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November 9, 2018

By ECF

Hon. Jesse M. Furman
United States District Judge
Southern District of New York
40 Centre Street, Room 2202
New York, NY 10007

Re: *Alaska Electrical Pension Fund, et al. v. Bank of America, N.A., et al.*, 14-cv-7126 (JMF)

Dear Judge Furman:

We write on behalf of Plaintiffs to further respond to certain of the Court's inquiries at yesterday's Fairness Hearing.

First, we wish to reiterate that while courts often speak in terms of percentages and multipliers as a matter of practicality, the fundamental consideration is that any fee award be "reasonable." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). We respectfully submit that our request is reasonable on the facts of this case, regardless of the various ways it is possible to describe or characterize the requested amount mathematically.

Second, while we argued that each fee request must be "based on scrutiny of the unique circumstances of each case," *id.*, at 53, and while our memoranda explain why the facts of our case place our fee request squarely within the amounts awarded in the relevant precedent, we write to supplement our response with respect to the cases the Court specifically raised:

- In *In re LIBOR-Based Financial Instruments Antitrust Litigation*, No. 11-md-2262 (NRB) (S.D.N.Y.) the court has made only interim awards based on recoveries to date, where those awards represent a multiplier of 3.23—about *twice* as much as sought here. This gap is caused by the fact that we had to make a much greater investment, proportionally, than *LIBOR* counsel given the significantly greater legal and factual complexity of the alleged manipulation in this case,¹ and the comparative

¹ Among other things, the "IBOR" cases generally involve a benchmark that was manipulated through false poll responses, meaning there were no "banging the close" efforts to investigate and prove up. And many of the IBOR cases involve manipulation in a single direction, making for comparatively simpler liability, damages, and certification issues.

lack of regulatory assistance we have received.²

- *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.) are inapposite for similar reasons. Indeed, counsel in those cases admitted to not even beginning to investigate the alleged wrongdoing until after a key defendant had entered a leniency program, and to benefiting throughout the proceeding as numerous regulators continued to uncover “smoking gun” evidence.³ Further, counsels’ fee request was limited by their client’s retainer, and was granted in full. That means the resulting orders do not necessarily represent the courts’ view as to what cap might be appropriate, let alone in a different factual setting like this case.

Third, we also wish to provide the Court with the attached Appendix A, which lists cases in this District that have awarded attorneys fees based on the gross recovery. Relatedly, we note that when class counsel advance expenses on behalf of a class, they are tying up their firm’s own capital for an extended period—often, for years. They are doing so despite the risk of never getting those funds back. We thus believe counsel are already properly incentivized to manage costs under the majority “gross” approach. Finally, we respectfully submit that using a net calculation would be particularly harsh here given this case demanded large expert expenditures and we already reduced our request in order to avoid an appeal for the benefit of the Class.

We remain ready to address any further questions the Court may have.

Respectfully submitted,

/s/ David W. Mitchell
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/s/ Daniel L. Brockett
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² See *LIBOR*, 2016 WL 7378980, at *3, n.6 (S.D.N.Y. Dec. 20, 2016) (noting that plaintiffs benefitted from numerous investigations, settlements, and plea agreements).

³ See, e.g., *Sonterra*, Dkt. 279, ¶¶ 2, 10-13, 17-18, 34-35, 37, 42.

Appendix A
Additional S.D.N.Y. Cases Awarding Fees On A “Gross” Not “Net” Basis

Case Name	Case Number	Final Approval Date
<i>Pieter Van Dongen v. CNinsure Inc., et al.</i>	1:11-cv-07320-VSB-JLC	July 9, 2014
<i>Construction Laborers Pension Trust of Greater St. Louis v. Autoliv, Inc., et al.</i>	1:13-cv-02546-JPO	October 29, 2014
<i>In re Morgan Stanley Mortgage Pass-Through Certificates Litig.</i>	09-CV-2137-KBF	December 18, 2014
<i>In re Morgan Stanley Pass-Through Certificates Litig.</i>	1:09-cv-02137	December 19, 2014
<i>In re Camelot Information Systems Inc. Securities Litig.</i>	1:12-cv-00086-PGG	June 30, 2015
<i>In re Celestica Inc. Securities Litig.</i>	07-CV-00312-GBD	July 28, 2015
<i>Mary K. Jones v. Pfizer Inc., et al.</i>	1:10-cv-03864-AKH	August 31, 2015
<i>In re Shengdatech, Inc. Securities Litig.</i>	1:11-cv-01918-LGS	September 25, 2015
<i>In re OSG Securities Litig.</i>	1:12-cv-07948-SAS	December 2, 2015
<i>Forth Worth Employees' Retirement Fund v. J.P. Morgan Chase & Co., et al.</i>	1:09-cv-03701-JPO-JCF	December 4, 2015
<i>In re Credit Default Swaps Antitrust Litig.</i>	1:13-md-2476-DLC	April 26, 2016
<i>NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.</i>	1:08-cv-10783-LAP	May 2, 2016
<i>In re Intercept Pharmaceuticals, Inc. Securities Litig.</i>	1:14-cv-01123-NRB	September 8, 2016
<i>Karen J. Desrocher v. Covisint Corporation</i>	14-cv-03878-AKH	December 13, 2016
<i>In re Third Avenue Management LLC Securities Litig.</i>	1:16-cv-02758-PKC	July 14, 2017
<i>Zubair Patel v. L-3 Communications Holdings, Inc.</i>	1:14-cv-06038-VEC	August 16, 2017
<i>Donald P. Boland and Mary A. Boland v. Gerdau S.A.</i>	1:16-cv-03925-LLS	October 20, 2017
<i>In re Genworth Financial, Inc. Securities Litig.</i>	1:14-cv-02392-AKH	November 16, 2017
<i>In re Ply Gem Holdings, Inc., Securities Litig.</i>	1:14-cv-03577-JPO	July 3, 2018