] In light of the Settlement with JPMorgan, Supporting Counsel submitted time and expenses through December 20, 2021, when the Settlement was preliminarily approved. In addition, Class Counsel submitted their time through March 31, 2022, and its expenses through May 5, 2022.

Class Plaintiffs' claims. These efforts began shortly after Defendant John Edmonds ("Edmonds"), a former JPMorgan precious metals trader, was charged and pled guilty to, among other things, commodities price manipulation and spoofing.[5] Immediately after the unsealing of the charges and the plea in November 2018, Class Counsel worked to understand the scope of the alleged manipulation of the Precious Metals Futures market, including the characteristics of the market that could make it susceptible to manipulation and the techniques that could be used to move the market. Class Counsel analyzed their client's Precious Metals Futures data and quickly advanced their investigation. One day after the unsealing of Edmonds' plea, Class Counsel filed the first complaint against JPMorgan and Edmonds on behalf of Plaintiff Dominick Cognata. Subsequently, other plaintiffs filed similar actions concerning these same allegations, and on February 5, 2019, the Court consolidated all related cases. *See* ECF Nos. 18, 34.

On February 21, 2019, the U.S. Department of Justice ("DOJ") intervened in the case and requested a stay of the action in light of ongoing related criminal prosecutions, which the Court granted. While the case was stayed, Class Counsel, assisted by Supporting Counsel, continued to investigate the Precious Metals Futures market and work with their experts to analyze the impact of JPMorgan's alleged spoofing and develop arguments that would be used once the stay was lifted. This work and preparation in anticipation of the end of the stay inured to the Settlement Class' benefit when, just over a year after the Court stayed this action, Class Plaintiffs and JPMorgan began discussing the possibility of a settlement. Based on the information Class Counsel had developed, they were well prepared to advocate and achieve this exceptional Settlement for Class Plaintiffs and the Settlement Class.

[5] Plea Agreement and Findings and Recommendations, *U.S. v. Edmonds*, No. 18 CR 239, (D. Conn. Oct. 9, 2018), ECF Nos. 7-8.

The success of the settlement negotiations is directly attributable to the high-quality efforts of Class Counsel, with the assistance of Supporting Counsel, to build a case that would succeed despite the still-developing case law involving spoofing manipulation. The Settlement is even more significant given that, for some Class Members, it likely provides an additional source of recovery beyond the victim compensation payment amount ("VCPA") established in connection with the DOJ and USAOC's Deferred Prosecution Agreement (the "DPA"). To Class Counsel's knowledge, this Settlement is one of only a few private class action settlements in CEA spoofing cases.

As further described herein, the efforts of Class Counsel and the result secured for the Settlement Class support an award of one-third of the Settlement Fund. The fee percentage is objectively fair and reasonable based on Plaintiffs' Counsel's investment of time and resources, the complexity of the litigation, the risks Class Counsel assumed, and the quality of the representation. The fee request is within the range of reasonableness when compared to awards granted in similarly complex class actions and is consistent with public policy. In addition, the lodestar cross-check further confirms that the requested award is not a windfall. Plaintiffs' Counsel's litigation costs and expenses, as described herein and in the declarations of Plaintiffs' Counsel,[6] were reasonably incurred to advance this litigation and should be awarded as well. Finally, in light of their involvement and cooperation in this case, the eleven Class Plaintiffs ask for Incentive Awards totaling $110,000, to be shared among them equally.

[6] Plaintiffs' Counsel have submitted declarations that reflect each firm's respective expenses and lodestar calculations based on current billing rates for contingent (and if applicable non-contingent) matters. *See* Declaration of Vincent Briganti, dated May 6, 2022, on behalf of Lowey Dannenberg, P.C. in Support of Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Expenses ("Briganti Fee Decl."); Declaration of Daryl F. Scott, dated May 6, 2022 ("Scott Decl.") (on behalf of Scott+Scott); Declaration of Timothy S. Kearns, dated May 6, 2022 ("Kearns Decl.") (on behalf of Hausfeld); Declaration of Kellie Lerner, dated May 6, 2022 ("Lerner Decl.") (on behalf of Robins Kaplan); Declaration of Daniel C. Girard, dated May 6, 2022 ("Girard Decl.") (on behalf of Girard Sharp); Declaration of Mark D. Smilow, dated May 4, 2022 ("Smilow Decl.") (on behalf of Weiss Law); Declaration of Linda P. Nussbaum, dated May 6, 2022 ("Nussbaum Decl.") (on behalf of Nussbaum).

ARGUMENT

I. THE ATTORNEYS' FEE REQUEST IS FAIR AND REASONABLE

In common fund cases, the lawyers that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019).

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

Class Counsel seek a fee of one-third of the $60,000,000 Settlement Fund, or $20,000,000, to be allocated among Plaintiffs' Counsel in proportion to their contributions to the case. *See In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987) (recognizing class counsel may distribute a fee award in "some relationship to the services rendered"). Given the speedy resolution achieved in this Action, the percentage of the fund method is particularly appropriate for evaluating the fee request and, under that framework, the one-third fee request is reasonable.

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

Courts evaluating whether a fee is "reasonable" must consider: "(1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement;

and (6) public policy considerations." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

1. Plaintiffs' Counsel Invested Substantial Time, Labor, and Resources

Plaintiffs' Counsel have devoted 9,440 hours of attorney and staff time since the inception of the case to prosecute this Action on behalf of Class Plaintiffs and the Settlement Class. *See* Briganti Fee Decl.; Girard Decl.; Scott Decl.; Kearns Decl.; Lerner Decl.; Smilow Decl.; Nussbaum Decl. This time does not include any time associated with preparing this motion. Class Counsel contributed the majority of those hours (5,615.85 hours). Briganti Fee Decl. ¶¶ 9-10. Below is a summary of the work performed and the resources devoted to prosecuting this Action.

a. Initial Investigation and Pre-Filing Work

On November 6, 2018, the United States District Court for the District of Connecticut unsealed the guilty plea by Edmonds to one count of conspiracy to defraud the market and manipulate the prices of NYMEX and COMEX precious metals futures contracts and one count of commodities fraud. Class Counsel immediately launched an investigation into this manipulative trading and the impact that it had on the firm's clients—including Plaintiff Dominick Cognata ("Cognata"), who was heavily engaged in trading Precious Metals Futures during the time of JPMorgan's alleged manipulation. Class Counsel analyzed Cognata's Precious Metals Futures and Options on Precious Metals Futures transactions and identified trades occurring on the same day of the spoofing activity identified by the DOJ in the plea agreement.

b. The Initial Complaint and Efforts During the Stay

As a result of Class Counsel's investigation, Cognata filed the initial complaint against JPMorgan, Edmonds and "John Doe Nos. 1-10" on November 7, 2018 alleging that JPMorgan violated the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq*. ("CEA"), and common law by

intentionally manipulating the prices of Precious Metals Futures and Options on Precious Metals Futures during the Class Period.[7] ECF No. 1.

Plaintiff Cognata alleged that JPMorgan intentionally manipulated the prices of Precious Metals Futures and Options on Precious Metals Futures through a technique called "spoofing," which is the intentional placing of orders with the intent to cancel prior to execution to send false and illegitimate supply and demand signals to an otherwise efficient market. Plaintiff Cognata alleged that JPMorgan's spoofing practices caused Precious Metals Futures and Options on Precious Metals Futures prices to be artificial throughout the Class Period to benefit JPMorgan's trading positions financially, at the expense of other investors.

Supporting Counsel prepared and filed related actions in this District. On February 5, 2019, all actions were consolidated into this action, and Lowey was appointed as interim lead class counsel. *See* ECF Nos. 18, 34.

On February 21, 2019, the DOJ intervened and moved to stay this Action due to the ongoing criminal investigation against JPMorgan, which relief the Court granted and subsequently extended through December 15, 2021. *See* ECF Nos. 26, 29, 36, 40, 43, 55, 63, 70, 71.

During the pendency of the stay, Class Counsel, assisted by Supporting Counsel, continued their thorough investigation of the underlying allegations and claims in this Action by analyzing (1) the Precious Metals Futures markets, generally; (2) publicly available press releases, news articles, and other media reports related to regulatory and law enforcement investigations into Precious Metals Futures manipulation; (3) publicly available documents concerning JPMorgan's business practices, formal regulatory investigations and enforcement proceedings, including by the DOJ and Commodity Futures Trading Commission ("CFTC"); (4) JPMorgan's Securities and

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[7] The initial proposed class period was January 1, 2009 through December 31, 2015. ECF No. 1 ¶ 1. The Class Period under the Settlement is from March 1, 2008 through August 31, 2016.

Exchange Commission filings and other public reports; and (5) consulted with experts and market participants about the foregoing.

Class Counsel worked closely with Cognata to understand his experience in the Precious Metals Futures market at this time of the alleged manipulation. In anticipation of filing a consolidated amended complaint and addressing class certification and damages issues that would arise in the case, Class Counsel also engaged economic consultants to assist in their examination of Defendants' alleged manipulation and to develop a proprietary model to identify instances of spoofing in the CME Order Book data and determine Class Members' damages. The damages model initially relied on publicly available information including approximately 3.8 billion records of Precious Metal Futures transactions from CME Order Book data and certain assumptions Class Counsel and Plaintiffs' economic experts developed during their investigation.

c. JPMorgan Settlement Negotiations

While the stay was pending, in March 2020 Class Plaintiffs and JPMorgan discussed the possibility of settlement. *See* Declaration of Vincent Briganti in Support of (A) Class Plaintiffs' Motion for Final Approval of Class Action Settlement With Defendant JPMorgan Chase & Co.; (B) Class Counsel's Motion for an Award of Attorneys' Fees and Payment of Litigation Expenses, dated May 6, 2022 ("Briganti Decl.") at ¶ 25. The Parties agreed to mediate and in May 2020 selected a respected and experienced mediator, the Honorable Diane M. Welsh (Ret.). *Id.* ¶ 26. Prior to the mediation, Class Counsel negotiated the production of certain Mediation Information by JPMorgan, which included Precious Metals Futures or Options on Precious Metals Futures trade data for JPMorgan's orders and transactions, totaling approximately 1.7 GB (containing 7.5 million lines) of data, for the full duration of the Class Period. The Mediation Information was produced to Class Plaintiffs in August 2020. *Id.* ¶ 27.

Upon receiving the Mediation Information, the data was screened and analyzed to determine the total number of alleged spoofing events and the impact of those events on the Precious Metals Futures and Options on Precious Metals Futures markets. With the Mediation Information and while working closely with consulting experts, Class Counsel identified thousands of instances of JPMorgan's alleged manipulation throughout the Class Period. Class Counsel and their experts developed a damage model that calculated the number and impact of the alleged manipulative events on the Precious Metals Futures and Options on Precious Metals Futures. Briganti Decl. ¶ 29. Based on the analysis, Class Counsel concluded that likely thousands of market participants had been harmed by JPMorgan's alleged spoofing, resulting in a preliminary class-wide damages estimate of $915 million, assuming Class Plaintiffs prevailed in full on all issues. *Id*. ¶ 33.

Around the same time, on September 29, 2020, JPMorgan entered into the DPA with the DOJ Criminal Division, Fraud Section, and the United States Attorney's Office for the District of Connecticut ("USAOC") to resolve criminal charges, including wire fraud charges relating to a scheme to defraud market participants in thousands of episodes of unlawful trading in the Precious Metals Futures market between at least April 2008 and January 2016.[8] The CFTC also issued an order (the "CFTC Order") finding JPMorgan engaged in manipulative and deceptive conduct and spoofing that spanned at least 2008 through 2016 and involved thousands of spoof orders in Precious Metals futures and Options on Precious Metals futures contracts traded on the COMEX and NYMEX.[9] Plaintiffs' Counsel analyzed the admitted facts in detail, combining the findings

[8] Deferred Prosecution Agreement, *U.S. v. JPMorgan Chase & Co.*, No. 20-cr-00175 (D. Conn. Sep. 29, 2020), ECF No. 11; *see also* Information, *U.S. v. JPMorgan Chase & Co.*, No. 20-cr-00175 (D. Conn. Sep. 29, 2020) (the "Information"), ECF No. 1.

[9] Order Instituting Proceedings Pursuant to Section 6(c) and (d) of the Commodity Exchange Act, Making Findings, and Imposing Remedial Sanctions, *In the Matter of JPMorgan Chase & Co., JPMorgan Chase Bank, N.A., and J.P.*

from regulators with information they had already developed in collaboration with their experts to understand the impact of JPMorgan's manipulation.

Using the information developed by their experts and from their ongoing investigation, Class Counsel prepared and exchanged a detailed mediation statement with Judge Welsh and JPMorgan on November 17, 2021, and prepared a comprehensive presentation for the mediation. Briganti Decl. ¶ 30.

On November 23, 2020 and December 9, 2020, the Parties participated in day-long Zoom mediation sessions with Judge Welsh that included robust presentations of the Parties' respective litigation risks—including the existence and import of the government settlements—and presentations of each Party's damages analysis, followed by questions and critiques from the opposing Party. During the mediation and settlement negotiations, JPMorgan vigorously contested Plaintiffs' damages theory and methodology. JPMorgan believed that the VCPA was well above the maximum damages suffered by the Class and presented a counter damages methodology to show that the Class was not entitled to any further monetary relief from JPMorgan. These mediation sessions concluded with the Parties unable to reach a settlement. The Parties continued their negotiations through Judge Welsh. On February 19, 2021, Judge Welsh presented the Parties with a mediator's proposal for a $60 million settlement that also included further exchange of Mediation Information. Each Party accepted the proposal. *Id.* ¶ 31.

After accepting Judge Welsh's proposal, Class Counsel and JPMorgan negotiated the provisions for a binding settlement term sheet ("Term Sheet"). Briganti Decl. ¶ 32. After several weeks of negotiations, the Parties executed the Term Sheet on May 20, 2021. As memorialized by the Term Sheet, JPMorgan produced additional Mediation Information, including 170,330

Morgan Securities LLC, Commodity Futures Trading Commission, No. 20-69 (Sept. 29, 2020), *available at*: https://www.cftc.gov/media/4826/enfjpmorganchaseorder092920/download.

documents consisting of 2,621,654 pages and at least 100,000 e-mails and Bloomberg chats that occurred throughout the relevant time period. *Id.*, ¶ 32. Plaintiffs' Counsel analyzed the additional Mediation Information for several months, to verify relevant representations made during settlement negotiation and to confirm that the proposed settlement amount was reasonably supported. *Id.*, ¶ 32-33.

While reviewing the Mediation Information, Class Counsel and JPMorgan continued to negotiate the terms of the Settlement Agreement. After Plaintiffs' Counsel completed their review of the Mediation Information, and after agreement had been reached on key settlement provisions, the Parties executed the Settlement Agreement on September 1, 2021. *Id.*, ¶¶ 33-36. Assisted by Supporting Counsel, Class Counsel then prepared the motion for preliminary approval of the Settlement, which they filed on November 19, 2021. *Id.*, ¶ 40.

On November 22, 2021, the Court held a telephonic conference concerning Class Plaintiffs' motion for Preliminary Approval of Class Action Settlement. *Id.*, ¶ 41. The Court ordered Class Counsel to submit additional briefing concerning the Court's jurisdiction over absent class members and the Court's authority to issue a bar order, as well as amendments to the preliminary approval order and distribution plan, discovery from potential objections, and documents from Class Members who may seek to opt out. Class Counsel, after conducting additional research and consulting with their experts and the Settlement Administrator, prepared a Letter containing Class Plaintiffs' Supplemental Submission that addressed each of the issues raised by the Court, which was filed on December 17, 2021. ECF No. 90. *Id.*, ¶ 42.

After the Settlement was preliminarily approved, Class Counsel coordinated with the Settlement Administrator, A.B. Data, to implement the approved Class Notice plan and respond to

inquiries from potential Class Members regarding the Settlement. Once the Class Notice plan was implemented, Class Counsel then prepared Class Plaintiffs' motion for final approval.[10]

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

2. The Magnitude and Complexity of the Action

A greater fee award is warranted for counsel prosecuting complex class action cases. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award."); *see also In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("*NASDAQ III*") ("[C]lass actions have a well deserved reputation as being most complex"). Complex cases require a greater level of investment, in terms of effort, expertise, and resources, by counsel to competently litigate the claims and issues at stake on behalf of plaintiffs and the class. Litigation involving commodity futures markets is regarded as challenging because the issues that can arise are often technical and complex. *See*, *e.g.*, *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 395 (S.D.N.Y. 1999) (detailing the "immense task undertaken and the complexity" of the commodities futures litigation brought under the CEA); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 356 (1982) (commodity futures markets are "esoteric"); *Arenson v. Bd. of Trade of City of Chi.*, 372 F. Supp. 1349, 1352 (N.D. Ill. 1974) ("It would be difficult to imagine litigation presenting issues of greater subtlety and complexity" than those involving commodity futures markets). This class action is among the most challenging, and such complexity supports a one-third fee award.

[10] Class Counsel's fee declarations do not include any time spent in April and May 2022 preparing the motion for final approval.

To successfully prosecute Class Plaintiffs' claims, Class Counsel needed to build upon their extensive experience in the complex commodities futures market that JPMorgan allegedly manipulated, as well as in the various cutting-edge algorithmic trading strategies that traders used to manipulate the market. Class Plaintiffs' allegations concerned thousands of instances of manipulation by JPMorgan traders that caused the prices of Precious Metals Futures and Options on Precious Metals Futures to be artificial. In cases requiring similar expertise, courts have acknowledged that commodities class actions present complex legal and factual issues. *See*, *e.g.*, *In re Sumitomo Copper Litig*., 74 F. Supp. 2d at 395 ("[p]etitioners undertook this complex and difficult litigation on a contingent fee basis …, in circumstances of high risks and almost overwhelming magnitude and complexity," in that claims under the CEA "have been notoriously difficult to prove, [and] this case was initially greeted with widespread skepticism in the financial community"); *In re London Silver Fixing, Ltd. Antitrust Litig*., No. 14-MD-02573 (VEC), 2021 WL 3159810, at *1 (S.D.N.Y. June 15, 2021) (noting that "the Action involves numerous complex factual and legal issues and was actively litigated and, in the absence of a settlement, would have involved lengthy proceedings with uncertain resolution of the numerous complex factual and legal issues"); *see also In re GSE Bonds Antitrust Litig.*, No. 19 Civ. 1704 (JSR), 2020 WL 3250593, at *4 (S.D.N.Y. June 16, 2020) (finding "complexity [is] present [where] plaintiffs claimed that the defendants colluded in the GSE Bond market over more than seven years, involving thousands of bond issuances, and implicating sixteen defendants").

To prosecute the Action, Plaintiffs' Counsel developed a deep understanding of the complex Precious Metals Futures market through a substantial investigation, including consultations with industry insiders and assistance in the form of expert analysis. To advance the litigation, Plaintiffs' Counsel engaged experts to prepare detailed analyses of Precious Metals

Futures and Options on Precious Metals Futures, creating sophisticated damages models, and reviewing years of available documents and data in the process. Briganti Decl. ¶¶ 7, 19, 28-29, 33. Plaintiffs' Counsel collaborated with their experts to evaluate very large futures and options data sets and other information to identify the effects of Defendants' alleged manipulation and the market-wide damages. *Id*.

The complexities described above provide a sufficient basis to support a fee award of one-third. Additionally, had the Action continued beyond the pleadings, significant fact and expert discovery would have been involved. *See Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 Civ. 2207(JGK), 2010 WL 3119374, at *6 (S.D.N.Y. Aug. 6, 2010) (describing the work undertaken by class counsel in a "complicated and difficult class action" that involved "significant discovery [and] complicated statistical analysis"). Moreover, JPMorgan is represented by high quality, sophisticated counsel with significant resources at their disposal, and class and merits issues would have been hotly contested. *See In re Gen. Motors LLC Ignition Switch Litig*. No. 14-MD-2543 (JMF), 2020 WL 7481292, at *2 (S.D.N.Y. Dec. 18, 2020) (litigating against sophisticated opposing counsel with a well-funded defendant are "the hallmarks of a challenging case."). But for this Settlement, the case would have grown not only in complexity but in its magnitude as well, which supports the reasonableness of a one-third fee award.

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

Courts in the Second Circuit have described assessing "risk of the litigation" as "perhaps the foremost factor to be considered in determining" a reasonable fee award. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009); *see also In re AOL Time Warner, Inc. Sec. and "ERISA" Litig.*, No. 02 Civ. 5575 (SWK), MDL 1500, 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 25, 2006) (the judiciary's focus is on "fashioning a fee" that encourages

lawyers to "undertake future risks for the public good"). The risk of undertaking litigation is "measured as of when the case is filed." *Goldberger*, 209 F.3d at 55.

Class Counsel took this case on a fully contingent basis and invested considerable time, money, and resources to advance the Action. *See City of Providence v. Aeropostale, Inc.*, No. 11 Civ. 7132, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award."). This risk was more significant because Class Plaintiffs sued a global financial institution represented by a highly regarded and sophisticated international law firm that has the resources to litigate for years at the trial and appellate levels. *See Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015) (noting "substantial risk" where counsel bore the "risk of defeat").

As described in the Final Approval Mem. and the Briganti Decl., Class Plaintiffs faced significant *ex ante* litigation risks in proving liability, class-wide impact, and damages. *See In re Platinum and Palladium Commodities Litig.*, No. 10 Civ. 3617 (WHP), 2014 WL 3500655, at *12 (S.D.N.Y. July 15, 2014) ("[I]n any market manipulation or antitrust case, [p]laintiffs face significant challenges in establishing liability and damages."). At all times during the litigation, Class Plaintiffs faced uncertainty in their ability to establish JPMorgan's liability related to the alleged spoofing of Precious Metals Futures and Options on Precious Metals Futures on the NYMEX and COMEX. Briganti Decl. ¶¶ 25, 30, 52. When the Action commenced, private CEA class actions related to spoofing were (and still are) relatively novel. As a result, the dearth of case law clearly outlining the viability and scope of actions, such as this one, increased the risk of non-recovery. Had the Action continued, Class Counsel would first have to demonstrate that Class Plaintiffs stated a claim for relief under the CEA, a hurdle that, in at least one other instance, was

not overcome. *See, e.g.*, *In re Merrill, BofA, & Morgan Stanley Spoofing Litig.*, No. 19 Civ. 6002 (LJL), 2021 WL 827190 (S.D.N.Y. Mar. 4, 2021) (dismissing CEA spoofing claims pursuant to Rule 12(b)(6)), *appeal docketed,* No. 21-853 (2d Cir. April 2, 2021).

Had Class Plaintiffs' claims moved passed the pleadings stage, the risks would only increase. At class certification, Class Counsel would have to demonstrate, supported by expert testimony, that JPMorgan's manipulation of the Precious Metals Futures market caused a class-wide impact, and the impact of such harm can be determined on a common formulaic basis. JPMorgan would likely counter Class Plaintiffs' arguments with expert opinions of its own, further heightening the uncertainty of certifying a class in this Action.

If Class Plaintiffs were to prevail on certifying a litigation class, they would still need to prove liability and actual damages at trial. A successful *Daubert* challenge or effective cross-examination at trial could result in a significantly reduced verdict even if Class Plaintiffs proved liability. Even where regulators or law enforcement agencies have secured a guilty plea, civil juries have found no damages. *See, e.g.*, Special Verdict on Indirect Purchases, *In re TFT-LCD (Flat Panel) Antitrust Litig*., No. 07 MDL 01827 (N.D. Cal. Sept. 3, 2013), ECF No. 8562. Thus, the one-third fee request is appropriate given the enormous risks Class Counsel undertook to litigate the Action on behalf of the Class Plaintiffs.

4. Class Counsel Provided High-Quality Representation

"[T]he quality of representation is [also] best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). Class Counsel's efforts led directly to the $60,000,000 recovery for the Class. Based on the damages analysis performed by Class Plaintiffs' experts, the Settlement represents approximately 6.6% of recoverable class wide damages, without considering any potential

restitution award available from the DOJ. *See* Briganti Decl. ¶ 30. Collectively, the Settlement and the portion of the VCPA attributable to Precious Metals Futures and Options on Precious Metals Futures represent approximately 28.4% of estimated class wide damages caused by JPMorgan. *Id*. ¶¶ 4, 21, 30. The Settlement provides certain recovery for the Settlement Class generally and augments the recovery any Class Member may have received from the VCPA. The value of the Settlement secured from JPMorgan cannot be understated given the caliber of defense counsel in this Action. *See Meredith Corp.*, 87 F. Supp. 3d at 670 (noting that counsel's achievement in "obtaining valuable recompense . . . for its clients is particularly noteworthy given the caliber and vigor of its adversaries"); *NASDAQ III*, 187 F.R.D. at 488 (approving attorneys' fee award where defendants were represented by "the nation's biggest and most highly regarded defense law firms").

The Settlement Class includes institutional investors, such as Class Plaintiffs, with the sophistication and resources to object to the Settlement or opt out to pursue their own claims. While the deadline to object or opt out has not yet passed, it is notable that, so far, not a single Class Member has objected, and only one Class Member has opted out of the Settlement. *See* Ewashko Decl. ¶¶ 24, 26. The lack of objections and the submission of only one exclusion request is a sign of the Settlement Class's approval of the Settlement and a further indication of Class Counsel's skillful prosecution of this Action.[11]

Class Counsel's decades of experience prosecuting class action cases, including some of the largest class action recoveries under the commodities and antitrust laws, was a critical component of achieving successful settlement results with JPMorgan. The skill and quality of

[11] Should any objections be received, Class Counsel will address them in their reply papers, due on July 1, 2022.

Class Counsel's representation in this Action further support their requested one-third attorneys' fee award.

5. Class Counsel's Fee Request is on Par with Awards Granted in Similarly Complex Litigation

Comparable cases serve as guideposts against which a court may determine whether a fee request is reasonable. *Grice*, 363 F. Supp. 3d at 406. For settlements involving the most complex claims, including antitrust, securities, and commodity class actions, as is the case here, courts in this district routinely grant fee requests above 30%. *See, e.g., Velez v. Novartis Pharms. Corp*., No. 04 Civ. 09194 (CM), 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (noting that fees in complex class actions case can range up to "50 percent of the gross settlement benefit"); *In re Warner Commc'n. Secs Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985) (same).

Consistent with the authorities cited above, one-third fee awards have been granted in numerous complex class actions in this District where the settlement amount has been under $75 million. *See, e.g., In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-CV-2548 (VSB), 2019 WL 4734396, at *2 (S.D.N.Y. Sept. 23, 2019) (awarding one-third fee from $75 million settlement fund); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 146 (S.D.N.Y. 2010) (awarding 33.33% of the $35 million gross settlement fund as attorneys' fees); Order, *In re Perrigo Company PLC Securities Litig.*, No. 19-cv-70 (DLC) (S.D.N.Y. Feb. 18, 2022), ECF No. 331 (awarding one-third fee from $31.9 million settlement); *In re Deutsche Bank AG Sec. Litig*., No. 1:09-CV-01714 (GHW), 2020 WL 3162980, at *1 (S.D.N.Y. June 11, 2020) (awarding one-third fee from $18.5 million settlement); Order, *Skiadas v. Acer Therapeutics Inc. et al.*, No. 1:19-cv-06137 (GHW), (S.D.N.Y. Jan. 7, 2022), ECF No. 136 (awarding one-third fee from $8.35 million settlement).[12]

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[12] *See also* Order Awarding Attorney's Fees, at 2, *In re London Silver Fixing, Ltd. Antitrust Litig.*, Nos. 14-MD-02573, 14-MC-02573 (S.D.N.Y. Jun. 15, 2021), ECF No. 534 (awarding 30% of the gross $38,000,000 Settlement Fund as attorneys' fees); *In re Amaranth Nat. Gas Commodities Litig.,* No. 07 Civ. 6377 (SAS), 2012 WL 2149094, at *2

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

6. Public Policy Supports Approval of the Fee Request

Public policy encourages enforcement of the commodities laws through private civil suits as a deterrent to corporate malfeasance. *See Leist v. Simplot*, 638 F.2d 283, 311 (2d Cir. 1980) ("The 1974 Congress repeatedly expressed its view that the changes [to the CEA] were designed to strengthen commodity futures regulation, a goal that would be ill-served by abolishing the private right of action that everyone had thought to exist."), *aff'd sub nom. Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353 (1982) (citing CEA legislative history); *Cange v. Stotler & Co., Inc.*, 826 F.2d 581, 584 (7th Cir. 1987) (explaining that Congress depends on the "critical" role of additional private suits to deter violations of the CEA); *see also Pillsbury Co. v. Conboy*, 459 U.S. 248, 262-63 (1983) ("This Court has emphasized the importance of the private action as a means of furthering the policy goals of certain federal regulatory statutes . . . .").

(S.D.N.Y. June 11, 2012) (awarding a 30% fee from a $77.1 million settlement fund); *In re DDAVP Direct Purchaser Antitrust Litig.*, No. 05 Civ. 2237 (CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33 1/3% in fees on a $20 million gross settlement, plus interest); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (33.33%).

Awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51. If attorneys' fees are routinely set too low, particularly in instances where counsel effectively and efficiently litigate a matter, they will be deterred from bringing meritorious cases in the future. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014).

Class Counsel's decision to take on the risk of this lawsuit serves the vital interest of advancing the enforcement of private commodities manipulation suits and protecting market participants who might otherwise be without recourse. *See Espinal v. Victor's Café 52nd St., Inc.*, No. 16 Civ. 8057 (VEC), 2019 WL 5425475, at *3 (S.D.N.Y. Oct. 23, 2019) ("The Second Circuit and courts in this District have taken into account the 'social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation' as a basis for increasing the percentage of the fund awarded to Class Counsel.") (citations omitted).

Private CEA claims based on spoofing manipulation remain novel and are difficult to litigate. However, without lawyers to pursue such claims on behalf of private individuals, such misconduct could continue without an effective deterrent. Private litigation discourages market manipulation by ensuring that the harm suffered by class members is shifted back onto the offending party in addition to any regulatory fines or punishments that may be instituted. Awarding a reasonable fee will encourage other counsel to further investigate and bring to light misconduct in financial markets, which will promote more scrupulous industry practices, increased supervision to prevent misconduct, and ultimately lead to a fairer and more efficient market for all participants.

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

When using the percentage method, courts in this Circuit use the lodestar calculation "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall..."

Colgate-Palmolive, 36 F. Supp. 3d at 353.[13] Courts compare the resulting award to the reasonable time and labor expended to confirm that the fee award is reasonable. *Grice*, 363 F. Supp. 3d at 406; *see also Montalvo v. Flywheel Sports, Inc*., No. 16-cv-6269 (PAE), 2018 WL 7825362, at *6 (S.D.N.Y. July 27, 2018) (approving 33% fee and noting that "courts in this district will often approve lodestar multipliers between two and four times…"). Courts in the Second Circuit routinely approve fee awards that result in multiplier between 2 and 6. *See, e.g.*, *Wal-Mart*, 396 F.3d at 123 (upholding a multiplier of 3.5 as reasonable and observing that "multipliers of between 3 and 4.5 have become common"); *Carlson v. Xerox Corp*., 355 F. App'x 523, 526 (2d Cir. 2009) ("the resulting multiplier would be 3.59, still below the 3.6 average and in line with the 3.1 median for similar cases"); *In re Fab Universal Corp. S'holder Derivative Litig*., 148 F. Supp. 3d 277, 283 (S.D.N.Y. 2015) ("In shareholder [class] litigation, courts typically apply a multiplier of 3 to 5 to compensate counsel for the risk of contingent representation.").[14]

The cross-check here confirms that there is no windfall. Class Counsel imposed limits to control certain time and hourly rates by, for example, capping first-level document review to $400 per hour. In addition to the direction provided by Class Counsel, all Plaintiffs' Counsel removed any time spent working on this motion. As a result, Plaintiffs' Counsel report spending 9,440 hours litigating the Action through March 31, 2022, resulting in a total lodestar amount of $6,154,295.75. Briganti Decl. ¶ 56. The number of hours spent on this Action are reasonable, particularly in light of the level of independent investigation conducted by Class Counsel and

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

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

Supporting Counsel to develop this case; the time and effort invested in negotiating the Settlement, including the drafting of the mediation statement, preparation of damages analysis and settlement presentation, review of the Mediation Information, and the drafting of the Term Sheet and Settlement Agreement; the work Class Counsel performed to prepare the motions for preliminary approval of the Settlement; and the time Class Counsel spent to oversee the Class Notice process and coordinate with A.B. Data regarding settlement administration process. Class Counsel actively managed the case to ensure that resources were adequately and appropriately utilized, audited all time and expenses, and communicated with Supporting Counsel about the reasonableness of their time and expenses.

The billing rates used to develop the lodestar are also reasonable. The hourly billing rates for attorneys working on this case ranged from $365 to $1,295. *See* Briganti Fee Decl. ¶ 9 (schedule listing attorney rates from $365-$1,295); Girard Decl. ¶ 9 (schedule listing attorney rates from $425-$1,025); Scott Decl. ¶ 8 (schedule listing attorney rates from $400-$1,295); Kearns Decl. ¶ 9 (schedule listing attorney rates from $425-$800); Lerner Decl. ¶ 9 (schedule listing attorney rates from $400-$990); Smilow Decl. ¶ 8 (schedule listing attorney rates from $385-$1,175); Nussbaum Decl. ¶ 9 (schedule listing attorney rates from $425-$995). Billing rates in the same range have been previously approved as reflective of market rates in New York for work of comparable size and complexity. *See*, *e.g.*, *GSE Bonds*, 2020 WL 3250593, at *1 (granting fee award using partner rates of $675 to $980 and associate rates of $365 to $820), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *GSE Bonds* (S.D.N.Y. Apr. 13, 2020), ECF No. 393.[15]

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[15] *See also In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789 (LGS), 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to $1,375 and associate rates of $350 to $700), *see also* Decl. in Support of Award for Attorney's Fees and Expenses, *In re Foreign Exchange* (S.D.N.Y. Jan. 12, 2018), ECF No. 939; *In re Credit Default Swaps Antitrust Litig.*, No. 13-md-2476 (DLC), 2016 WL 2731524, at *17

Once the lodestar figure is determined, courts typically enhance it by a positive multiplier "to reflect consideration of a number of factors, including the contingent nature of success and the quality of the attorney's work." *Maley v. Del Global Tech. Corp.*, 186 F. Supp. 2d 358, 370 (S.D.N.Y. 2002). Here, a fee award of one-third of the Settlement Fund represents a multiplier of approximately 3.24 and is squarely within the range awarded by courts in this District, as well as across the country, in complex litigation. *See*, *e.g.*, *GSE Bonds,* 2020 WL 3250593, at *5 (awarding $77.3 million in fees, representing a 4.09 multiplier on the lodestar); *CDS*, 2016 WL 2731524, at *18 (approving fees totaling over $253 million, which was "equivalent to a lodestar multiple of just over 6"); Order, *Bhatia v. McKinsey & Co.*, No. 19-cv-01466 (GHW) (S.D.N.Y. Feb. 17, 2021), ECF No. 111 (awarding $7.9 million fee, representing a multiplier of 7.61).[16] Accordingly, the results of a lodestar cross-check further supports Class Counsel's fee request.

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

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

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(S.D.N.Y. Apr. 26, 2017) ("*CDS*") (granting fee award using partner rates of $834 to $1,125 and associate rates of $411 to $714; *see* ECF No. 482).

[16] *See also Beckman*, 293 F.R.D. at 481-82 ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Asare v. Change Grp. of N.Y., Inc.*, No. 12-cv-3371 (CM), 2013 WL 6144764, at *19 (S.D.N.Y. Nov. 18, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *City of Providence,* 2014 WL 1883494, at *13 (noting that "lodestar multiples of over 4 are awarded by this Court"); *Maley*, 186 F. Supp. 2d at 371 (approving a fee award that represented a 4.65 multiplier); *In re RJR Nabisco, Inc. Sec. Litig*., No. 88 Civ. 7905 (MBM), 1992 WL 210138, at *6-8 (S.D.N.Y. Aug. 24, 1992) (awarding multiplier of 6).

2019). When "a class plaintiff successfully recovers a common fund for the benefit of a class, the costs of litigation should be spread among the fund's beneficiaries." *Maley*, 186 F. Supp. 2d at 369. In cases where a large amount of the expenses was paid to experts, courts routinely approve those disbursements. *See*, *e.g.*, *CDS*, 2016 WL 2731524, at *18 (approving $10 million in expenses where "[m]ost of these expenses were incurred in connection with retention of experts").

As detailed in Plaintiffs' Counsel's individual declarations filed concurrently herewith, Plaintiffs' Counsel incurred litigation expenses in this Action totaling $400,078.86. *See* Briganti Fee Decl. ¶ 13; Girard Decl. ¶ 13; Scott Decl. ¶ 12; Kearns Decl. ¶ 9; Lerner Decl. ¶ 13; Smilow Decl. ¶ 12; and Nussbaum Decl. ¶ 13. Approximately 85% or $339,810.15 of these costs were spent on expert work. Briganti Decl. ¶¶ 59-60 (listing expenses paid to experts/consultants). As described above, the expert work was critical in assisting Class Counsel with the identification of JPMorgan's alleged spoofing and in assessing the impact of the misconduct on Class Plaintiffs and the Settlement Class. As the expert work helped to both identify and crystallize Class Plaintiffs' claims and to assess the magnitude of the damages which led to reaching the Settlement, this work was unquestionably "critically important" to the prosecution of this Action, and of the type of reimbursement that "[c]ourts routinely award." *Colgate-Palmolive*, 36 F. Supp. 3d at 353; *CDS*, 2016 WL 2731524, at *18. Plaintiffs' Counsel incurred $7,098.71 in costs relating to data, legal, and financial computer research. Briganti Decl. ¶ 60. Other categories of expenses incurred by Plaintiffs' Counsel include, court costs (filing fees), document production/discovery, mediation fees, process servers, in-house photocopying, telephone, and FedEx/UPS shipping. *Id.* In complex class actions, costs related to initial investigations and research, testifying and consultant experts, discovery expenses, travel, postage and mailing, and copying costs are considered reasonable and necessary expenses. *Meredith Corp.*, 87 F. Supp. 3d at 671; *see also Guevoura*, 2019 WL

6889901, at *22. The litigation expenses and costs incurred by Plaintiffs' Counsel are therefore appropriately paid for from the Settlement Fund.

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

Class Plaintiffs respectfully request that the Court award them a total of $110,000 to be shared equally among each of the eleven Class Plaintiffs for their service as class representatives in this Action. Incentive Awards are granted at the discretion of the Court to "compensate class representatives for their services to the class and simultaneously serve to incentivize them to perform this function." WILLIAM B. RUBENSTEIN, 5 NEWBERG ON CLASS ACTIONS § 17:1 (5th ed. 2011); *see also In re Gen. Motors LLC,* 2020 WL 7481292, at *4 ("In the Second Circuit, Plaintiff incentive awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs."). In deciding whether to grant such awards, a court considers "'the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (*e.g.*, factual expertise), any other burdens sustained by that plaintiff . . . and, of course, the ultimate recovery.'" *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (quoting *Roberts v. Texaco*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997)); *see also Anwar v. Fairfield Greenwich Ltd.*, No. 09 Civ. 118 (VM), 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) ("Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation."); *Beckman v. Keybank, N.A.*, 293 F.R.D. 467, 483 (S.D.N.Y. 2013) ("It is important to compensate plaintiffs for the time they spend and the risks they take.").

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

The requested Incentive Awards are in line or below awards granted by courts in this District and others. *See, e.g.*, *In re Deutsche Bank*, 2020 WL 3162980, at *2 (awarding incentive awards of $10,000 per plaintiff); Order at ¶ 3, *Skiadas*, No. 1:19-cv-06137 (GHW), ECF No. 136 (awarding incentive awards of $10,000 per plaintiff); Order at ¶ 7, *Boutchard,* No. 1:18-cv-07041, ECF No. 154, (granting incentive awards of $12,500 and $17,500 to two named plaintiffs in CEA case). Further, as a percentage of the Settlement Fund, the Incentive Awards here would represent less than 0.1% of the Settlement, on par with awards made in other actions. *See In re Deutsche Bank*, 2020 WL 3162980, at *2 (incentive award represented less than 0.1% of settlement fund); Order at ¶ 3, *Skiadas,* No. 1:19-cv-06137 (GHW), ECF No. 136 (incentive award represented less than 0.1% of settlement fund). The Incentive Awards should be granted in light of their reasonable size and Class Plaintiffs' efforts in this case.

CONCLUSION

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

Dated: May 6, 2022
White Plains, New York

Respectfully submitted,

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