

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE LIBOR-BASED FINANCIAL )	
INSTRUMENTS ANTITRUST LITIGATION )	MDL No. 2262
_____ )	
THIS DOCUMENT RELATES TO: )	Master File No. 1:11-md-2262-NRB
Case No. 12-CV-1025 (NRB) )	ECF Case
_____ )	

**DECLARATION OF KAREN L. MORRIS AND ROBERT S. KITCHENOFF  
IN SUPPORT OF CLASS COUNSEL’S MOTION FOR AWARD OF  
ATTORNEYS’ FEES, AND REIMBURSEMENT OF LITIGATION EXPENSES**

Pursuant to 28 U.S.C. § 1746, Karen L. Morris and Robert S. Kitchenoff declare:

1. Karen L. Morris is a partner in the law firm of Morris and Morris LLC Counselors At Law (“Morris and Morris”). Robert S. Kitchenoff is a member of the law firm of Weinstein Kitchenoff & Asher LLC (“Weinstein Kitchenoff”).

2. Morris and Morris and Weinstein Kitchenoff serve as the attorneys for Ellen Gelboim and Linda Zacher (“Bondholder Plaintiffs”)<sup>1</sup> and as Court-appointed Class Counsel for the Subsequent Settlement Classes (“Class Counsel”) in the above-captioned action (*see* ECF No. 3578).<sup>2</sup>

3. We submit this declaration in support of the Motion for Award of Attorneys’ Fees and Reimbursement of Litigation Expenses in connection with the Bondholder Plaintiffs’ settlements with Defendants MUFG Bank, Ltd., f/k/a Bank of Tokyo-Mitsubishi UFJ Ltd.

<sup>1</sup> In this declaration we use terms as they are defined in the memorandum supporting the motion, which is being filed contemporaneously herewith.

<sup>2</sup> “ECF No.” refers herein to documents in the docket of the MDL Action, 11-md-2262-NRB.

(“MUFG”), Credit Suisse Group AG (“Credit Suisse”) and The Norinchukin Bank (“Norinchukin”) (collectively, the “Subsequent Settlements”).<sup>3</sup>

4. Class Counsel have actively prosecuted the Bondholder Action from its inception, are familiar with its proceedings, and have personal knowledge of the matters set forth herein. If called as a witness, each declarant could testify thereto, except as to matters which pertain solely to the other’s firm.

5. Class Counsel have significant experience prosecuting complex antitrust class actions, including settlements thereof. A copy of the Morris and Morris firm resume is attached as Exhibit 1. A copy of the Weinstein Kitchenoff firm resume is attached as Exhibit 2.

#### **I. CLASS COUNSEL’S EFFORTS**

6. Class Counsel’s total time for professional services devoted to litigating this case from October 1, 2020<sup>4</sup> through January 31, 2023 is 3,071.7 hours. The total lodestar value of these services, derived by multiplying each professional’s hours by his or her current hourly rates is \$3,114,351.50.

7. Class Counsel litigated this case for nearly ten years against highly qualified defense counsel. As discussed in more detail below, the time spent litigating this matter was reasonably necessary and appropriate to prosecute the action. Class Counsel respectfully submit that

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<sup>3</sup> By Order dated December 16, 2020, the Court granted final approval to settlements between Bondholder Plaintiffs and seven Defendants: Barclays Bank plc (“Barclays”), UBS AG (“UBS”), HSBC Bank plc (“HSBC”), Citibank, N.A. and Citigroup Inc. (collectively “Citi”), JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A. (collectively “JPMorgan”), Bank of America Corporation and Bank of America, N.A. (collectively “BOA”), and the Royal Bank of Scotland Group plc (“RBS”) (hereinafter the “Initial Settlements”). Final Judgment and Order, (ECF No. 3246). The Initial Settlements created an aggregate Settlement Fund of \$68.625 million plus interest.

<sup>4</sup> Class Counsel were awarded attorneys’ fees for work performed from inception of the litigation through September 30, 2020 in the Initial Settlements Final Judgment and Order.

the combined Subsequent Settlements amount of \$1,749,000, taken together with the Initial Settlements amount of \$68.625 million, is a testament to Class Counsel's efforts.

8. Class Counsel's efforts on behalf of the Bondholder Class since the inception of the case to the present include, but are not limited to, the following:

- Conducted an initial investigation to develop the facts and legal theories that formed the basis of the allegations in the Bondholder complaint, and drafted and filed the original complaint, the first amended complaint, and the proposed second amended complaint.
- Defended the first amended complaint from two motions to dismiss and from Defendants' opposition to Bondholder Plaintiffs' motion for leave to file the proposed second amended complaint.
- Performed legal research and wrote letters to the Court providing supplemental authority, seeking relief, addressing discovery requests, and presenting scheduling issues.
- Worked closely with consulting experts in economics, finance, and the debt security industry. This work was instrumental in developing studies and analyses to support the drafting of the complaints, arguments on appeal, and the negotiation of the Initial and Subsequent Settlements.
- Twice appealed the dismissal of the Bondholder Plaintiffs' antitrust claims to the Second Circuit. Obtained *certiorari* on the first appeal, and successfully argued before the Supreme Court, overturning unfavorable pre-existing Second Circuit precedent.
- Reviewed and analyzed documents and audio tapes produced by Defendants, as well as trial transcripts and evidence from criminal trials both in the United States and the United Kingdom relating to LIBOR manipulation, documentation in connection with regulatory settlements, testimony before the U.K. Parliament, production from the Bank of England and the Federal Reserve, and other publicly available information, and worked diligently to compile a comprehensive factual record in the case which underpinned all settlement efforts undertaken by Class Counsel.
- Successfully pursued discovery from third party brokers.
- Investigated available data sources and worked with consulting experts to develop damages estimates which were directly relevant to the litigation and all settlement efforts.
- Worked closely with Bondholder Plaintiffs' consulting expert in reviewing and analyzing Defendants' transactional data, bid/ask data from Bloomberg and ICAP, and other available relevant data supporting the expert's regression analysis model devised to calculate but-for values, and in developing an expert report supporting the model for settlement purposes.

- Negotiated with Bloomberg Financial LP to obtain the Bloomberg Bulk Data<sup>5</sup> and worked closely in conjunction with the Claims Administrator, Bondholders' consulting experts and technical personnel from Bloomberg to format, analyze, and properly interpret this data to extract data relevant to claims administration in connection with the Initial Settlements. This work will facilitate claims administration efforts related to the Subsequent Settlements as well.
- Created and continually updated and expanded detailed mediation statements and other extensive background memoranda, with relevant documentary support, based on Class Counsel's analysis and continual development of the factual record, which work materially supported the negotiation of both the Initial Settlements and the Subsequent Settlements.
- Undertook arm's-length negotiations with multiple defendants, and successfully achieved the Initial Settlements with Barclays, UBS, HSBC, Citi, JPM, BOA and RBS, and the Subsequent Settlements with MUFG, Credit Suisse, and Norinchukin.
- Successfully obtained preliminary and final approval of the Initial Settlements (Barclays, UBS, HSBC, Citi, JPM/BOA, and RBS), and preliminary approval of the Subsequent Settlements (MUFG, Credit Suisse, and Norinchukin).
- Worked with consulting experts and the Claims Administrator to develop a Plan of Allocation and two different notice plans, drafted the various forms of notice for the Initial Settlements and the Subsequent Settlements, worked with the Claims Administrator to craft the language for the settlement website and the script for the toll-free telephone line, drafted the Proof of Claim Form, briefed motions for approval of the two separate comprehensive notice plans, and closely supervised implementation of notice plans approved by the Court.
- Worked closely with the Claims Administrator, including directing weekly status calls, to monitor and oversee the administration of claims submission and review processes in connection with the Initial Settlements. This work has resulted in an effective template of procedures and processes which will be directly applicable to the review and administration of new claims submitted in connection with the Subsequent Settlements.

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<sup>5</sup> The Bloomberg Bulk Data was raw data acquired on behalf of the Bondholder Class from Bloomberg Finance LP that included information regarding, among other matters, CUSIP numbers of the relevant LIBOR-based debt securities issued and/or outstanding during the Class Period, whether (and if so, when) relevant debt securities defaulted or stopped paying interest during the Class Period, and other information directly relevant to determining if a putative Bondholder class member were damaged.

9. The schedules below summarize the time spent by the attorneys of Morris and Morris and Weinstein Kitchenoff who billed a minimum of 20 hours to this case, from October 1, 2020, through January 31, 2023. The lodestar value calculations provided below are based on the current hourly rates for the attorneys and professional support staff of each of the Class Counsel firms, which are the same as the regular rates charged for their services in non-contin-  
gent matters or which have been accepted in other complex or class action litigation, subject to subsequent annual increases.

10. The schedules were compiled from daily time records prepared in the ordinary course of business and maintained by Class Counsel, which records are available for *in camera* review at the request of the Court. Time expended on the application for attorneys' fees and reimbursement of litigation expenses has been excluded.

**(i) Morris and Morris, from October 1, 2020 through January 31, 2023:**

<b>Attorneys</b>	<b>Current Rate</b>	<b>Hours</b>	<b>Value</b>
Karen L. Morris	\$1075.00	450.5	\$484,287.50
Patrick F. Morris	\$965.00	889.6	\$858,464.00
<b>TOTAL LODESTAR</b>		1,340.1	\$1,342,751.50

**(ii) Weinstein Kitchenoff, from October 1, 2020 through January 31, 2023:**

<b>Attorneys</b>	<b>Current Rate</b>	<b>Hours</b>	<b>Value</b>
Robert Kitchenoff	\$940.00	719.50	\$676,330.00
David H. Weinstein	\$1,100.00	960.70	\$1,056,770.00
Andrea L. Wilson	\$750.00	51.40	\$38,500.00
<b>TOTAL LODESTAR</b>		1,731.6	\$1,771,600.00

11. Class Counsel's total time litigating the case from October 1, 2020 through January 31, 2023, is 3,071.7, resulting in lodestar of \$3,114,351.50. Award of the 28% requested fee would result in a lodestar multiplier of less than 1%.

## II. COUNSEL'S LITIGATION EXPENSES

12. As detailed in the schedule below, Class Counsel collectively incurred a total of \$1,556.00 in unreimbursed litigation expenses in connection with the prosecution of the Bondholder Action from October 31, 2020<sup>6</sup> through January 31, 2023. These expenses were reasonably necessary to the prosecution of this action, are of the type that counsel normally incur in litigation, and that would be reimbursed by clients under fee arrangements where the client was paying expenses. The following schedule was compiled from accounting records regularly prepared and maintained by each of the counsel firms, which are available for *in camera* review at the request of the Court.

<b>Expense Category</b>	<b>Expenses Incurred</b>
On-line Research <sup>7</sup>	\$296.00
Data Analysis and Licensing	\$1,260.00
<b>TOTAL EXPENSES</b>	<b>\$1,556.00</b>

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<sup>6</sup> In connection with the final approval of the Initial Settlements, Class Counsel were reimbursed for all litigation expenses incurred from inception of the litigation through October 30, 2020.

<sup>7</sup> The charges reflected for on-line research are for out-of-pocket payments to the vendors for research done in connection with this litigation. Online research is billed to each case based on actual time usage at a set charge by the vendor. There are no administrative charges included in these figures.

### **III. SERVICE AWARDS FOR THE BONDHOLDER PLAINTIFFS**

13. Class Counsel request a \$2,500 service award each for the Bondholder Plaintiffs, Ellen Gelboim and Linda Zacher. The Bondholder Plaintiffs have each generously contributed time for the benefit of the Subsequent Settlement Classes and, in the opinion of Class Counsel, are each deserving of the requested incentive award. The Bondholder Plaintiffs' participation in the litigation has included, *inter alia*, providing evidence to assist in the development of the Bondholder Plaintiffs' claims, responding to questions from counsel about documents and data provided, attending the hearing of the matter in the U.S. Supreme Court, staying actively apprised of pleadings, briefing, and evolving settlement negotiations, and approving terms and conditions of the Settlements, including the Subsequent Settlements. Without their service there would be no recovery for the Class.

### **V. PROVISION OF NOTICE**

14. The Court approved the Postcard Notice, the Publication Notice and the Detailed Notice. ECF No. 3578. The Postcard Notice, which was sent to potential members of the Settlement Classes, the Publication Notice, and the Detailed Notice (available for review and/or download on the Bondholder Settlements Website) all informed potential members of the Subsequent Settlement Classes that any individual or entity who wished to (i) object to part or all of the proposed Subsequent Settlements, or (ii) be excluded from any of the Subsequent Settlements must do so by March 1, 2023, and provided information about how to do so.<sup>8</sup>

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<sup>8</sup> Both the Postcard Notice and the Publication Notice provided the address to – and directed potential members of the Subsequent Settlement Classes to – the Bondholder Settlements Website and provided the toll-free number to obtain additional information about the Subsequent Settlements, including the timing and procedure to either object to any aspect of, or opt out of any of the Subsequent Settlements.

15. Each of the Notices also informed potential members of the Subsequent Settlement Classes that claims already submitted in the Initial Settlements would be automatically considered for recovery in the Subsequent Settlements and need not be re-submitted, and that recovery for any new claims submitted in the Subsequent Settlements would be limited to the net settlement funds in the Subsequent Settlements.

16. Each of the Notices further informed potential members of the Subsequent Settlement Classes that (i) the Court of Appeals upheld the District Court's dismissal of the Bondholder Action on the merits, ending the case as to the non-settling defendants; and (ii) that dismissal is now final. As a result, the Subsequent Settlements are the only remaining opportunity for members of the Bondholder Class to recover on the claims in the litigation.

17. Finally, each of the Notices informed potential members of the Subsequent Settlement Classes that Class Counsel would ask the Court for an award of attorneys' fees of up to one-third of the aggregate Subsequent Settlement Funds, along with reimbursement for litigation expenses and service awards to the named class representatives..

## **VI. OBJECTIONS AND REQUESTS FOR EXCLUSION RECEIVED TO DATE**

18. As of this filing, Class Counsel have received no objections to the Subsequent Settlements. Class Counsel have received four (4) requests for exclusion from the Subsequent Settlements.



We each declare under penalty of perjury that the forgoing is true and correct.

Executed on February 15, 2023

/s/ Karen L. Morris  
Karen L. Morris

/s/ Robert S. Kitchenoff  
Robert S. Kitchenoff