UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	
BANK OF NEW YORK MELLON CORP. FOREX TRANSACTIONS LITIGATION	Master File No. 12 MD 2335 (LAK)
This Document Relates To:	
Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corp., et al.	12 Civ. 3066 (LAK)
International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corp., et al.	12 Civ. 3067 (LAK)
Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp, et al.	12 Civ. 3470 (LAK)
Carver, et al. v. The Bank of New York Mellon, et al.	12 Civ. 9248 (LAK)
Fletcher v. The Bank of New York Mellon, et al.	14 Civ. 5496 (LAK)

JOINT DECLARATION OF SHARAN NIRMUL AND DANIEL P. CHIPLOCK IN SUPPORT OF (1) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE SETTLEMENT AND THE PROPOSED PLAN OF ALLOCATION, AS WELL AS CERTIFICATION OF THE SETTLEMENT CLASS, AND (2) LEAD SETTLEMENT COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS

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SHARAN NIRMUL and DANIEL P. CHIPLOCK declare as follows:

1. We, Sharan Nirmul and Daniel P. Chiplock, are partners of the law firms Kessler Topaz Meltzer & Check, LLP ("KTMC") and Lieff Cabraser Heimann & Bernstein, LLP ("LCHB"), respectively (collectively, "Co-Lead Customer Counsel"). KTMC represents Southeastern Pennsylvania Transportation Authority ("SEPTA") and LCHB represents International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund ("IUOE Local 39"), the Ohio Police & Fire Pension Fund ("OP&F"), and the Ohio School Employees' Retirement System ("SERS") (collectively, "Lead Customer Plaintiffs" or "Plaintiffs") in the consolidated Customer Class Cases[1] (the "Actions" or, collectively, the "Action"). We have personal knowledge of the matters set forth herein based on our active, day-to-day supervision and participation in the prosecution and settlement of the claims asserted on behalf of Plaintiffs and the putative Class[2] in this Action.

2. We respectfully submit this declaration in support of (1) Lead Plaintiffs' Motion for Final Approval of the Settlement and the Proposed Plan of Allocation, as well as Certification of the Settlement Class, and (2) Lead Settlement Counsel's[3] Motion For Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Plaintiffs, submitted herewith.

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[1] "Customer Class Cases" refers to *Southeastern Pennsylvania Transportation Authority v. The Bank of New York Mellon Corp., et al.*, No. 12-CV-3066 (LAK) (JLC) (the "SEPTA Action"); *International Union of Operating Engineers, Stationary Engineers Local 39 Pension Trust Fund v. The Bank of New York Mellon Corp., et al.*, No. 12-CV-3067 (LAK) (JLC) (the "IUOE Local 39 Action"); and *Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp., et al.*, No. 12-CV-3470 (LAK) (JLC) (the "Ohio Action").

[2] All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation of Settlement dated March 19, 2015 ("Stipulation") (Dkt. No. 583-1).

[3] Lead Settlement Counsel are Co-Lead Customer Counsel and McTigue Law LLP, which is one of the three firms that served as counsel for plaintiffs ("ERISA Plaintiffs") in the two ERISA class actions that were consolidated with the Customer Class Cases, *Carver v. The Bank of New York Mellon, et al.* ("Carver"), No. 12-cv-9248 (S.D.N.Y) and *Fletcher v. Bank of New York Mellon et al*. ("*Fletcher*"), Case No. 14-cv-05496 (S.D.N.Y.) (collectively the "ERISA Actions"). The ERISA Actions were also settled as part of this Settlement.

3. This declaration does not detail each and every event that occurred since the first of these Actions was commenced more than four years ago. Rather, it provides the Court with highlights of the litigation, the events leading to the Settlement, and the basis upon which Customer Counsel[4] and Plaintiffs recommend its approval, seek an award of attorneys' fees, service awards for Plaintiffs, and reimbursement of litigation expenses.

I. PRELIMINARY STATEMENT

4. The Settlement before the Court is the culmination of over four years of hard-fought litigation in federal court. Simply put, the litigation sought to recoup profits that, Plaintiffs alleged, Defendants wrongfully took from custodial clients who used Defendants' "standing instructions" ("SI") foreign exchange ("FX") services. Plaintiffs alleged that, contrary to Defendants' promises of providing "best execution" or "extremely competitive" market-based rates to their custodial clients, Defendants purposefully assigned rates to custodial SI FX trades that were based on the extreme ends of the day's trading range, rather than more competitive rates that were available throughout the day, and profited from the difference. Plaintiffs alleged that Defendants' practice gave rise to, among other things, breaches of contract, breaches of fiduciary duty, and violation of state consumer-protection laws.

5. Establishing Defendants' liability was extremely complex and a battle of proof through extensive and highly contested discovery fought on numerous fronts. Significant efforts were expended by both sides prior to the litigation being transferred to this Court. Following the MDL transfer to this Court on April 16, 2012 (*see* Dkt. No. 1[5] ("MDL Transfer Order")), the

[4] For purposes of this declaration, "Customer Counsel" shall refer to all counsel for Plaintiffs in the Customer Class Cases.

[5] Unless otherwise specified, references to "Dkt. No." herein are to docket entries in the main MDL docket, or Case No. 1:12-md-02335-LAK-JLC. References to "IUOE Local 39 Dkt. No." are to docket entries in Case No. 1:12-md-03067-LAK-JLC. References to "SEPTA Dkt No." are to docket entries in Case No. 1:12-cv-03066-LAK-JLC.

appointment of Plaintiffs' Executive Committee[6] and Plaintiffs' Steering Committee,[7] and the Court's authorization of coordinated fact discovery in May 2013, the litigation continued at a furious pace aided by the Court's aggressive pre-trial schedule. A Master Customer Class Complaint ("Master Complaint") filed in July 2013 streamlined the claims in the Customer Class Cases.

6. As set forth in the Master Complaint, during the Class Period (currently defined as January 12, 1999 to January 17, 2012), BNYM (or the "Bank") and each of its predecessor entities, Mellon Bank, N.A. ("Mellon") and Bank of New York ("BNY")[8], provided custodial services to Plaintiffs and members of the Class, including executing FX transactions for Class Members pursuant to "standing instructions." Under "standing instructions," as opposed to "direct" FX transactions, a custodial FX service provider acquires foreign or domestic currency to effectuate a client's purchase or sale of a foreign security (or the repatriation of a foreign dividend) on an as-needed basis without the direct involvement of either the custodial client's investment staff or outside investment managers.

References to "Ohio Dkt No." are to docket entries in Case No. 1:12-cv-3470-LAK-JLC. References to "DOJ Dkt. No." are to docket entries in Case No. 1:11-cv-06969-LAK.

[6] By order dated June 22, 2012, this Court appointed KTMC and LCHB, together with Bernstein Litowitz Berger & Grossmann, LLP ("BLBG" or "Securities Counsel") (counsel for plaintiffs in the securities class action (described further below) that was also coordinated with the Customer Class Cases) as the three members of Plaintiffs' Executive Committee charged with coordinating the activities of all Plaintiffs' counsel and discovery in the actions coordinated and/or consolidated before the Court.

[7] In its June 22, 2012 Order, the Court also appointed a Plaintiffs' Steering Committee which is today comprised of Hausfeld LLP (additional counsel in the IUOE Local 39 Action), Hach Rose Schirripa & Cheverie LLP (additional counsel in the IUOE Local 39 Action), Thornton Law Firm LLP (Relator's counsel and additional counsel in the IUOE Local 39 A ction), Nix Patterson & Roach LLP (additional counsel in the SEPTA Action), Murray Murphy Moul + Basil LLP (additional counsel in the Ohio Action), and Cotchett Pitre & McCarthy, LLP (counsel in the related individual action styled *Los Angeles County Employees Retirement Assoc. ex rel. FX Analytics v. The Bank of New York Mellon Corp*., 12-civ-8990-LAK (S.D.N.Y.) and *In re Bank of New York Mellon Corp. False Claims Act Foreign Exchange Litigation*, 12-civ-3064-LAK (S.D.N.Y.) (collectively, the "LACERA/LADWP Actions", that are still pending before the Court). Two other firms, Harwood Feffer LLP and Robbins Umeda LLP, whose actions were subsequently dismissed, are no longer part of the Plaintiffs' Steering Committee.

[8] Prior to the merger of BNY and Mellon in 2007 (the "Merger"), each entity operated separately, with its own set of customers, its own FX processes, and its own set of contracts and disclosure documents concerning those processes. This fact assumed heightened importance as the litigation progressed, as further described below.

7. Plaintiffs alleged that "direct" or "negotiated" sales or purchases of foreign or domestic currency traditionally yielded modest profits to a purchaser or seller of currency, perhaps up to two to three basis points ("bps") of "spread" per unit as compared with the interbank exchange rate applicable to the currency at the time. Meanwhile, SI resulted in spreads to BNYM of many multiples over and above what BNYM earned in the direct FX context, notwithstanding BNYM's promises, *inter alia*, (1) to provide "best execution" for its custodial FX customers, (2) that SI services were "free of charge," and (3) that the terms of SI FX transactions would not be less favorable to a custodial customer than the terms offered by BNYM to unrelated parties in a "comparable" arm's-length FX transaction.

8. Indeed, nearly a year after the first of the above-referenced Actions was filed, BNYM admitted it assigned prices to SI FX trades that were at or near the high or low ends of the range of prices reported in the interbank market for currency transactions for the relevant pricing cycle. This hitherto undisclosed pricing practice allowed BNYM to record margins that were orders of magnitude greater than those it earned on direct transactions with its custodial customers.

9. Plaintiffs further alleged, and sought discovery to demonstrate, that:

(a) Defendants knew that they made higher profits out of their SI transactions than they did from negotiated transactions, often by a tenfold or twentyfold margin; (b) Defendants also knew that more "transparency" with custodial clients about their SI pricing would cause such clients to migrate to negotiated FX transactions or alternative FX platforms and drastically reduce Defendants' profits; (c) Defendants thus did not want full transparency, and were therefore (in the words of one executive) "late to the transparency space" relative to their competitors; and

(d) Defendants made numerous common misrepresentations in various documents and on the internet that misled custodial clients concerning their conduct with respect to SI trades.

10. In response, Defendants argued, *inter alia*, that their statements regarding SI FX were not deceptive or misleading, and that they breached no fiduciary duties to custodial customers when performing "ancillary" services such as SI FX pursuant to specified instructions. Defendants also argued that BNYM's custodial clients, and in particular their outside investment managers ("IMs") (who in many cases served as intermediaries between the custodial customers and BNYM), knew or should have known that SI FX transactions were subject to "mark-ups" in exchange for the asserted convenience of the service provided.

11. BNYM's response to this litigation was highly aggressive. After Plaintiffs' claims survived motions to dismiss, and once Defendants were required to answer the Master Complaint, Defendants filed counterclaims against two of the three Lead Customer Plaintiffs (IUOE Local 39 and SEPTA), and third-party claims against the individual trustees of IUOE Local 39. Defendants also pleaded "conditional" counterclaims against members of the putative Class. Defendants alleged that the targets of these counterclaims—who were all present or former custodial customers of BNYM—were required to indemnify BNYM for the fees and costs it incurred in defending not just the Customer Class Cases, but the related governmental litigation as well (in particular, the suit brought by the United States Department of Justice ("DOJ")). In short, BNYM, having already admitted that it consciously priced SI FX trades in a manner that was continually disadvantageous to customers, having been compelled to answer Plaintiffs' charges of breaches of fiduciary duty and of contract, and having been accused of outright fraud by the DOJ, nonetheless claimed that its own customers (specifically, Plaintiffs and the Class) bore ultimate responsibility for its conduct (and for the fact that the DOJ was

suing it). Plaintiffs moved to dismiss BNYM's counterclaims, but they were sustained by the Court at least with respect to SEPTA, IUOE Local 39, and the individual trustees of IUOE Local 39. The Court dismissed BNYM's "conditional" counterclaims against the putative Class, as essentially premature.

12. From the time in 2013 when discovery in the Customer Class Cases was coordinated with that of the lawsuit brought by the DOJ, Class Counsel (and particularly, Co-Lead Customer Counsel in their role as members of Plaintiffs' Executive Committee) worked very closely with the team from United States Attorney's Office ("USAO") to coordinate discovery and to achieve objectives that were of mutual benefit to the Class and to the United States. This coordination involved, from the outset, multiple calls and correspondence per week between Co-Lead Customer Counsel and the USAO, which evolved to (typically) multiple contacts per day during the most intense final several months of the fact discovery period (September 2014 through January 2015). The New York Attorney General ("NYAG") participated in this coordination as well (but to a more limited extent) beginning in 2014, after its claims were largely sustained in state court.

13. Between May 2013 and January 2015, the parties exchanged roughly 30 million pages of party document discovery, with more than 25 million of them being produced by BNYM. In their initial disclosures, Defendants identified 162 third-parties who, in their view, potentially had discoverable information pertinent to BNYM's defenses. The USAO responded by serving document subpoenas on 160 of them. BNYM served subpoenas in kind, on these and other third-parties (ultimately more than 275 of them), and ultimately deposed or sought to depose more than 60. As further described below, BNYM's efforts were curtailed only after

Plaintiffs brought a motion seeking to enjoin a number of these proposed depositions as unduly burdensome and/or seeking testimony that was not substantially relevant.

14. On March 14, 2014, while still poring over the Bank's vast document production, which was not completed until late in the summer of 2014, Plaintiffs began taking depositions of the Bank's witnesses. Between March 2014 and January 15, 2015, Plaintiffs took 53 depositions of the Bank's current and former employees, principally in Pittsburgh, New York, and Boston. Over the same period, the Bank took 26 depositions of current and former employees or affiliates of OP&F, SERS, SEPTA and IUOE Local 39 (to add to six depositions the Bank took of the IUOE Local 39's representatives and agents prior to the transfer of the IUOE Local 39 Action to this Court). The Bank also took 25 more depositions of third parties, which occurred throughout the United States and in the United Kingdom. Defendants' third party discovery was the subject of several rounds of motion practice before this Court, in which Plaintiffs battled to curtail BNYM's overreaching and extremely burdensome third party discovery. These efforts had some, but limited, success.

15. Indeed, Defendants employed a scorched-earth discovery strategy, largely eschewing Rule 30(b)(6) depositions of Plaintiffs in favor of cumulative and time-intensive fact depositions of anyone within or without the Plaintiff organizations whom they deemed to have information that could be of any relevance to their defenses. Defendants deposed no fewer than 18 witnesses (including current and former employees) from OP&F and SERS (together, the "Ohio Funds"), as well as the Office of the Ohio Treasurer. Defendants also deposed (a) five fact witnesses from SEPTA, with one more (SEPTA's CEO) scheduled and two more in dispute at the time the parties reached this accord, and (b) all four of the individual trustees for IUOE

Local 39, in addition to IUOE Local 39's investment manager, investment consultant, fund counsel, and two fund administrators.

16. Defendants also deposed a number of additional IMs who used Defendants' SI FX service on Plaintiffs' behalf. Only after this discovery was substantially complete did Defendants serve Rule 30(b)(6) deposition notices on Plaintiffs, seeking organizational witnesses to address the same topics that had been covered repeatedly in the fact depositions Defendants already had taken.

17. Class certification was the key challenge to Plaintiffs in this litigation. Plaintiffs sought to craft an overarching theory of liability and damages that would compensate the custodial customers of what were, in essence, three different institutions: BNY; Mellon; and their post-Merger successor, BNYM. This was a formidable assignment. It required Plaintiffs to discover and unite into common themes the FX pricing practices for the sales and trading desks of Mellon's pre-Merger Pittsburgh and London branches with the sales and trading desks of BNY's New York, Brussels, and London branches—and then, following the Merger, to establish how these pricing practices were unified. Plaintiffs also had to identify and unite into common themes the marketing practices of Mellon, BNY and post-Merger BNYM, both in the United States and abroad, including the development of each entity's respective websites, responses to requests for proposal ("RFPs"), and responses to market forces and changes in market technology.

18. As FX services changed dramatically over the course of the 13-year Class Period, Plaintiffs had to develop the tools and facts to understand the various databases and systems that BNY, Mellon, and then BNYM used to track, process, and settle FX transactions. This was critical to unraveling whether Defendants were systematically diverting their customers away

from, or otherwise depriving their customers of, the benefits of superior trading platforms while purporting to provide their clients with "best execution." The depositions Plaintiffs took of Defendants' FX traders and salespeople, system developers, marketing personnel, and executives were at times highly technical and involved the mastery of information across multiple areas that no single BNYM, Mellon, or BNY employee possessed. It was Plaintiffs' discovery efforts that reconstructed a cohesive narrative of BNYM's development of SI notwithstanding that the institutional knowledge was highly diffuse and dispersed.

19. Although this Action settled on the eve of class-certification briefing, the parties' positions on class certification had already been formulated. In November 2014, Plaintiffs served their class-certification opening expert damages report, to which Defendants responded on December 5, 2014 by filing five expert reports. On January 12, 2015, Plaintiffs filed their reply expert reports in response to Defendants' reports. At the time of Settlement, Defendants had moved to exclude one of Plaintiffs' experts, a motion that was rendered moot by this Settlement.

20. We are very proud of the exceptional results achieved in this litigation. Through this Settlement, BNYM will return to the Class, on a gross basis, approximately 35% of the known margins it recorded on SI FX transactions during the Class Period, totaling $504 million in restitution for members of the Class.[9] The mean approximate recovery, net of fees and expenses, is greater than $400,000 per Class Member, with almost 100 Class Members receiving net recoveries of more than $1 million each.

[9] As discussed further herein, $335 million in proceeds to Class Members is flowing directly through the Class Settlement. $155 million in additional customer proceeds is being paid pursuant to the NYAG Settlement, and another $14 million (earmarked for ERISA plans that are members of the Class) is coming from the U.S. Department of Labor ("DOL") Settlement. The NYAG Settlement and DOL Settlement are being administered jointly with the Class Settlement.

21. It reaching this historic settlement with BNYM, it is an understatement to say that Plaintiffs were fully informed of the risks of continued litigation and the benefits to the Class of the immediate and substantial recovery this Settlement represents. While Plaintiffs were confident in their ability to present a common class theory, even if class certification were successful, the true measure of damages in this case was highly contested, and it remained an open question as to whether a jury would believe BNYM's defense that it provided a valuable and unrivaled service through SI FX. Indeed, Plaintiffs anticipated that one of the Bank's main arguments would be that many of its clients continued to use its SI FX service despite the litigation and despite knowing that SI FX trades were priced in the Bank's favor.

22. Set forth below, in greater detail, is a description of the procedural history of this litigation, the efforts of counsel in reaching this Settlement, and the averted risks and immediate rewards this Settlement represents. We set forth the reasons why this Settlement and the Plan of Allocation should be finally approved as fair and reasonable and the proposed Settlement Class certified, as well as why Lead Settlement Counsel's request for fees, reimbursement of litigation expenses, and service awards for Plaintiffs should be approved.

II. PROCEDURAL HISTORY OF THE ACTION

23. The SEPTA and IUOE Local 39 Actions were transferred to this Court on April 16, 2012 following substantial litigation in their respective transferee Courts. The Ohio Action was ordered transferred to this Court as part of the MDL on May 2, 2012. The first of the ERISA Actions, *Carver v. The Bank of New York Mellon,* No. 12-CV-09248-LAK, was filed on December 19, 2012, followed by *Fletcher v. The Bank of New York Mellon*, No. 14-CV-5496-

LAK, on July 22, 2014.[10] This section discusses the origin of the Actions, the first of which was filed in March 2011, their litigation prior to transfer to this Court, the several related cases that were also coordinated with the Actions through the MDL, and the pleadings and opinions that framed the parties' disputes.

A. The Whistleblower Actions

24. The cases before the Court have their origin in a whistleblower formerly employed by BNYM who began working in partnership with FX Analytics, a Delaware general partnership, which served as the Relator in several lawsuits brought on behalf of public pension funds that used BNYM's SI FX service. Throughout this litigation, the Relator primarily has been represented by the Thornton Law Firm LLP ("TLF"), a member of the Plaintiffs' Steering Committee, with LCHB serving as co-counsel. Beginning in October 2009, the Relator initiated statutory false-claim actions under seal on behalf of public pension funds in a number of states. Actions filed in Florida and Virginia[11] were unsealed in January of 2011, which publicly revealed for the first time that BNYM was engaged in a practice of systematically charging its custodial clients undisclosed spreads by allegedly manipulating the FX rates assigned to its clients' SI FX transactions.

25. TLF's involvement in indirect FX litigation dates back to late 2007, when it first met with the whistleblowers who eventually would file the initial whistleblower complaint

[10] Counsel for the ERISA Plaintiffs—McTigue Law LLP, Beins Axelrod P.C., and Keller Rohrback LLP—are referred to collectively herein as "ERISA Counsel." Their individual declarations in support of Lead Settlement Counsel's Motion for Attorneys' Fees and Reimbursement of Expenses are attached hereto as Exhibits 3-5.

[11] *Commonwealth of Virginia, ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, No. CL-2009-15377 (Va. Cir. unsealed Jan. 21, 2011) (*Virginia* Action); *State of Florida, ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, No. 2009-ca-4140 (Fla. Cir. unsealed Feb. 7, 2011) (*Florida* Action).

against State Street Bank, BNYM's primary competitor.[12] More than a month before the State Street whistleblower complaint was unsealed by the intervention of the California Attorney General ("California AG") (in October 2009), TLF met with the individual who would come to serve as the whistleblower against BNYM. Immediately after the California AG's intervention in the State Street action, TLF (with LCHB as co-counsel) filed whistleblower complaints under seal against BNYM in eight jurisdictions. Three of these (Florida, Virginia, and New York) would eventually be joined by the relevant state attorney general and unsealed.[13]

26. Between October 2009 and October 2011, Relator's counsel developed the case against BNYM and educated the attorneys general who ultimately intervened. The nearly two dozen disclosure statements to the government consisted of hundreds of pages and included numerous internal BNYM documents and emails (several of which were quoted in almost every successive complaint against BNYM, including those filed two years later by the DOJ and the NYAG).[14]

27. Relator's counsel began meeting with representatives from the DOJ and the United States Securities and Exchange Commission ("SEC") several months after the Virginia action was unsealed in January 2011. These meetings resulted in the eventual filing, in October 2011 (or months after the first two Customer Class Cases were filed), of the DOJ Action.[15] The

[12] Additional description of the efforts undertaken by TLF in support of this Action is set forth in the Declaration of Michael A. Lesser in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Thornton Law Firm, LLP, attached hereto.

[13] A fourth *qui tam* action, *Commonwealth of Mass., ex rel. FX Analytics v. The Bank of New York Mellon Corp.*, Civil Action No. 2012-01955 (Suffolk. Super. Ct., MA), was pursued by another state agency (the Massachusetts Securities Division) after the Massachusetts Attorney General declined to intervene.

[14] In January 2012, *The Wall Street Journal* published materials that had been provided by Relator's counsel to the Florida Attorney General and obtained pursuant to the Freedom of Information Act.

[15] *United States v. The Bank of New York Mellon Corp.*, No. 11-cv-6969 (LAK).

NYAG Action[16] was filed the same day as the DOJ Action, after the NYAG intervened in the whistleblower case that had been filed under seal in New York.

B. The SEPTA Action

28. Following the unsealing of the allegations of the BNYM whistleblower in Virginia, SEPTA, through its counsel, KTMC and Nix Patterson & Roach LLP ("Nix Patterson"), commenced its own investigation of the FX pricing it had obtained through Mellon's SI FX service and, following the Merger, BNYM's SI service. SEPTA had been a custodial client of Mellon and then BNYM since 1991 and directly, and through its IMs, used Mellon's and BNYM's SI FX service.

29. SEPTA retained an FX expert to audit the pricing of FX rates that Mellon and BNYM had reported to SEPTA for its custodial FX transactions and compare those rates to the interbank trading range on the date of the transactions. This analysis revealed a systematic bias in the FX rates which skewed toward the worst rates of the interbank trading day (high for purchases and low for sales). This pattern of disadvantageous FX rates was consistent with the allegations in the Relator's complaints and demonstrated that BNYM's pricing practices likely affected many, if not all, of its custodial FX customers.

30. On March 7, 2011, SEPTA commenced a federal class action in the U.S. District Court for the Eastern District of Pennsylvania on behalf of itself and a class of public and non-public institutional custodial clients of Mellon and BNYM for breach of fiduciary duty. The case was assigned to the Hon. Joel H. Slomsky. The action alleged that BNYM, a fiduciary of SEPTA via its custodial contract and through common law, breached its duty of loyalty to SEPTA and the putative class by unjustly charging undisclosed fees for SI FX and failing to

[16] *People ex rel. Schneiderman v. Bank of New York Mellon Corp.*, No. 114735/09 (N.Y. Sup. Ct. N.Y. Cnty.).

provide "best execution" for SI FX despite BNYM's written representations on its website, which described the service as providing "best execution" and being "free of charge." On March 22, 2011 and June 1, 2011, SEPTA filed amended complaints to add claims for breach of contract and unjust enrichment arising from the Master Trust Agreement ("MTA") governing the custodial relationship, and based on the written "Forms and Procedures" governing the provision of SI FX.

31. Between June 1, 2011 and September 9, 2011, the parties briefed BNYM's motion to dismiss, and on October 6, 2011, Judge Slomsky heard oral argument. While the parties awaited Judge Slomsky's ruling, SEPTA was subject to a discovery stay.

C. The IUOE Local 39 Action

32. Separately, counsel for IUOE Local 39 conducted their own analysis of IUOE Local 39's FX transactions, which were handled by BNY and then BNYM while both entities acted as IUOE Local 39's custodian. IUOE Local 39's SI FX trades demonstrated the same pattern as that described above as to SEPTA's. On July 22, 2011, IUOE Local 39, through its counsel, LCHB, TLF, Hausfeld LLP ("Hausfeld"), and Hach Rose Schirripa & Cheverie, LLP ("Hach Rose"), filed the IUOE Local 39 Action[17] in the U.S. District Court for the Northern District of California asserting claims for violation of Sections 17200 and 17500, et seq. of the California Business and Professions Code ("UCL"); breach of contract; breach of the implied covenant of good faith and fair dealing; and violation of Section 349, et seq. of New York's General Business Law ("N.Y. GBL § 349"). The action sought recovery on behalf of several putative classes, including (a) all California-based non-public institutional investors in foreign securities for which BNYM provided custodial FX services during the Class Period, (b) all

[17] *International Union of Operating Engineers, Local 39 Pension Trust Fund v. The Bank of New York Corp., et al.*, No. 3:11-cv-03620 (WHA) (N.D. Cal.).

California-based ERISA funds for which BNYM provided custodial FX services during the Class Period, and (c) all non-public institutional investors in foreign securities, wherever situated, whose FX transactions were executed in New York by the Defendants' New York FX desk during the Class Period. The IUOE Local 39 Action was assigned to the Hon. William H. Alsup.

33. The parties fully briefed and argued BNYM's motion to dismiss on December 15, 2011. Judge Alsup then set an aggressive pretrial schedule requiring (i) IUOE Local 39 to file a class-certification motion by April 12, 2012, (ii) the parties to complete discovery by December 31, 2012, (iii) final dispositive motions to be filed by February 7, 2013, and (iv) trial to commence on March 25, 2013.

34. While BNYM's motion to dismiss was *sub judice*, Judge Alsup invited IUOE Local 39 to amend its complaint by January 5, 2012, which it did, alleging, among other things, that by assigning customer clients rates for SI FX transactions that were near the high of the daily interbank range, for purchases, and near the low end, for sales, BNYM failed to accord those clients terms "not less favorable . . . than terms offered by [the Bank] to unrelated parties in a comparable arm's length FX Transaction," which its operative custodial agreements mandated.

35. On January 4, 2012, IUOE Local 39 filed its response to BNYM's motion to transfer the IUOE Local 39 Action and other actions to this Court pursuant to 28 U.S.C. § 1407(a) (further discussed below). Elizabeth Cabraser appeared for Plaintiffs and argued before the Judicial Panel on Multidistrict Litigation in San Diego on March 29, 2012.

36. Meanwhile, Judge Alsup ordered an expedited briefing schedule on BNYM's motion to dismiss the amended complaint, which set the deadline for filing the motion on January 19, 2012, the opposition on February 2, 2012, and the reply on February 9, 2012. On

February 14, 2012, before a second round of oral argument was set to take place, Judge Alsup issued an opinion denying BNYM's motion to dismiss in its entirety.

37. Discovery related to class-certification issues was subject to an extremely aggressive schedule in the IUOE Local 39 Action, taking place over a four-month period between December 2011 and April 2012, just prior to the time of transfer to this Court. This discovery included the production by BNYM of over 500,000 pages of documents and 1.2 gigabytes of transactional data for every putative Class Member—which up to that time, in the IUOE Local 39 Action, did not include public pension funds. Plaintiff and Plaintiff's affiliates or service providers (including Plaintiff's trustees, investment manager, consultant, and administrator) produced over 185,000 pages of documents.

38. Several discovery issues were the subject of motions to compel dated February 3, 2012, including IUOE Local 39's request that BNYM produce (i) documents dating back to the beginning of the Class Period, (ii) non-anonymized FX trading data for all Class Members, and (iii) all documents it had produced to government enforcement agencies related to SI FX. These issues were resolved on terms largely favorable to IUOE Local 39 by Magistrate Judge Joseph C. Spero on February 27, 2012 (two weeks after BNYM's motion to dismiss the IUOE Local 39 Fund's case was denied in its entirety). IUOE Local 39 took one Rule 30(b)(6) deposition of BNYM before the case was transferred to the MDL, and BNYM took six depositions of IUOE Local 39 and its service providers or agents. BNYM also took two third-party depositions, including one in the United Kingdom. Once the case was transferred to the MDL, discovery was stayed pending coordination with the other actions.

39. IUOE Local 39 Fund filed its motion for class certification on April 12, 2012, pursuant to Judge Alsup's pretrial schedule.

40. In support of its class-certification motion, IUOE Local 39 submitted the expert report of G. William Brown, Jr., Esq., an expert in the area of FX, Fellow (and formerly Professor of the Practice of Law) of Duke Law School, and principal of 8 Rivers Capital, LLC, a finance consulting firm. As discussed in greater detail below, Professor Brown would build on this early work to provide the damages methodology and analysis that would be the foundation on which the strength of this Settlement could be assessed by all parties.

41. Four days after IUOE Local 39 filed its motion for class certification, its case was transferred to the MDL.

D. The New York Attorney General and U.S. Department of Justice Commence Civil Lawsuits Against BNYM

42. On October 4, 2011—or nearly seven months after the SEPTA Action was filed, and four months after the IUOE Local 39 Fund Action was filed—the NYAG commenced a civil fraud lawsuit under the Martin Act against BNYM in New York State Supreme Court based on its ongoing investigation of the allegations made by the Relator. The NYAG Action, commenced against BNY and BNYM specifically (not Mellon), was assigned to the Hon. Marcy Friedman. The whistleblower, through TLF, provided extensive information directly to the NYAG. In addition to bringing claims under the Martin Act against BNYM, the NYAG's complaint also joined claims brought on behalf of certain funds of the New York City Retirement Systems ("NYC Funds").

43. On the same day the NYAG filed suit, the DOJ commenced a federal lawsuit under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") based on its investigation spurred by the whistleblower's allegations (the "DOJ Action"). The case was assigned to this Court.

44. On January 17, 2012, BNYM entered a partial settlement and dismissal of certain claims in the DOJ Action. In that settlement, BNYM agreed, among other things, to refrain from representing in publications or on websites that its SI FX service was "free" or provided "best execution," and to provide more disclosure to its clients concerning its SI FX pricing practices.[18]

45. Following their partial settlement and dismissal of claims, the USAO filed a Second Amended Complaint on February 6, 2012, and the parties in the DOJ Action briefed motions to dismiss. On April 24, 2013, this Court granted in part and denied in part BNYM's motion to dismiss the claims pled in the USAO's Second Amended Complaint ("FIRREA Opinion"). DOJ Dkt. No. 54. Following the Court's ruling, Defendants pushed for coordinated discovery between the MDL Actions[19] and the DOJ Action.

46. Subsequently, on August 5, 2013, Judge Friedman denied BNYM's motion to dismiss the NYAG Action. *See* Decision/Order, *The People of the State of New York, et al. v. The Bank of New York Mellon Corp.*, Index No. 114735/2009 (N.Y. Sup. Ct. N.Y. Cnty. Aug. 5, 2013) ("NYAG Opinion"). Thereafter, Defendants sought to coordinate discovery in the NYAG Action with discovery in the coordinated MDL Actions. The coordination of the NYAG Action with the MDL Actions is discussed further below.

[18] This included, for example, that BNYM would not represent that it offers "netting" unless it referred to SI FX transactions with the same settlement date, same currency pair, originating from the same individually-managed account, and that were priced at the same trading desk and during the same pricing cycle; BNYM would publish clients' 90-day average of rates for purchases and sales of currency pairs and the 90-day averages of the bid/offer rates in the interbank market for the same currency pairs; BNYM would disclose its "range of day" pricing model and the fact that such a model was "generally less favorable to clients than directly negotiated trades"; and BNYM would not represent that SI FX pricing was the same for all clients. In exchange, the USAO's claim for injunctive relief seeking certain disclosures was dismissed with prejudice.

[19] "MDL Actions" refers to the Customer Class Cases, the ERISA Actions, the DOJ Action, and the actions defined below as the Securities Action and the LACERA/LADWP Actions. "MDL Plaintiffs" refers to Plaintiffs in the MDL Actions.

E. The Ohio Action

47. On March 12, 2012, the Ohio Funds commenced their action against BNYM in state court in Ohio, styled *Ohio Police & Fire Pension Fund, et al. v. The Bank of New York Mellon Corp., et al.*, Case No. 12 CV 003214 (Ct. Com. Pls. Franklin Cnty.). Counsel for the Ohio Funds were LCHB and Murray, Murphy, Moul + Basil LLP ("MMMB").[20] The case was then removed to federal court and transferred to this Court on May 2, 2012. On July 13, 2012, the Ohio Funds amended their complaint to include allegations on behalf of a proposed class of all investors for whom BNYM executed SI FX trades during the Class Period.

48. The Ohio Funds asserted claims for breach of contract, fraud in the inducement, unjust enrichment, conversion, breach of the covenant of good faith and fair dealing, and violation of the Ohio Deceptive Trade Practices Act (and similar statutes). Between August 13, 2012 and October 2, 2012, the parties fully briefed Defendants' motion to dismiss the Ohio Funds Action. On May 17, 2013, the Court denied that motion without prejudice in view of its prior decisions in the SEPTA and DOJ Actions, and pending the filing of the Master Complaint.

F. Defendants' Motion to Transfer Pursuant to 28 U.S.C. § 1407

49. On December 13, 2011, Defendants filed a motion pursuant to 28 U.S.C. § 1407 requesting transfer and coordination of the SEPTA Action, the IUOE Local 39 Action, and several other actions related to BNYM's SI FX pricing practices. These other actions included *Sansano v. BNYM, et al.*, No. 2:11-cv-01412-MRH (W.D. Pa. filed Nov. 4, 2011), *Terrazas, et al. v. BNYM, et al.*, No. 2:11-cv-01461-MRH (W.D. Pa. filed Nov. 15, 2011), and *Iron Workers Mid-South Pension Fund v. BNYM*, No. 1:11-cv-8471-LBS (S.D.N.Y. filed Nov. 22, 2011), each of which were shareholder derivative actions brought for the benefit of BNYM against certain

[20] The efforts of MMMB in connection with this Action are set forth in greater detail in the accompanying Declaration of Brian K. Murphy in Support of Motion for Attorneys' Fees and Reimbursement of Expenses Filed on Behalf of Murray Murphy Moul + Basil LLP, attached hereto.

officers and directors (the "Derivative Actions"); *Bank of New York Mellon Corp. False Claims Act Foreign Exchange Litigation v. BNYM*, No. 3:11-cv-05683-JCS (removed to N.D. Cal. on Nov. 28, 2011), a false claims act case brought on behalf of certain California municipal public pension funds; *Clark v. Hassell, et al.*, No. 1:11-cv-8810-UA (S.D.N.Y. filed Dec. 2, 2011), a claim brought on behalf of BNYM's ERISA plans ("BNYM Employee ERISA Action"); and *Louisiana Mun. Police Employees' Ret. Sys. v. The Bank of New York Mellon Corp., et al.*, No. 11-cv-9175 (S.D.N.Y. filed Dec. 14, 2011),[21] a securities fraud putative class action (the "Securities Action").[22]

50. On April 16, 2012, the MDL Panel ordered the transfer of the SEPTA and IUOE Local 39 Actions to the Southern District of New York for coordinated or consolidated pretrial proceedings and assigned the Hon. Lewis A. Kaplan to the case. Dkt. No. 1 (MDL Transfer Order). The Customer Class Cases (including the subsequently transferred Ohio Action) were coordinated with all of the related actions, including the Securities Action, the BNYM Employee ERISA Action, and the Derivative Actions. The Derivative Actions and the BNYM Employee ERISA Action were subsequently dismissed with prejudice.

51. Following transfer, the parties submitted a joint status report for each of the cases that were subject to the MDL Transfer Order. The Court then held a status conference on May 23, 2012 (the "May 23 Hearing"), at which the parties agreed to certain broad logistical goals for litigating the Action. At this conference, the Court appointed LCHB and KTMC as interim Co-Lead Class Counsel for the Customer Class Cases, permitted Plaintiffs to proceed with document discovery (but stayed deposition discovery until the PSLRA discovery stay was lifted in the Securities Action), and ordered the parties to propose an executive committee structure to lead

[21] Defendants added this action to their Amended Motion to Transfer on Dec. 22, 2011.

[22] Plaintiffs in the Securities Action are referred to herein as "Securities Plaintiffs."

the coordinated proceedings. The Court also indicated that it would decide Defendants' motion to dismiss the SEPTA Action and, thereafter, would entertain Plaintiffs' request to file a Master Complaint. The Court also vacated the remaining deadlines in Judge Alsup's pretrial schedule, including the deadline for BNYM to oppose IUOE Local 39's motion for class certification.

52. Following an extensive meet and confer process, the parties submitted their proposed pre-trial orders establishing Plaintiffs' Executive Committee. On June 20, 2012, the Court appointed LCHB, KTMC, and BLBG to Plaintiffs' Executive Committee, and the remaining counsel for Plaintiffs to Plaintiffs' Steering Committee. *See* Dkt. No. 103 ("Pre-Trial Order No. 2").

53. The responsibilities of Plaintiffs' Executive Committee included presenting Plaintiffs' positions to the Court on all pre-trial matters and coordinating the activities of Plaintiffs and their counsel during pretrial proceedings, including written discovery and depositions. On the same day, the Court entered Pre-Trial Order No. 3 (the "Confidentiality Order"), which had been the subject of extensive meet and confers with Defendants and competing submissions to the Court.

G. The Core Pleadings and Opinions That Framed Plaintiffs' Claims

1. The Court's SEPTA Opinion and Judge Alsup's IUOE Local 39 Opinion

54. On January 23, 2013, the Court issued a 61-page opinion granting in part and denying in part BNYM's Motion to Dismiss. The Court found that SEPTA had plausibly alleged sufficient facts to support its breach of contract claim based on the incorporation of BNYM's promises of "best execution" and "free of charge" contained on its website into the FX Forms and Procedures that governed the SI service. Additionally, the Court sustained Plaintiff's breach of fiduciary claim, finding that, at least under Pennsylvania law, BNYM "owed fiduciary duties

of loyalty and care, [and] was obligated to provide the full and fair disclosure of relevant information that the law requires." *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, 921 F. Supp. 2d 56, 88 (S.D.N.Y. 2013) ("SEPTA Opinion").

55. The different types and versions of the "FX Procedure Form," the transmittal document that authorized BNYM to undertake SI FX transactions for its custodial clients, are indicative of this case's complexity. *See id.* at 71. The four categories of documents discussed in the SEPTA Opinion included: (1) the FX Procedure Forms ("SI Forms")—which were generally one page forms that incorporated by reference certain of the other three categories of documents or information listed here; (2) BNYM's FX Policies and Procedures ("FX Procedures")—a multi-page document setting forth the timing and pricing of SI FX trades; (3) BNYM's website—accessible from and linked to certain web pages referenced in the "FX Polices and Procedure Forms"; and (4) RFP responses—several-hundred-page documents, which frequently referenced the terms under which the Bank would transact FX.

56. The content of each category of document changed over time, which, in turn, weakened or strengthened Plaintiffs' claims. For instance, BNYM and its predecessors produced thousands of versions of SI Forms and the FX Procedures, numerous versions of its website, and more than 2,000 RFP responses. Thus, as discussed further below, in developing the proof necessary to establish the theories of liability sustained in the SEPTA Opinion, Plaintiffs had to sort out the relevant classes and/or sub-classes based, in part, on the content of each type of document.

57. The SEPTA Opinion addressed the parties' disagreement over the definition of "best execution" as a central controversy to this litigation. "Simply put," the Court explained, "while defendants' argument about the proper construction of this contract term may prove

sufficient to warrant summary judgment or a verdict at trial, the Court cannot now conclude that SEPTA's reading of the contract is implausible as a matter of law." *Id.* at 78.

58. With respect to the breach of fiduciary duty claim, the Court held that "[t]he principal relationship among the parties is set forth in the MTA[, which] established a trust consisting of money and property contributed by SEPTA, with [BNY Mellon] as the Master Trustee." The Court continued: "BNY Mellon…retained other powers as custodian to exercise as it 'may deem necessary or desirable for the protection of the Master Trust Fund,'" and the "Master Trustee holds the assets in the fund 'for the exclusive benefit' of the beneficiaries of the trust funds." The Court further noted, however, that BNY Mellon could "provide ancillary services as [may be agreed] upon from time to time" as a non-fiduciary. *Id.* at 3-5 (citing MTA §§ 2.1, 2.5, 5.1, 5.2, 7.2 and 9.1). Therefore, BNYM, as one who was in a "confidential relationship" of trust with SEPTA, owed SEPTA a duty of full and fair disclosure, even if it entered the specific SI FX contracts as a "principal" or "at arm's length." *Id.* at 48-50.

59. Because no state statutory claims were alleged in the SEPTA Action, the Court did not opine on such claims. However, Judge Alsup had previously analyzed unfair trade practices claims under California and New York law in the IUOE Local 39 Action. On February 14, 2012, in the course of denying BNYM's motion to dismiss in its entirety, Judge Alsup held that IUOE Local 39 properly alleged violations of Cal. Civ. Code §§ 17200, 17500 and N.Y. Gen. Bus. Law § 349. *See* IUOE Local 39 Dkt. No. 89 ("IUOE Local 39 Opinion") at 7-8. Specifically, Judge Alsup held, *inter alia*, that Defendants' alleged conduct satisfied all three separate and independent tests available under California law for determining whether a business practice is unfair, i.e., (1) it was sufficiently tethered to a specific statutory provision (at least as to ERISA plans); (2) the utility of the conduct was outweighed by the gravity of the alleged

victim's harm; and (3) possible countervailing benefits to consumers or competition were not sufficient to justify the conduct. *Id.* at 6. Judge Alsup further held that IUOE Local 39 had sufficiently alleged that BNYM's conduct amounted to false advertising under California's statutes, and that whether a "reasonable pension fund" would likely have been misled by BNYM's statements was a question for the trier of fact. *Id.* at 7. Finally, Judge Alsup held that IUOE Local 39 had sufficiently alleged that BNYM's conduct constituted deceptive trade practices under N.Y. GBL § 349, and that pension funds could be considered "consumers" for purposes of that statute under the facts alleged. *Id.* at 10.

60. The SEPTA Opinion and the IUOE Local 39 Opinion largely framed the litigation in the Customer Class Cases going forward.

2. Master Customer Class Complaint

61. On July 1, 2013, Plaintiffs filed the Master Complaint, which collected, into one pleading, the claims that were sustained by the SEPTA Opinion and IUOE Local 39 Opinion, as well as the claims asserted in the Ohio Action. The Master Complaint thus set forth claims for breach of fiduciary duty, breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, conversion, breaches of California and Ohio consumer protection laws (and other similar state statutes), and violation of NY GBL § 349.

H. BNYM Asserts Counterclaims Against Certain Plaintiffs and Members of the Putative Class

62. On September 15, 2013, BNYM answered the Master Complaint and simultaneously filed counterclaims against SEPTA, IUOE Local 39, and certain unnamed putative Class Members whom Plaintiffs sought to represent.[23] According to BNYM, its custody

[23] BNYM also asserted third party claims for indemnification against the four individual trustees of IUOE Local 39—Lyle Setter, Paul Bensi, Jerry Lee Kalmar, and Bart Florence—(the "IUOE Local 39 Trustees") in their representative capacity. *See* IUOE Local 39 Dkt. No. 155.

agreements with these entities indemnified it against all losses, including attorneys' fees, incurred in defending the claims brought against it. Remarkably, BNYM claimed that this right of indemnification extended to the governmental proceedings as well, therefore shifting its costs of defending the DOJ Action over to Plaintiffs (and the four individual trustees of IUOE Local 39).

63. BNYM's counterclaims therefore implicitly sought tens of millions of dollars in legal defense costs from Plaintiffs, the IUOE Local 39 Trustees, and members of the putative Class.

64. Plaintiffs moved to dismiss, arguing, among other things, that BNYM had waived its right to bring counterclaims against IUOE Local 39 and its trustees since it had previously answered IUOE Local 39's complaint more than a year earlier (after Judge Alsup had denied BNYM's motion to dismiss). BNYM also had not raised the possibility of counterclaims in the Scheduling Order that the parties had negotiated (and which the Court had entered on September 12, 2013, just three days before Defendants filed their counterclaims). *See* Dkt. No. 273. Plaintiffs also argued that BNYM's "conditional" counterclaims against absent putative Class Members were substantively premature, and (separately) were premature as to "known" plaintiffs such as SEPTA and IUOE Local 39 because they depended on an adverse adjudication against Plaintiffs on the merits.

65. On July 9, 2014, the Court granted Plaintiffs' motion to dismiss BNYM's counterclaims with respect to absent putative Class Members, but denied Plaintiffs' motion in all other respects, holding that BNYM had not waived its right to plead counterclaims or third-party claims against SEPTA, IUOE Local 39, and the IUOE Local 39 Trustees, and that those claims were not premature. Dkt. No. 420. The Court dismissed, without prejudice, BNYM's

conditional counterclaims against unnamed Class Members, accepting Plaintiffs' arguments that putative Class Members were not "opposing parties" within the meaning of Rule 13 and thus, procedurally, no counterclaims could be asserted against them. *Id.* Nonetheless, the Court's decision left open the possibility for Defendants to reassert counterclaims against absent Class Members once the Class was certified.

66. On August 29, 2014, Plaintiffs filed Answers to BNYM's Counterclaims, setting forth detailed denials of each claim asserted by BNYM. *See* IUOE Local 39 Dkt. No. 211, SEPTA Dkt. No. 192. In sum, Plaintiffs asserted that BNYM was not entitled to indemnification because the acts giving rise to BNYM's counterclaims and third party claims derived from BNYM's own wrongdoing. *Id.*

III. DISCOVERY

67. Discovery in the MDL Actions was extensive and hard-fought from beginning to end. From June 2013 onward, that discovery was managed by Plaintiffs' Executive Committee, in frequent collaboration with the USAO. All strategic decisions involving discovery in the Customer Class Cases were made by Co-Lead Customer Counsel. As many issues in the Customer Class Cases overlapped with issues relevant to the DOJ Action, it was typical for Co-Lead Customer Counsel to be in weekly or even daily consultation and contact with the USAO. Later in the litigation, Co-Lead Customer Counsel worked with the principal attorney handling litigation on behalf of the NYAG to assist the NYAG in gathering evidence for its case, and in developing expert testimony. As more specifically described below, the joint discovery costs in the Actions were borne principally by Plaintiffs' Executive Committee and, for the Customer Class Cases in particular, Co-Lead Customer Counsel.

A. In General

68. Discovery in this Action related to the conduct of three distinct legal entities (BNY, Mellon, and BNYM), over the span of 13 years, and involved their operations in Boston, New York, Pittsburgh, London and Brussels, which in turn were spread across several different divisions and working groups (including sales, trading, marketing, relationship management, and the executive suite). Third party discovery, principally pursued by Defendants, covered institutions throughout the United States (from Alaska to New York), and in the United Kingdom. Depositions were held in no fewer than 20 different U.S. cities across the country, including Anchorage, Seattle, Santa Fe, Los Angeles, Pittsburgh, New York, and Boston. Depositions were also held internationally in London and Scotland.

69. With respect to document discovery, the parties negotiated more than 500 unique search terms that were applied to Defendants' electronic files, which included more than 150 document custodians (i.e. current and former employees of Mellon, BNY and BNYM). The parties collectively produced roughly 30 million pages of documents. BNYM alone produced more than 25 million pages of documents (not counting more than 250,000 Excel files), representing more than 3,000 gigabytes of data. Third parties produced at least an additional three million pages of documents. Plaintiffs themselves produced several million pages of documents in response to BNYM's document requests.

70. As discussed above, Defendants and the USAO served hundreds of third party document subpoenas. The parties took or defended 110 depositions directly pertinent to the Customer Class Cases, and exchanged 114 interrogatories and 24 requests for admission. Co-Lead Customer Counsel also participated in 18 other depositions relating to the NYC Funds Action, the Securities Action, and the LACERA/LADWP Actions. There were more than 10 discovery disputes that ended up before the Court, and countless meet and confers that averted

dozens of others. The vast majority of discovery in the MDL Actions occurred between May 2013 and January 2015, with depositions commencing in earnest in March 2014. As the lodestar charts attached as Exhibit B to each of the attached declarations by Customer Counsel and ERISA Counsel demonstrate, 67,933 hours were spent on discovery, including 51,048 hours on document review (i.e., task categories '2' and '3') and 16,885.06 hours on drafting witness memoranda or other discovery documents (task category '4'). To say that discovery in this case was a massive undertaking would be an understatement.

71. Class-certification discovery in at least one of the Customer Class Cases was also rigorously undertaken prior to the cases being transferred to this Court. In the IUOE Local 39 Action, the parties exchanged more than 550,000 pages of documents (including documents that had BNYM had also produced to the NYAG in connection with its investigation) and 1.2 gigabytes of data, and took or defended nine depositions.

72. Notwithstanding the work that had been done in the IUOE Local 39 Action, following the consolidation of the actions before this Court, the scope and complexity of discovery in this Action expanded exponentially. This was because discovery had to encompass the needs of no less than three class actions, the DOJ Action, the Securities Action, the LACERA/LADWP Actions, and eventually the ERISA Actions. After consolidation, the Customer Class Cases collectively sought recovery for the conduct at all three BNYM-associated entities (BNY, Mellon and BNYM), and sought relief for the broadest possible class of all public and private custodial customers of those entities. These efforts required the constant and close collaboration between Plaintiffs' Executive Committee and the USAO, whose allegations (along with the NYAG's) principally concerned BNY and BNYM (and their respective customer bases).

73. From the time these cases were consolidated to the time of settlement, the parties met and conferred countless times, and exchanged hundreds of pages of correspondence, struggling to reach agreement on the proper scope and relevance of document discovery. After the parties exchanged formal document requests as well as responses and objections, the parties then met and conferred for several months regarding the search terms and custodians from which the parties (and particularly BNYM) would provide responsive documents. The parties then went through the always arduous task of actually producing documents. Finally, the parties followed up on various alleged deficiencies in the document productions including missing, improperly redacted or withheld documents. Ultimately, most differences between the parties were negotiated and resolved without Court intervention, except for several notable exceptions discussed below.

74. Because of the aggressive discovery schedule (pursuant to which the parties initially had 18 months to initiate and complete document discovery and take all necessary party and non-party depositions), discovery was required to be both ruthlessly efficient, laser-focused on the key issues, and multi-tracked to ensure that all evidentiary holes were filled.

75. The collaboration between Plaintiffs and the USAO was, in our collective experience, unprecedented. As detailed below, throughout much of fact discovery, Plaintiffs and the USAO were in oftentimes daily communication regarding strategic issues involving discovery. Meet and confers were coordinated to avoid duplication. They were jointly attended and negotiated by representatives of Plaintiffs and the USAO, and briefing on key discovery disputes was shared. Plaintiffs shared their work product with the USAO with respect to deposition preparation, document review, and various aspects of factual and legal research that proved helpful for both cases. The damages model that Plaintiffs constructed, which was

developed from Plaintiffs' requests for production and interrogatories, became the basis for computing customer damages and ultimately informing the settlements of the Customer Class Cases, the USAO Action, the NYAG Action, and claims being investigated by the United States Department of Labor ("DOL").

B. Pre-Discovery Negotiations

1. Negotiation of the Confidentiality Order

76. After the MDL transfer, before any additional documents were produced or depositions taken, the parties undertook to negotiate a stipulated comprehensive confidentiality protocol. Although the parties bridged many differences, they were unable to come to final agreement on a form of order. Plaintiffs wished to proceed under an order substantially similar to the one that had governed the IUOE Local 39 Action,[24] where significant document discovery had already taken place. Defendants, meanwhile, argued for more restrictive confidentiality provisions than those under which the parties had proceeded to that point, including allowing for a "Highly Confidential" category that was restricted to outside attorneys' eyes only. Notably (and unique in our collective experience), Defendants' form of order also required that Defendants be given advance notice and the opportunity to object to any expert or consultant with whom Plaintiffs desired to share information designated as "confidential" before that information could be shared, notwithstanding the execution by that expert or consultant of an acknowledgement indicating that he/she was bound by the order. Even if this did not amount to an outright "veto" right over any experts or consultants that Plaintiffs wished to retain (since the parties would need to litigate the issue if Defendants refused to consent to the choice of expert or consultant), it unquestionably gave Defendants an advantage in knowing, well in advance of the

[24] *See* IUOE Local 39 Dkt. No. 72.

time that the Federal Rules would ordinarily require, the identities of any experts or consultants Plaintiffs wished to use.

77. On June 20, 2012, over Plaintiffs' objection, the Court entered Defendants' form of order. Dkt. No. 104. In addition to the more restrictive provisions concerning the use of Defendants' "confidential" documents as described above, the Confidentiality Order addressed the inadvertent production of privileged documents (allowing for clawbacks), the labeling of confidential transcripts, the manner in which a party could challenge a confidentiality designation and/or clawbacks, attempts by third parties to obtain confidential information, and other issues that would guide the parties' production of materials going forward.

2. Negotiation of the 9/12/13 Scheduling Order

78. Following the SEPTA Opinion, and the subsequent May 17, 2013 and July 22, 2013 status conferences with the Court, the parties were instructed to meet and confer regarding a proposed pretrial schedule, and did so over the course of several weeks. In yet another example of how hard-fought the litigation was from the outset, although the parties were able to reach agreement on less controversial issues (for example, the time to exchange initial disclosures and the time for BNYM to answer the Master Complaint), they were unable to reach consensus as to the most critical elements of a pretrial schedule. In particular, Plaintiffs proposed a pretrial schedule that was designed to have the case ready for trial by mid-2015 (i.e., roughly 2 years from the date of the SEPTA Opinion, and more than three years after IUOE Local 39 had moved for class certification prior to transfer). This proposed schedule was aggressive but certainly feasible from Plaintiffs' perspective. Defendants proposed a pretrial schedule that was nearly twice as long. The USAO, meanwhile, took the position that its case was entitled to its own (expedited) pretrial schedule, separate and apart from the private cases in part based on the extended schedule demanded by Defendants.

79. On September 12, 2013, the Court adopted a pretrial schedule that was largely consistent with the schedule proposed by Plaintiffs (the "Scheduling Order"). Dkt. No. 273. The schedule adopted by the Court also contemplated extensive coordination between the Lead Customer Plaintiffs, the Securities Plaintiffs, the ERISA Plaintiffs, and the USAO. By agreement of the parties, the Scheduling Order was subsequently amended on July 11, 2014, with all dates being pushed out by a modest 90 days to accommodate the large number of BNYM party depositions that remained to be scheduled (despite Plaintiffs' best efforts and in the face of strong resistance from BNYM). BNYM argued, for its part, that more time was needed to take third party discovery (without committing to how many third party depositions it intended to seek). The Court noted in approving this extension that "the parties shall proceed on the assumption that no further extensions will be granted."[25]

80. The key pre-trial deadlines set forth in the Scheduling Order, and subsequently amended by the July 11, 2014 Scheduling Order (Dkt. No. 422), contemplated the following deadlines:

10/31/2013	Deadline to serve all document discovery
2/28/2014	Deadline to complete all document discovery (extended to July 30, 2014)
10/15/2014	Original deadline for completion of all fact discovery
11/3/2014	Opening class certification reports
12/05/2014	Rebuttal class certification reports
1/9/2015	Reply class certification reports
1/30/2015	Close of fact and class certification expert discovery, and deadline for class certification motion
3/15//2015	Exchange of merits expert reports
6/30/2015	Deadline for summary judgment outlines and Rule 56.1 statements
9/16/2015	Summary judgment deadline
10/01/2015	Proposed joint pre-trial order

[25] The schedule was slightly amended on two subsequent occasions, January 21, 2015 and then again on February 20, 2015, to allow the parties to consummate negotiations regarding the Settlement.

3. Defendants' Document Production

81. Document production in these Actions began with the service of the first set of document requests in the IUOE Local 39 Action on December 16, 2011. Defendants' last production of documents occurred on January 19, 2015. Plaintiffs served five sets of Requests for Production of Documents which included 58 individual document requests. The first three sets of requests were served by IUOE Local 39 in its case in late 2011 and early 2012, prior to the MDL Transfer Order. The latter two sets of document requests built on the document discovery obtained in the IUOE Local 39 Action, and were drafted in conjunction with Securities Plaintiffs and the other MDL Plaintiffs. In formulating these joint requests, Plaintiffs' Executive Committee, including Co-Lead Customer Counsel, worked efficiently to include the comments of all MDL Plaintiffs.

82. Document discovery also included subpoenas served by the USAO and BNYM on nearly 300 third parties, which included investment managers and consultants of SEPTA, the Ohio Funds, and IUOE Local 39, together with a multitude of other clients and IMs that used BNYM's SI FX service. BNYM's stated need for such expansive third party discovery was to rebut class certification, to prove that its FX services were value-driven, and to show that each manager and client had distinct motives for using the service. BNYM also asserted that such discovery was necessary to defend against the DOJ's FIRREA claim.

83. Once formal discovery requests established the categories of documents each side was seeking, the parties met and conferred to narrow objections, and agree on appropriate search terms (more than 500 of them) and custodians (more than 150 of them). It took months of negotiations to finally reach agreement on these custodians and search terms, but the parties managed to avoid motion practice, and they remained the bedrock of Defendants' document production for the remainder of the litigation.

84. Plaintiffs leveraged technology and effective organization of resources to review and analyze BNYM's voluminous production, which amounted to roughly 25 million pages of documents, including more than 679,000 e-mails and more than 757,000 e-mail attachments. The 679,000 figure represents the number of documents containing one or more e-mails (i.e., including chains of e-mails). The number of individual e-mails Counsel reviewed was far greater. Counsel thus needed to devote significant time to combing through e-mail communications among BNYM personnel to establish the Bank's liability. Meanwhile, third party document production included an additional 3.3 million pages of production. To put the volume of electronic document production in perspective, if one person read each page of these productions at a rate of two minutes per page continuously without sleep or breaks, excluding the voluminous spreadsheets of data that had to be analyzed for purposes of Plaintiffs' damages analysis, it would have taken that individual 75 years to review BNYM's production. This virtual mountain of evidence required a rigorous, disciplined, and coordinated process of review, which Plaintiffs implemented as described below.

a. Use of Electronic Technology to Facilitate Speedy and Efficient Document Analysis

85. In order to target Plaintiffs' review on the most relevant documents and weed out potentially irrelevant material, Plaintiffs employed electronic discovery technology to first organize and then prioritize the document review. *First*, Plaintiffs' Executive Committee solicited bids from database vendors for a document-management system that could accommodate the size of the production, enable the review of documents housed on the database by multiple users at multiple law firms, and offer the latest coding, review, and search capabilities for electronic discovery. In addition, to maximize cost efficiencies, Plaintiffs sought a vendor that could also provide court-reporting services for the large number of depositions that

were anticipated, and would do so at a cost advantage if awarded a contract for database management. Ultimately, Plaintiffs' Executive Committee negotiated a highly favorable pricing arrangement for the benefit of all the coordinated cases, including the DOJ Action and the NYAG Action, with D4 Database Management ("D4"), which served as the document vendor and court reporter for the coordinated cases throughout the litigation.

86. At the outset, the costs of D4's document database and court-reporting services were shared by Co-Lead Customer Counsel, Securities Counsel, ERISA Counsel, the USAO, and LACERA/LADWP Counsel[26] in the following proportions:

Plaintiffs	**Share of Discovery Costs**
Co-Lead Customer Counsel (LCHB and KTMC)	42.68%
Securities Counsel	21.34%
ERISA Counsel	10%
USAO	16%
LACERA/LADWP Counsel	10%

87. Once discovery in the NYAG Action was coordinated with the MDL and the USAO Actions, the NYAG assumed a very modest proportion of the joint costs of D4's database and deposition reporting services as follows:

Plaintiffs	**Share of Discovery Costs**
Co-Lead Customer Counsel (LCHB and KTMC)	38%
Securities Counsel	19%
ERISA Counsel	10%
USAO	16%
LACERA/LADWP Counsel	10%
NYAG	3.5%
NYC Funds	3.5%

88. Plaintiffs utilized the algorithm-based "technology assisted review" (frequently referred to as "TAR" or "predictive coding") to rank documents by relevance. In order to

[26] "LACERA/LADWP Counsel" refers to Cotchett, Pitre & McCarthy, LLP.

implement the technology assisted review, over the course of several weeks, a small group of attorneys at Co-Lead Customer Counsel coded several thousand "seed" documents based on their respective relevance. Through this process, the TAR software was able to identify certain keywords, phrases, and names that made a document more or less relevant. Based on an algorithm, the TAR software then assigned a ranking to each document in BNYM's production. Plaintiffs then used those rankings to prioritize their review, focusing first on those documents likely to contain the most useful information.

b. Manual Document Review Process and Protocols

89. In implementing the manual review of the residual documents following the TAR process, Plaintiffs' Executive Committee developed a review protocol which included a review manual, coding sheets, and several days of orientation to educate attorneys tasked with document review and analysis about the claims at issue. Plaintiffs' Executive Committee then coordinated a review team that included law firms on Plaintiffs' Steering Committee, who also represented Plaintiffs. The firms that did the principal amount of review of Defendants' documents in the Customer Class Cases, apart from Plaintiffs' Executive Committee, included Hach Rose, Hausfeld, and Nix Patterson. Each was assigned batches of documents via the D4 review portal to review.

90. Eleven lawyers from KTMC were deployed full time to analyze Defendants' production. LCHB deployed 14 lawyers working full time on document analysis. In addition, these lawyers were complemented by lawyers from BLBG, and the firms referenced above, who worked under the supervision of Plaintiffs' Executive Committee. These lawyers reported directly to either senior associates or partners for Plaintiffs' Executive Committee firms, participated on weekly telephone conference calls to discuss their findings, and then transitioned,

as depositions began to be noticed, to preparing memoranda and deposition kits in support of each party and non-party deposition.

91. In undertaking the analysis of Defendants' production, documents were categorized in three major areas: (1) subject matter; (2) relevance; and (3) document type (e.g., email correspondence, customer agreement, fee schedule, FX Procedure Form, organizational chart, etc.). Within these categories, lawyers conducting the review also had a menu of sub-categories (e.g., best execution, bonus, ERISA obligations, FX disclosures, etc.), which further refined the review and helped identify relevant documents quickly when needed for more specific projects or for deposition preparation.

92. In requiring the lawyers involved in document analysis to meet at least weekly with associates and/or partners as a group, the Plaintiffs' Executive Committee sought to ensure that reviewing attorneys and associates across all firms were aware of the issues being identified in the document review, why certain documents were high-value documents, and how such documents were informing Plaintiffs' theories of liability. The weekly calls also summarized and discussed the "hottest" documents identified for each week. Following the weekly discovery review call, one firm from Plaintiffs' Executive Committee would draft a memorandum summarizing the hottest and most important documents from that week. The memoranda would then be sent to more senior attorneys who would further distill the documents that survived first-tier review. Finally, after the memoranda were edited by senior attorneys, they, along with the documents referenced therein, would be shared among Plaintiffs' Executive Committee firms for the use in pleadings, expert reports, and in preparation for depositions.

c. Discovery-Specific Projects

i. Master Trust Agreements Between BNYM and Class Members

93. Plaintiffs understood that BNYM's documents, almost exclusively, would form the basis for liability at summary judgment or trial. Simultaneously with the review of BNYM's production for important documents, there were a number of additional discovery projects that involved a more targeted review and synthesis of the production specific to the Action.

94. One of the most significant and arduous document-review projects involved proving the existence of common fiduciary and contractual language across all of the BNYM, Mellon, and BNY clients that would unify putative Class Members into a single class or multiple subclasses. This project involved the identification, review, and cataloging of several thousand MTAs, and any amendments thereto, to identify contractual language that would establish BNYM's fiduciary obligations to Class Members, a fact-based inquiry, the parameters of which were set forth in the Court's SEPTA Opinion.

95. The vast majority of putative Class Members had MTAs with BNYM that neither affirmed nor disavowed the existence of a fiduciary relationship between BNYM and that putative Class Member. In advance of and in connection with developing Plaintiffs' theories in support of class certification, Plaintiffs devoted significant resources to reviewing and cataloging the relevant clauses of each and every Class Member MTA for: (1) the applicable state law; (2) the existence of a fiduciary or confidential relationship; (3) an obligation of full and fair disclosure arising out of that fiduciary or confidential relationship; and (4) any permissible exceptions or carve-outs to either the fiduciary/confidential relationship or the custodial banking

relationship. There were over 2,000 documents that required review for what were initially believed be approximately 1,262 Class Members.[27]

96. This project was further complicated by the fact that BNYM often produced multiple MTAs for each Class Member. Thus, Plaintiffs had to ascertain whether a given MTA was "final." Relatedly, many Class Members also executed contracts with both a legacy entity (i.e., BNY or Mellon) and BNYM. It was frequently the case, then, that a single Class Member could have had two or three MTAs that governed its relationship with the Bank during the Class Period.

97. Plaintiffs cross-referenced MTAs with other BNYM discovery to ensure review of all available MTAs. Using certain of BNYM's responses to interrogatories, Plaintiffs further narrowed the operative agreements to those affecting putative Class Members. Plaintiffs also met and conferred extensively with BNYM regarding its failure to produce MTAs for certain putative Class Members. Plaintiffs also cross-referenced their expert's SI FX trade data analysis with the MTA review and analysis to establish putative sub-classes and members for each. Through this process, Plaintiffs strengthened their fiduciary duty claims against BNYM and clarified the membership of the putative Classes (and possible sub-classes). Indeed, Plaintiffs review of hundreds of those agreements revealed that the majority of them called for the laws of New York, California, Pennsylvania, Massachusetts, or Delaware to apply.

ii. Contract Claims: SI Form and FX Procedures

98. For their contract claims, Plaintiffs also needed to establish valid contractual relationships between BNYM and each putative Class Member. As recognized by the Court in the SEPTA Opinion, BNYM's contractual obligations to Plaintiffs were allegedly embodied in

[27] Approximately 1,218 distinct BNYM custodial customers were ultimately deemed to be part of the Settlement, based on the parties' further review of BNYM's transactional data and the terms of the Settlement.

two sets of documents: the SI Forms and FX Procedures, which every client or its investment manager that used standing instruction service (or equivalent) offered by BNYM, Mellon or BNY, allegedly executed. As many Class Members had several different custodial accounts with BNYM with different investment managers, there frequently were multiple SI Forms and FX Procedures applicable to each of the more than 1,200 Class Members in this Action. Indeed, there are over 11,000 different custodial accounts tied to Class Members in this Action.

99. Many putative Class Members entered into SI Forms and FX Procedures with different BNYM predecessors, i.e. one or both of BNY or Mellon. For instance, SEPTA executed SI Forms with both Mellon and BNYM. Thus, as part of the discovery analysis, Plaintiffs had to track down iterations of the SI Forms and FX Procedures used by BNYM and its predecessors, determine whether and when such forms were amended, isolate the key contractual language in those SI Forms and FX Procedures, connect those SI Forms and FX Procedures to BNYM's representations of "best execution" on its website (at various points in time), and also isolate other common contractual language relating to BNYM's representations that provided a unifying theory for class certification. Like the review of the MTAs, this was an enormously labor intensive process.

iii. Contract Claims: Requests For Proposals

100. A large number of putative Class Members also issued RFPs that BNYM, BNY or Mellon responded to in an effort to either keep existing custody clients or win new business. BNYM's RFP responses represented, for example, that the Bank would obtain "the very best rates," "best execution" and "extremely favorable rates" in executing FX on its clients' behalf. RFPs were critical to Plaintiffs' theory of contract liability because each RFP response that yielded a new custodial relationship for BNYM constituted an independent contractual relationship, separate and apart from the SI Forms and the FX Procedure Forms described above.

101. RFP responses were especially critical for Class Members who transacted with Mellon, in particular, as the obligations defined in Mellon's SI Forms and FX Procedure Forms were far narrower than those of BNY and BNYM. More specifically, under the SEPTA Opinion, neither Mellon's SI Forms nor its FX Procedures contained any ambiguities such that any additional Mellon misrepresentations could be incorporated by reference therein. Put simply, this meant that terms such as "best execution" and "free of charge" – which appeared on BNY's and BNYM's websites – would likely not apply to Class Members who exclusively had transacted with Mellon. Plaintiffs therefore had every incentive to locate substantially similar representations in Mellon's RFP responses that equated with the promise of best execution or best rates. Plaintiffs believe they were successful in doing so.

102. The resources needed to analyze and review BNYM's RFP responses were enormous. Because of the expansiveness of BNYM's operations, RFPs (and BNYM's responses to them) generally exceeded 200 pages each, and frequently 300 pages. Plaintiffs dedicated a team of attorneys to focus exclusively on RFP review and analysis. Through targeted searches, the team identified more than 2,000 RFP responses in the Bank's production, spanning a period of thirteen years and involving RFPs issued by BNY, Mellon and BNYM. Once isolated, Plaintiffs (working with the USAO, which was also keenly interested in the RFP responses to support its mail and wire fraud predicate claim) then undertook the laborious and time consuming task of deciphering (i) which RFPs were directed to Class Members (the vast majority of the RFP responses in the Bank's production were for non-Class Members – principally, non-custodial clients of BNYM who had nonetheless received RFPs that spoke to the Bank's FX capabilities); and (ii) which RFPs actually contained misrepresentations (through their review, Plaintiffs identified more than 20 unique misrepresentations).

103. However, after analyzing thousands of RFP responses, neither Plaintiffs nor the USAO could ascertain whether certain of the responses were final versions, actually sent to putative Class Members. This required further review of metadata that Plaintiffs sought from BNYM which tended to reveal whether RFPs were put into final form. Obtaining such information involved extensive meet and confers regarding the production of RFP responses. These negotiations continued over several months; although the parties made substantial progress in their negotiations, at the time of settlement, this issue remained outstanding. All parties nonetheless understood the substantial implications from resolution of this issue. In fact, in the event that a suitable agreement could not be reached among the parties, Plaintiffs were considering filing an adverse inference motion with the Court.

104. Plaintiffs' discovery efforts were also directed at establishing BNYM, both pre- and post-Merger, maintained a common database of stock RFP responses, and that RFP responses with respect to FX services were part and parcel of a company-wide policy to mischaracterize BNYM's standing instruction service. In order to establish this common practice and procedure, Plaintiffs had to discover the database management software and protocols for storing and sharing RFP responses in the United States and in Europe, depose the individuals knowledgeable about the process of preparing and tracking of RFP responses and the institutional preservation of common RFP responses, and then develop the evidence to demonstrate that BNYM's representations found on its website were connected to the representations provided to RFP responses and were part of a common scheme and course of conduct. Co-Lead Customer Counsel took the lead in developing this important aspect of the record, deposing four different BNYM deponents, three of whom were Rule 30(b)(6) deponents, and one of whom was based in the United Kingdom, regarding BNYM's RFP practices.

iv. Depositions

105. Depositions served as a critical component of discovery in this case from both a fact-gathering perspective and in terms of the legal arguments each party made. The breadth and importance of deposition discovery is apparent in the terms of the Scheduling Order, which provided that each side was permitted to take up to 150 depositions.[28]

106. Plaintiffs' Executive Committee and USAO shared resources in order to gather meaningful testimonial evidence. Plaintiffs' Executive Committee and the USAO spent approximately 350 hours *on the record* taking depositions of BNYM current and former employees, entering several thousand exhibits as part of those examinations.

107. Fifty-three (53) depositions were taken of fifty-two (52) BNYM witnesses[29] over the life of the Customer Class Cases. All but one of these depositions took place between March 19, 2014 and January 15, 2015. Five of these depositions went longer than one day. 1,301 total exhibits were marked at the BNYM witness depositions, totaling approximately 20,000 pages.

108. Although Plaintiffs were just one of seven constituencies[30] in the MDL/NYAG coordinated cases, Co-Lead Customer Counsel led almost half (or twenty-four) of the BNYM witness depositions.[31] Of these twenty-four depositions, KTMC led twelve, including one two-

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[28] The Scheduling Order allocated the total number of depositions permitted per side between the private cases (100) and the USAO case (50). However, given the level of collaboration between Plaintiffs' Executive Committee and the USAO, these distinctions were largely artificial.

[29] One BNYM witness—John Cipriani—gave two depositions: first as a 30(b)(6) witness in the IUOE Local 39 Action (prior to MDL transfer) on 2/28/12, and then again more than two years later (in the MDL) as a fact witness on 10/21—10/22/14.

[30] Apart from the Customer Plaintiffs, the other constituencies included the DOJ, the NYAG, the Securities Plaintiffs, plaintiffs in the ERISA Actions, LACERA/LADWP (who brought their own direct action), and the NYC Funds (who also brought their own action).

[31] The BNYM witness depositions that were led by Customer Counsel were: John Cipriani (as a 30(b)(6) witness) (8 new exhibits introduced), David Green (25 new exhibits), James McAuliffe (35 new exhibits), William Samela (19 new exhibits, 3 previously marked), Phyllis Bertok (7 new exhibits), Paul Park (10 new exhibits), William Blatchford (35 new exhibits), Richard Estes (24 new exhibits, 2 previously marked), Antonio Garcia-Meitin (15 new exhibits), Karen Grupinski (14 new exhibits), Richard Rua (26 new exhibits, 2 previously marked), John Bundy (16 new exhibits, 2 previously marked), Robert Donelan (14 new exhibits, 1 previously marked), Peter Maher (27 new

day deposition, LCHB led seven, TLF led three, and Hausfeld LLP led two. Of the remaining twenty-nine BNYM depositions that were not led by Customer Counsel, eight (8) were led by BLBG, who were lead counsel in the Securities Action.[32] The DOJ led twenty (20) BNYM depositions, which included several half-day depositions.[33] The NYAG led one deposition.[34] Customer Counsel appeared at all but three (3) of the BNYM witness depositions,[35] and asked questions at nine (9) of those that they did not lead.[36] To summarize, therefore, of the 53 total BNYM witness depositions that were taken in the MDL, Customer Counsel asked questions at 33 (24 of which they led), and did not attend 3.

109. To minimize burdens on the parties and witnesses, the parties agreed that depositions of BNYM witnesses would occur primarily in Pennsylvania, Massachusetts and New

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exhibits), Brian Haberstock (8 new exhibits, 3 previously marked), Kevin Lawrie (21 new exhibits, 4 previously marked), Robert Near (24 new exhibits, 9 previously marked), Patrick Coppe (10 new exhibits, 2 previously marked), Trevor Kirby (29 new exhibits, 1 previously marked), David Almeida (12 new exhibits, 5 previously marked), Richard Gill (15 new exhibits, 4 previously marked), Tim Keaney (28 new exhibits, 4 previously marked), A.J. Quitadamo (2 days) (35 new exhibits, 5 previously marked), and Gerald Hassell (BNYM's CEO) (17 new exhibits, 30 previously marked).

[32] The eight (8) BNYM witnesses whose depositions were led by BLBG were Gregory Wildgrube (26 new exhibits), Daniel Wywoda (29 new exhibits), Ronald "Jeep" Bryant (46 new exhibits), James Palermo (26 new exhibits, 11 previously marked), Richard Mahoney (2 days) (54 new exhibits, 17 previously marked), John Park (30 new exhibits, 3 previously marked), Robert Kelly (23 new exhibits, 10 previously marked), and Thomas Gibbons (30 new exhibits, 8 previously marked). Another BNYM witness, Bruce Van Saun, was deposed after the February 4, 2015 handshake agreement to settle the Customer Class Cases, the DOJ Action, and the NYAG Action, and therefore is not included in any of the totals above.

[33] The BNYM witnesses whose depositions were led by the DOJ were Vincent Sands (18 new exhibits), Jennifer Goerlich (44 new exhibits), Thomas Hoge (30 new exhibits, 1 previously marked), Georgia Phillips (16 new exhibits), David Babbitt (28 new exhibits), Paula Pulvino (40 new exhibits), Nancy Wolcott (38 new exhibits), Carlos Pacheco (15 new exhibits), Bruce Shain (23 new exhibits), Susan Pfister (11 new exhibits), Aniko Delaney (8 new exhibits, 3 previously marked), Kevin Tabacchi (54 new exhibits, 3 previously marked), Ronald Christiansen (21 new exhibits, 7 previously marked), John Cipriani (2 days) (43 new exhibits, 11 previously marked), Marek Unger (28 new exhibits), Margarita Morales (15 new exhibits, 4 previously marked), Jorge Rodriguez (2 days) (32 new exhibits, 15 previously marked), David Nichols (2 days) (62 new exhibits, 10 previously marked), Sue Lo (half-day) (4 new exhibits, 3 previously marked), and Boris Anguelov (half-day) (3 new exhibits, 2 previously marked).

[34] The NYAG led the deposition of Michael Gandy (30 new exhibits).

[35] The only three BNYM witness depositions at which Customer Counsel did not appear were those of Gibbons, Pacheco, and J. Park. These witnesses were of special relevance to the Securities Action and/or otherwise were not highly relevant to the Customer Class Cases.

[36] Customer Counsel asked questions of the following BNYM witnesses where Customer Counsel were not the lead questioner: Sands, Phillips, Delaney, Bryant, Christiansen, Palermo, Cipriani, Mahoney, and Nichols.

York. Co-Lead Customer Counsel, on behalf of Plaintiffs' Executive Committee and for the benefit of the USAO and other MDL Plaintiffs, also negotiated highly favorable pricing for deposition services and effectively used technology to keep costs for depositions down. Therefore, Co-Lead Customer Counsel, along with its vendor and co-counsel were diligent in reducing deposition costs, while ensuring that critical information regarding BNYM's marketing and pricing practices was obtained.

110. Plaintiffs' Executive Committee sought to maximize efficiencies in this process by assigning depositions based on subject matter, expertise and relevance to the respective underlying cases. This was important because, particularly during the last 4 months of the discovery period, depositions were double and sometimes triple-tracked.

111. No deposition proceeded without significant consultation between Plaintiffs' Executive Committee and USAO, and occasionally the NYAG, to ensure that the goals of all plaintiffs would be advanced. Calls among counsel for Plaintiffs and USAO prior to depositions, and in caucuses between Customer Counsel, the USAO, NYAG and ERISA Counsel during the depositions, ensured that depositions were conducted in a manner sufficient to satisfy all interests without sacrificing the time of either deponents or attorneys.

112. Plaintiffs also shared resources in preparing for individual depositions. First-tier document review, as described above, was conducted by most members of Plaintiffs' Executive Committee and Plaintiffs' Steering Committee. Attorneys from Plaintiffs' Executive Committee would then conduct a second-tier document review of those documents most likely to contain useful information for a given deponent. Often, this involved reviewing all "Hot" and "Highly Relevant" documents in a deponent's custodial file. If time permitted, this review would be

further expanded to include all "Hot" and "Highly Relevant" documents mentioning that deponent as well.

113. From this review, document review analysts from Plaintiffs' Executive Committee would create a memorandum and deposition kit identifying documents that could potentially serve as effective tools and exhibits for a given deposition. This memorandum would also contain a discussion of the deponent's role within BNYM, Mellon or BNY and identify potential areas of interest to be explored at deposition, and would identify any prior testimony that mentioned the deponent. Such memoranda were then edited and circulated by document review analysts or associates to Plaintiffs' Executive Committee and the USAO. These memoranda were also supplemented with summaries of key documents based on document reviews done by the USAO's outside consultants. Using these methods, the parties gained the benefit of multiple perspectives and expertise when preparing for depositions without duplicating efforts. Co-Lead Customer Counsel prepared deposition memoranda and kits which were shared with Plaintiffs' Executive Committee and the USAO.

114. Customer Class Plaintiffs kept costs down and maximized efficiencies by limiting duplicative participation in depositions. With respect to participation, generally only a single questioner, on behalf of all coordinated actions (including the USAO and NYAG actions) actually examined BNYM witnesses. Time was allotted to other plaintiffs, if requested, for non-duplicative questioning. Further, Plaintiffs tended to limit attorney attendance in out-of-town depositions, and encouraged, instead, use of inexpensive WiFi video services and teleconference services rather than travel. Plaintiffs also negotiated with their Court Reporting service to order only a single transcript for the Plaintiff side so as to limit the over-ordering of copies. Plaintiffs

and the USAO also negotiated with BNYM for an agreement to bring certain foreign BNYM witnesses to the U.S. rather than requiring depositions through Hague Convention procedures.

115. Plaintiffs had to deal with the added difficulty of scheduling BNYM deponents in the last quarter of the schedule. Although Plaintiffs sought BNYM depositions beginning in March 2014, BNYM did not commit to dates for many of their key witnesses until September 2014, and scheduled most of those critical depositions in November and December 2014. This deposition stacking, in addition to the massive number of third party depositions sought by BNYM at the close of discovery, required an enormous commitment of resources from Plaintiffs' Executive Committee in a very truncated period.

d. Rule 30(b)(6) Notice & Controversy

116. On June 30, 2014, the USAO, in consultation and collaboration with Plaintiffs' Executive Committee, served a Rule 30(b)(6) deposition notice on BNYM, primarily focused on the characteristics of the computer systems that generated much of the SI FX transaction data upon which the parties would calculate damages and establish liability. These systems also documented the technological abilities of BNYM with regard to the provision of FX services, which Plaintiffs sought to establish were only selectively made available to certain of the Bank's custodial clients in efforts to maintain the profitability of the SI FX program.

117. Although the Rule 30(b)(6) notice was served by the USAO, Plaintiffs' Executive Committee made significant contributions in both drafting the notice and engaging BNYM in the lengthy meet and confer process that ensued.

118. Over the course of several months, Plaintiffs' Executive Committee and USAO jointly met and conferred with BNYM regarding the Rule 30(b)(6) notice. During the course of those negotiations, however, BNYM made clear that they would object to any subsequent deposition notices pursuant to Rule 30(b)(6), an issue with very little precedent guiding the

parties. To preserve all rights, the USAO, with substantial input from Plaintiffs' Executive Committee, submitted a comprehensive revised Rule 30(b)(6) notice containing all potential topics for which it would depose BNYM on July 29, 2014 (the "Amended Notice"). The Amended Notice contained 21 questions, with multiple subparts, spanning all conceivable topics relevant to each of the MDL Actions, the DOJ Action, and the NYAG Action. BNYM served objections and responses to the original Rule 30(b)(6) notice on August 11, 2014 and September 22, 2014, which served as the primary area of negotiation over the next three months. BNYM argued vehemently that (i) most of the testimony sought through the Rule 30(b)(6) notice was best obtained through fact witnesses, and (ii) it would be exceedingly burdensome to prepare a witness to testify as to each issue listed on the notice.

119. After BNYM served its remaining objections and responses to the Amended Notice on September 22, 2014, BNYM served a Rule 30(b)(6) deposition notice on SEPTA, served substantially identical notices on IUOE Local 39 and Ohio SERS on October 8, 2014, and served notices on OP&F and the Ohio Treasurer of State on October 31, 2014. These notices were served after BNYM had already deposed more than thirty fact witnesses from SEPTA, the Ohio Plaintiffs (including two former employees of the Ohio Treasurer of State and a previous Rule 30(b)(6) deposition of OP&F), and IUOE Local 39. BNYM's Rule 30(b)(6) notices were extremely broad: the covered topics included selection, retention and evaluation of investment managers and investment consultants; Plaintiffs' relationship and communications with their investment managers and investment consultants; Plaintiffs' knowledge of the relevant custody contracts, the BNYM website, the SI Forms, and SI Procedures; Plaintiffs' knowledge of BNYM's FX service, including alternative to SI; all communications with BNYM regarding FX; Plaintiffs' ability to execute FX on their own behalf; Plaintiffs' understanding of "best

execution"; Plaintiffs' knowledge of independent FX market rates; Plaintiffs' knowledge of the State Street lawsuit and the lawsuits against BNYM commenced by the NYAG and Virginia AG; actions SEPTA and IUOE Local 39 took to indemnify BNYM under the custody contracts; and the process for approving and filing each lawsuit. Plaintiffs drafted and served lengthy responses and objections to the notice, arguing primarily that the information sought was duplicative and cumulative of prior deposition testimony. To support these objections, Plaintiffs took the painstaking and time-consuming step of identifying each prior deponent who had spoken to a given issue, including the page and line numbers of each such response.

120. Ultimately, the parties were able to reach a creative three-part mutual solution to the Rule 30(b)(6) issue: (i) Plaintiffs and Defendants would be permitted to retroactively designate prior testimony as 30(b)(6) testimony; (ii) the parties would revisit their respective Rule 30(b)(6) notices with the goal of narrowing the list of topics sought; and (iii) to the extent possible, the parties also agreed to provide written responses to any outstanding issues which could not be covered by prior testimony. In this way, the parties were both able to obtain the information they desired without the added burden of having to prepare multiple deponents as Rule 30(b)(6) witnesses. Negotiations concerning the proposed Rule 30(b)(6) deposition of the Ohio Treasurer of State were ongoing when the parties reached an agreement in principle.

121. In the end, although BNYM agreed to produce additional Rule 30(b)(6) witnesses, only two additional BNYM 30(b)(6) witnesses were actually deposed purely in their capacity as Rule 30(b)(6) witnesses. One of them provided highly technical (and useful) testimony regarding BNYM's multiple computer systems used for, among other things, executing SI FX transactions, tracking customer transactions, and tracking profit and loss from such trades. The information learned through this deposition was critical to Plaintiffs' understanding of the

Bank's transaction data. This data and information was, in turn, used by Plaintiffs' damages expert to construct a damages methodology for all Class Members. It forms the basis for the Plan of Allocation in the Settlement.

122. The second of those witnesses provided testimony on concerning the Bank's responses to RFPs. As discussed above, the alleged misrepresentations contained in the Bank's RFP responses served as the factual basis for many putative Class Members' claims (particularly those of Mellon's clients) and also were important to the USAO's claims. Plaintiffs elicited critical testimony regarding Mellon's and BNYM's process for responding to RFPs, including how such information was saved on a shared system, which individuals within each bank had responsibility for drafting and editing RFPs, and how the Bank kept track of which RFPs were ultimately sent to clients. This testimony aided Plaintiffs' analysis of the RFPs (as discussed above), and also informed the countless meet and confer sessions over the issue of which RFPs had actually been sent to Class Members.

e. Interrogatories

123. As permitted by the Federal Rules and the Scheduling Order, the parties also engaged in extensive and time-consuming interrogatory discovery. Plaintiffs prepared and served more than 80 highly particularized interrogatories, contained in six unique sets, on BNYM. Initially, Plaintiffs' interrogatories were designed to allow Plaintiffs to identify the putative classes and subclasses and damages. Thus, the first three sets of interrogatories sought information regarding all of BNYM's custodial clients and each client's FX transactions during the Class Period. Requesting such information was only half the battle. Analyzing the information was particularly challenging in light of the fact that such data was maintained by two distinct legacy entities, as well as the merged BNYM entity. Further, the sheer volume of the

information – several terabytes of transaction data[37] – also presented unique challenges in calculating damages. The transaction data was, however, essential to Plaintiffs' damages expert, who developed a damages methodology to analyze and quantify the data.

124. As Plaintiffs' knowledge of the case evolved over time – gained from analyzing significant amounts of testimonial and documentary evidence – Plaintiffs were able to craft and serve more targeted interrogatories designed to address specific proofs needed for liability or class certification. For instance, Plaintiffs' Sixth Set of Interrogatories, served on December 24, 2014, asked the Bank to identify which Class Members received final RFPs from the Bank (RFPs were identified as one of the many contractual documents at issue); information regarding the information contained on the Bank's website (also relevant to Plaintiffs' contract claims); and the entities through which each Class Member transacted SI (relevant to establishing potential subclasses at class certification). Interrogatories were also crafted to fill holes with respect to issues that had not been addressed through deposition testimony or document production and also to request the basis for the damages supporting the Bank's counterclaims against Plaintiffs, *i.e.* its attorneys' fees and expenses in connection with defending the Customer Class Cases, the DOJ Action, and the NYAG Action.

125. Plaintiffs took advantage of additional tools available under the Federal Rules to obtain necessary information in discovery. On September 25, 2014, Plaintiffs served on BNYM a request for entry onto land or property for inspection pursuant to Rules 26 and 34 to enable Plaintiffs to document the proximity and opportunities for exchange of information between the Bank's FX traders and sales personnel, in preparation for trial. This resulted in an agreement by

[37] Indeed, the file containing the Bank's transaction data was so large that a special computer program was needed to open it.

the Bank to produce high-resolution photographs of its Pittsburgh FX trading desk, which Plaintiffs intended to use as trial exhibits.

126. Plaintiffs also drafted Requests for Admission regarding, for example, the Bank's FX disclosures to clients and pricing practices, profit earned on SI, and the Bank's understanding of "best execution." The Actions were settled without these being served.

4. Formal Discovery Disputes

127. Once the documents were produced and reviewed, Plaintiffs frequently conducted both formal and informal follow-up requests with BNYM relating to document production. Notably, in a case where nearly 20 million pages of documents were produced by Defendants, just two disputes related to BNYM's documents ended up before the Court.

a. Rua Clawback & Groom Motion to Compel

128. Through two separate motions, Plaintiffs sought to compel the discovery of two documents BNYM sought to recall and redact pursuant to the Confidentiality Order. The issues regarding these two documents involved challenging theories regarding whether certain communications with third-parties waive attorney-client privilege. At issue in the first motion to compel, filed on September 2, 2014, was BNYM's attempt to clawback a document containing a discussion between non-lawyers that conveyed at least part of the substance of legal advice received from BNYM's counsel concerning a matter of significant importance in the litigation. In the second motion to compel, filed on October 23, 2014, Plaintiffs sought to prevent BNYM from clawing back a legal memorandum sent to BNYM's investment managers regarding whether it's SI practices complied with ERISA. That motion presented the novel issue whether BNYM and its third party investment managers shared a "common business interest" such that the attorney client privilege would not be waived by the sharing of legal advice. Both motions were vigorously disputed, as the parties recognized the importance of the outcome. Although the

Court ultimately sided with BNYM on both motions, it did so in carefully worded and reasoned opinions which recognized the strong arguments made on both sides of the issue.

b. Requests for Production, Privilege Logs and Redaction Challenges

129. One of the most significant and time-consuming set of informal follow up requests involved BNYM's responses to RFPs, as discussed above. Plaintiffs also expended significant resources in analyzing the Bank's redactions and privilege logs. BNYM produced roughly 56,000 documents in redacted form. Throughout the review process, attorneys from Plaintiffs' Executive Committee kept track of documents that, in their estimation, were improperly redacted. In collaboration with the USAO, Plaintiffs identified approximately 150 redacted or withheld documents to challenge, many of which were chosen as representative of other similarly redacted documents in the Bank's production. The parties met and conferred over the course of several months regarding the propriety of BNYM's redaction and withholding of documents. BNYM ultimately reproduced more than a thousand documents that had been withheld, and several hundred documents that had been redacted.

C. Discovery of Plaintiffs

130. BNYM directed a relentless discovery campaign against Plaintiffs. By the end of it, Plaintiffs had produced nearly 6 million pages of documents, a subset of the documents that were collected and reviewed by Co-Lead Customer Counsel. The search for and collection of documents in response to Defendants' discovery requests was an arduous, time-consuming, and costly endeavor to which each of the Lead Customer Plaintiffs devoted substantial employee and information-technology resources. In addition, both KTMC and LCHB had attorneys on site at each of the Plaintiffs' offices poring over hard copy materials spanning more than 10 years. Because Plaintiffs' discovery was progressing in parallel with the discovery that Plaintiffs were

taking of BNYM, once electronic documents were harvested from the electronic repositories of the Plaintiff institutions, separate review teams of lawyers had to be assembled to review the documents for relevance and privilege. During the fall of 2013, for instance, KTMC contracted with nine lawyers over four months whose sole responsibility was to review the documents SEPTA had collected for relevance and privilege and to undertake to produce these documents to Defendants. Similarly, LCHB deployed six lawyers to gather, review and produce the Ohio Funds documents.

1. Document Discovery

131. BNYM served eight sets of document requests on Plaintiffs: two on SEPTA, two on the Ohio Funds, and four on IUOE Local 39. BNYM's first request was served on December 23, 2011, and its last request was served on November 18, 2013. Plaintiffs served responses and objections to each set of requests, and endeavored, through meet-and-confer sessions with the Bank's counsel, to narrow the universe of documents sought. Whenever possible, Customer Counsel also divided up responsibility among themselves for responding to specific requests that would affect all Plaintiffs equally, thereby avoiding duplication of efforts.

132. Despite the efficiencies gained through developing joint strategies for responding to BNYM's discovery requests, the process of collecting, reviewing and producing Plaintiffs' documents was complicated and time-consuming. Literally millions of pages from the Ohio Funds (including from the Ohio Treasurer of State) were collected and reviewed. Each document needed to be reviewed for relevance and privilege, a rolling process that took months to complete. In addition to the first-tier review, Plaintiffs also performed a second-tier review of all documents initially tagged as "privileged" or identified as needing further review. Attorneys also frequently spot-checked documents coded as "responsive" or "not responsive" to confirm they were being coded correctly.

133. Here again, Plaintiffs leveraged technology to gain efficiencies in the review process. As described above, this allowed Plaintiffs to prioritize their review of the most important (or likely important) documents ahead of those documents deemed by the review technology to be less relevant. This process benefited both Plaintiffs and BNYM by ensuring that the most relevant documents (and thus most responsive to BNYM's requests) were produced first. SEPTA produced approximately 73,000 pages of documents. SERS produced more than 300,000 documents, consisting of more than 5 million pages. OP&F produced more than 18,000 documents, consisting of 400,000 pages. The Treasurer of State produced more than 1,000 documents, consisting of more than 128,000 pages. IUOE Local 39 and its associated service providers produced several thousand documents, equaling more than 185,000 pages. In connection with their review and production, Plaintiffs also created privilege and redaction logs for each client, each of which contained approximately 1,200 entries for all Plaintiffs.

2. Defendants' Interrogatories and Requests for Admission Directed to Plaintiffs

134. The Bank also served three sets of far-ranging interrogatories on Plaintiffs. Responding to each of the Bank's interrogatories required a significant amount of work by Plaintiffs. As discussed above, whenever possible, Plaintiffs divided responsibility for responding to Defendants' interrogatories to avoid duplication of efforts. The Bank's third set of interrogatories, consisting of 17 contention interrogatories, was particularly demanding. The Bank asked Plaintiffs, for example, to:

- Identify all documents constituting the operative contracts for each named plaintiff and explain in detail why Plaintiffs believed such documents to constitute an operative contract;

- Identify every source of any fiduciary duty Plaintiffs claimed BNYM owed to Plaintiffs and the class;

- Identify every misrepresentation made by BNYM to Plaintiffs;
- Describe in detail Plaintiffs' contention that BNYM violated certain consumer protection statutes;
- State each question of law or fact Plaintiffs contend is common to each class or subclass; and
- Describe in detail what Plaintiffs understood "best execution" to mean at all times during the Class Period.

Although the case settled before Plaintiffs' response to BNYM's contention interrogatories were due, when the Settlement was reached Plaintiffs nonetheless had already drafted responses and were diligently working to refine them.

135. On December 27, 2014, the Bank also served 24 detailed requests for admission on Plaintiffs. The Bank's RFAs asked Plaintiffs to admit certain propositions such as that the Bank priced its FX within the range of the day, that Mellon did not advertise "best execution" in its FX practices, and that Plaintiffs' investment managers undertook primary responsibility and discretion for executing Plaintiffs' FX transactions. Each request was, in some way, tied directly to BNYM's anticipated defenses. Crafting appropriate responses was therefore an exercise in caution and discretion as much as it was a fact-gathering exercise. Plaintiffs prepared responses to BNYM's requests, but the litigation was resolved before the responses were served.

3. Depositions of Plaintiffs

136. BNYM deposed approximately 32 representatives of Plaintiffs, including current and former employees. In each instance, the attorneys defending the deposition would review all documents bearing on the particular witness and, relatedly, develop a strong understanding of that individual's role within the organization and corresponding job responsibilities. In advance of each deposition, "deposition kits" were created for each witness. Those kits included a discussion of all important documents (either from the witness's custodial file or other

documents that mentioned the witness or spoke to his or her job functions), as well as a discussion of that individual's role within the organization and likely areas of inquiry. Counsel then worked with each witness to prepare for one to two days prior to the deposition. BNYM deposed Plaintiff witnesses for more than 100 hours, requiring significant preparation and travel.

137. Plaintiffs objected outright to certain depositions noticed by the Bank, which prompted numerous exchanges of written correspondence and telephonic meet and confers. For instance, BNYM noticed both SEPTA's General Manager (the equivalent of a CEO) and Chairman of the Board. Through a several-month-long meet-and-confer process, SEPTA took the position that the limited utility of these depositions was far outweighed by the burdens imposed by asking high ranking executives and board members to sit for deposition of dubious relevance. In the end, Plaintiffs and BNYM were able to reach agreement on the number and identities of SEPTA deponents. This agreement, however, was the product of prolonged negotiations, over the course of many months.

138. Similarly, during fact discovery, BNYM sought numerous depositions of Ohio representatives in addition to the 18 BNYM ultimately took from OP&F, SERS, and the Ohio Treasurer of State. BNYM sought the depositions of the former executive directors of SERS and OP&F, the former Treasurer of the State of Ohio, a former Deputy Treasurer of the State of Ohio, two former attorneys from the Treasurer's Office, and a former director of operations from the Treasurer's Office. The parties discussed these depositions over the course of many months, and exchanged detailed correspondence about the proposed deponents, including the parties' detailed positions on the apex doctrine and when high-ranking state officials may be deposed.

4. Agreements with the USAO to serve as fact witnesses in the FIRREA Case

139. Plaintiffs also worked with the USAO in aid of developing evidence to support the USAO's FIRREA claim. Following extensive negotiations with the USAO, each of the Ohio Funds and SEPTA, through written agreements, committed to appear at any trial of the DOJ Action in lieu of being deposed by the USAO.

5. Discovery Disputes

140. While the parties generally worked cooperatively to resolve discovery disputes without Court intervention, as is often the case with complex litigation, a number of disputes ended up before the Court. The section below summarizes the nature of the discovery disputes that were presented to the Court, and the Court's ruling as to each.[38]

a. October 2, 2013 Motion to Compel

141. First, on October 2, 2013, BNYM moved to compel SEPTA and the Ohio Funds to produce (i) RFPs Plaintiffs issued to prospective investment managers, (ii) responses to those RFPs, and (iii) documents reflecting Plaintiffs' evaluation of those responses. The parties met and conferred extensively, with Plaintiffs ultimately offering to produce RFP materials only in the case of investment managers who were actually retained by Plaintiffs. BNYM rejected Plaintiffs' offer and opted to seek relief from the Court. After the issue was fully briefed, Magistrate Judge Cott issued an order which was largely consistent with the offer Plaintiffs had previously made to the Bank.

[38] As mentioned above at ¶ 38, in a discovery hearing prior to the MDL transfer, IUOE Local 39 prevailed in obtaining extensive FX trading data for Class members, as well as extending the time period covered by Defendants' planned document production in the IUOE Local 39 Action.

b. February 13, 2014 Motion to Compel and For Sanctions (SEPTA only)

142. Magistrate Judge Cott's October 24, 2013 Order did not, however, dispose of the RFP issue. As counsel for SEPTA learned more about how that organization operated, it became apparent that, unlike the Ohio Funds, SEPTA did not issue formal RFPs. Thus, SEPTA later took the position that a joint promise to provide responses to RFPs issued by Plaintiffs applied to the Ohio Funds but did not apply to SEPTA. BNYM disagreed and entered into further motion practice, with BNYM seeking not only to compel SEPTA to produce such materials, but also sanctions for failure to comply with Magistrate Judge Cott's Order. The issue was briefed extensively and argued before the Court. SEPTA was ordered to inquire with each of its relevant current and former investment consultants and managers regarding responses to RFPs. This process yielded the additional production of fewer than 20 documents, none of which constituted responses to RFPs.

c. Third Party Discovery

143. Third party discovery was a particularly complicated and contentious issue in these Actions. BNYM identified more than 160 third parties in its initial disclosures in the Customer Class Cases and the DOJ Actions. Plaintiffs believed that extensive third party discovery of absent Class Members was inappropriate, and that, in any case, the limited benefits to be gained by such discovery were outweighed by the extraordinary burdens it entailed. Before discovery in the MDL Actions and the DOJ Action was coordinated, however, the USAO issued document subpoenas to nearly all of the third parties identified in the Bank's Rule 26 disclosures. BNYM, in turn, sought to depose scores of third parties.[39]

[39] To put these numbers in context, Plaintiffs' Executive Committee and the USAO together noticed fewer than 60 BNYM witness depositions.

d. November 2013 Motion for a Protective Order

144. On November 1, 2013, Plaintiffs moved for a protective order challenging 130 third party subpoenas that had been issued by BNYM. Plaintiffs argued that a recent change in Fed. R. Civ. P. 45 granted the Court jurisdiction over all subpoenas, regardless of where they were issued (many of the subpoenas were issued outside of the Southern District of New York), Plaintiffs relied on a previous discovery ruling by Magistrate Judge Cott in the Securities Action,) holding certain discovery irrelevant to the instant litigation.

145. Plaintiffs' motion for a protective order, and the Bank's motion for emergency relief in response, yielded multiple letters exchanged between the parties, Court submissions, and hearings before the Court, as well as and extensive argument over appropriate discovery and communications with absent Class Members and subpoena recipients.

146. The Court granted BNYM's motion for emergency relief and enjoined Plaintiffs from directly contacting third parties concerning the Bank's subpoenas, but assigned Plaintiffs' motion for a protective order to Magistrate Judge Cott, who then ordered supplemental briefing regarding the impact of this Court's ruling as to BNYM's emergency motion.

147. After hearing extensive argument, Judge Cott directed the parties to meet and confer regarding Plaintiffs' motion and to present a joint solution to the Court. Over the next seven days, the parties met and conferred numerous times. In the end, BNYM agreed to substantially narrow the scope of its third party subpoenas.

e. Deposition Protective Orders

148. While Plaintiffs recognized that reasonable third party deposition discovery was appropriate, BNYM engaged in a relentless campaign to elicit testimony from third parties whose relevance to this litigation was, at best, minimal. To illustrate: The first third party deposition did not occur until September 23, 2014 – just four months before the close of fact

discovery. In the weeks that followed, BNYM would notice nearly 42 additional third party depositions in locations including Virginia, Dallas, Los Angeles, Alaska, London, and Scotland. The vast majority of these depositions—roughly 8 out of every 10—were noticed for dates in December 2014 and January 2015. Frequently, third party depositions were double- or triple-tracked alongside other third party or party depositions. At a minimum, each deposition required attendance by at least one member of Plaintiffs' Executive Committee; frequently, Plaintiffs or the USAO cross-noticed BNYM's depositions, as was the case with the class representatives' more than ten investment managers and consultants.

149. Having to devote time and resources to cover these third party depositions threatened to divert already strained resources away from critical case deadlines. Between December 2014 and January 2015 alone, Plaintiffs had to (i) prepare for and lead a two-day deposition of a critical BNYM witness (in addition to attending nearly a dozen others); (ii) prepare two rebuttal expert reports in response to four experts offered by the Bank in opposition to class certification; (iii) take or defend six expert depositions; (iv) defend three party witness depositions; (v) respond to contention interrogatories; and (vi) prepare their opening motion for class certification. After consulting with the USAO, Plaintiffs decided to file a motion for a protective order under Rule 26 to limit the number of third party depositions by the Bank.

150. On September 24, 2014, Plaintiffs moved for a protective order. In addition to asking the Court to foreclose the Bank from proceeding with 11 depositions of absent Class Members, Plaintiffs' motion also sought to limit the scope of depositions of eight other absent Class Members who also served as investment managers or consultants for Plaintiffs during the Class Period. Plaintiffs argued that discovery from absent Class Members is permitted in only very limited situations, and that the utility of the discovery sought was outweighed by the

burdens imposed both on Plaintiffs and on the absent Class Members. BNYM's primary argument in response was that the discovery sought was critical to its defense in the DOJ Action. Specifically, BNYM claimed that the testimony sought was geared at (i) proving that there was no industry standard understanding of "best execution" within the FX industry; and (ii) showing that some customers were not actually misled by BNYM's practices. The USAO took no formal position on the motion, but Plaintiffs vigorously disputed BNYM's arguments.

151. In an Order issued on October 9, 2014, the Court granted Plaintiffs' motion in its entirety. In so doing, the Court engaged in a detailed analysis of what the USAO would and would not need to prove to succeed on its claims. Critically, the Court explained that the USAO would *not* be required to show that the alleged victims were "actually [] deceived or even that the victim [was] actually harmed."[40] And, as to the issue of BNYM's fraudulent intent, the Court held that the *Bank* – not any third party – was in the best position to obtain evidence bearing on its understanding of "best execution." The significance of the Court's ruling thus went far beyond the obvious benefit obtained in precluding the discovery sought.

152. The Court's October 9, 2014 ruling did not dispose of third party discovery issues, however. BNYM interpreted the Court's October 9 Order as applicable only to the specific depositions that were the subject of Plaintiffs' motion. The Bank thus subsequently noticed 19 additional third party depositions, arguing that the discovery was relevant not just to the DOJ Action, but to the private actions as well. The parties engaged in an extensive meet and confer process over the course of several weeks but were unable to reach an agreement as to appropriate limits for third party discovery, both as to the number of depositions and the scope of

[40] *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, No. 12 MD 2335 (LAK), 2014 U.S. Dist. LEXIS 148964, at *70-71 (S.D.N.Y. Oct. 9, 2014).

such depositions. When it became clear that the parties were at an impasse, Plaintiffs' Executive Committee again developed a joint strategy to bring the issue before the Court.[41]

153. On October 22, 2014, the USAO, with considerable input and assistance from Plaintiffs' Executive Committee, moved the Court for a protective order barring the 19 third party depositions BNYM had noticed and precluding BNYM from seeking any further third party discovery without leave of the Court. *See* ECF No. 122 in 11-cv-6969-LAK. BNYM also cross-moved for "clarification and partial reconsideration" of the Court's October 9, 2014 Order requesting clarification as to the permissible scope of examination with respect to the eight absent Class Members who were also investment managers or consultants for Plaintiffs, and requesting permission to take three depositions enjoined by the Order.

154. After both motions were fully briefed, the Court denied Plaintiffs' and the USAO's second motion for a protective order, and directed the parties to meet and confer regarding third party discovery and present a joint plan to the Court. Although the motion was denied, Plaintiffs and the USAO succeeded in persuading the Court that limitations on third party discovery were both necessary and appropriate. In particular, the Court was careful not to declare "open season on non-party witnesses," noting that it would be both "unnecessary and unreasonable to suppose that a deposition of anyone who may know anything about the Bank's pricing of SI transactions should or will be deposed." And the Court admonished the Bank for seeking to take "a very large number of non-party depositions in the final sixty days of discovery." Dkt. No. 136 at 3-4.

[41] It should be noted that the decision to file a subsequent motion for a protective order was not made without considerable deliberation. Both Plaintiffs and the USAO were mindful of the judicial resources that would need to be devoted to addressing an issue which they believed had already been addressed. Nonetheless, Plaintiffs and the USAO believed that relief from the Court was the only option available to them.

155. Over the course of seven days following that Order, the parties engaged in protracted meet and confer sessions, with near-daily calls and countless email exchanges. The negotiations, which were at all times conducted in good faith, were intense. In the hours leading up to the Court-imposed deadline, an understanding between BNYM and the Plaintiffs' Executive Committee as to the necessary scope of any agreement developed more quickly than an understanding between the Bank and the USAO. Counsel for Plaintiffs mediated a resolution between the Bank and the USAO, often communicating each side's respective demands to the other and, whenever possible, pushing the parties closer together. This role required nuance and measure: On the one hand, Plaintiffs did not want to compromise any negotiation leverage, as their interests were largely aligned with those of the USAO. On the other hand, Plaintiffs recognized that some level of sacrifice would be needed to reach an agreement. Negotiations went to the eleventh hour and beyond, with counsel for Plaintiffs having to call the Court and request a one-hour extension to the previously imposed 3 PM deadline to submit a joint proposal. In the end, Plaintiffs succeeded in persuading the Bank and the USAO to agree on a comprehensive stipulation governing all aspects of third party discovery for the remainder of the litigation.

156. The detailed seven-page stipulation reached by the parties underscored the complexity of the negotiations and the importance of the issue to all parties.

D. Expert Reports and Expert Discovery

157. It was clear from the start of this litigation that many aspects of the claims, and in particular, the Bank's defenses, would be the subject of expert testimony.

158. In support of class certification, and flowing from work first developed in connection with the IUOE Local 39 class certification motion filed in 2012 before Judge Alsup, Plaintiffs retained G. William Brown, Jr., Esq., principal of 8 Rivers Capital and Fellow of Duke

Law School (where he has been a Professor of the Practice of Law) to prepare a class-wide damages analysis.

159. There were numerous steps involved in developing the factual foundation for Professor Brown's analysis, and Plaintiffs took the lead in this process.

160. The fundamental first step was developing the legal framework for damages given the numerous claims at issue in the Customer Class Cases, including breach of contract, breach of fiduciary duty, and numerous state consumer statutes. Plaintiffs developed the view that each of these claims, at their core, rested on the notion that BNYM, through its various contractual, fiduciary, and statutory obligations, promised to provide its customers with FX trades, *inter alia*, using "best execution," "free of charge," using the "best rates," in a manner no less favorable than a "comparable arm's length transaction," and in order to "maximize the proceeds of each trade" for the custodial client.[42] Yet, in reality, Plaintiffs alleged, BNYM employed a policy of pricing FX transactions at the outer edges of the range of prices for the trading sessions during which the trades occurred.

161. Applying these allegations to Plaintiffs' legal framework yielded a damages methodology that sought to identify the difference between, on the one hand, the prices custodial clients actually received on their FX trades and, on the other hand, the prices they should have received had the Bank not deliberately priced FX trades at or near the least favorable rate (for the clients) of the applicable trading range. Plaintiffs thus developed a model to measure: (i) disgorgement of BNYM's net profits attributable to its practice; (ii) disgorgement of revenues from the practice; and (iii) what spreads comparable arms-length transactions yielded for BNYM at the time the Bank was transacting for Class Members.

[42] *See* Master Compl. ¶¶ 5, 22-166.

162. Developing these measures required *first* identifying and acquiring the data maintained by the Bank that would allow such an analysis for a period spanning more than ten years, and involving several computer systems maintained across three companies. *Second*, Plaintiffs had to request and synthesize information regarding the identity of the Class Members whose data would have to be analyzed. *Third*, Plaintiffs needed to depose witnesses from BNY, Mellon and BNYM that understood the pricing protocols, the various systems and databases that the Bank maintained, and various coding conventions that would permit an analysis by Plaintiffs' expert. This information was sought and obtained via interrogatories, document requests and depositions between the commencement of discovery in the IUOE Local 39 Action in the fall of 2012, as well as interrogatory responses, numerous meet-and-confers with BNYM to ensure the Bank had provided to Plaintiffs all the documents they needed, and depositions through the fall of 2014.

163. All in all, through these discovery efforts, Professor Brown was able to analyze several terabytes of transactional data and build a damages model that formed the basis for the negotiations among the parties that resulted in the resolution of all the Customer Class Cases, the DOJ Action, the NYAG Action, and the DOL's potential claims.

164. Over several months, Plaintiffs worked with Professor Brown to refine his damages methodology and ultimately produce a damages report, including a class wide damages methodology, in support of class certification that was served on Defendants on November 5, 2014.

165. In response to Professor Brown's report, and in anticipation of their arguments in opposition to class certification, BNYM served Plaintiffs with six expert reports:

- a 62-page report (plus exhibits) by Professor Geert Bekaert, of Stanford University, which sought to portray the determination within the FX markets as to what constituted the best price or best rate for any given Class Member as individualized, i.e., not common among all Class Members;

- a 63-page report (plus appendices), by Professor Bradford Cornell of Compass Lexecon and CalTech, which sought to illustrate through empirical data analysis the various motivations by asset managers and owners in using various FX services, including SI FX. Dr. Cornell also sought to refute Professor Brown's damages methodology, asserting that determinations of what constituted the best price varied among Class Members, and argued for set-offs against damages the costs incurred by BNYM for the provision of FX services and costs avoided by Class Members in using the service.

- a 59-page report, (plus appendices), by Professor Jonathan Macey of Yale University, that sought to describe alternative definitions of the term "best execution" in an effort to rebut the notion that the concept would be universally understood by Class Members;

- a 40-page report by Christiane Mandell, a financial markets expert, opining on the operations of the FX market and asserting that individualized issues would predominate in Plaintiffs' attempting to establish what constituted the best market rates for FX services.

- A 32-page report by Professor David Sitkoff, of Harvard University, who opined on the purported dissimilarities of fiduciary law across the 50 states such that presenting a unified claim would be impracticable.

- A 36 -page report by Professor David Roper targeted at ERISA claims challenging whether there could be a basis to assess whether any SI FX transaction was "comparable" to other transactions and providing empirical analysis of the allegedly variable use of the SI FX program by ERISA plans.

166. In response to BNYM's expert reports, Plaintiffs were required to prepare, between December 5, 2014 and January 9, 2015, rebuttal expert reports that responded to the arguments raised by the Bank's experts. Plaintiffs worked with Professor Brown to respond to the reports of Drs. Cornell, Baerkart, and Mandell and also retained Dr. David DeRosa of Columbia University to respond, principally, to Dr. Macey's opinions regarding best execution—a critical issue in the litigation. At the time that Plaintiffs retained Dr. DeRosa, he had been serving as a consulting expert for the USAO. Moreover, following Dr. DeRosa's retention by Class Counsel, the NYAG and the Securities Plaintiffs also sought his analysis on "best execution." Co-Lead Customer Counsel took the lead in working with Dr. DeRosa in responding to BNYM's experts' reports. Given the common interests in Dr. DeRosa's opinions and the fact that his work on the Customer Class case would underlie any expert work he did on the DOJ, NYAG and Securities Actions, all Plaintiffs reached a cost-sharing agreement with regard to Dr. DeRosa's expenses, summarized as follows:

Dr. DeRosa Split of Expert Costs Among Plaintiffs	
Co-Lead Customer Counsel	46%
Securities Counsel	23%
USAO	11.5%
NYAG	11.5%
LACERA/LADWP Actions	4%
ERISA Counsel	4%

167. On January 9, 2015, Co-Lead Customer Counsel served a 24-page reply expert report (plus exhibits) by Professor Brown, as well as a 79-page report (plus exhibits) by Dr. DeRosa.

168. In connection with BNYM's expert reports, Plaintiffs were required to review and digest more than 230 unique sources, totaling thousands of pages of information. Although the litigation ultimately settled before any expert was deposed in the Customer Class Cases, Plaintiffs also divided responsibility for deposing the Bank's experts and expended significant time preparing for such depositions.

169. In response to Dr. DeRosa's report, the Bank filed a motion to strike, asserting that his report was in the style of an opening report on which Plaintiffs had the burden of proof (on class certification). Plaintiffs opposed the Bank's motion but the parties reached an agreement to settle the litigation before the issue was decided by the Court; there can be no serious doubt, however, that the issue, while believed by Plaintiffs to be without merit, carried with it severe consequences in the event that the Court accepted Defendants' argument. Indeed, had the Court granted BNYM's motion, the record on the meaning of "best execution" at class certification would have consisted exclusively of the Bank's expert reports.

IV. MEDIATION AND SETTLEMENT

A. Timing and Process

170. In or around early November 2014, Plaintiffs, the DOJ, and the NYAG, in anticipation of the last push to complete fact discovery and the preparation of expert reports in the Customer Class Cases, began to explore the potential of a mediated resolution of all of the coordinated actions. With the approval of the DOJ and the NYAG, Co-Lead Customer Counsel were charged with reaching out to Defendants to broach the possibility of a global mediation. Over the course of the next few weeks, Plaintiffs' Executive Committee and the USAO

negotiated with Defendants over the parameters of a potential mediation and the potential mediator.

171. The initial round of negotiations focused on the process for mediation and, in the first instance, the identity of the mediator. After prolonged negotiation, the parties ultimately agreed on the selection of the Hon. Layn R. Phillips (Ret.), former U.S. District Judge for the Western District of Oklahoma, as a mediator.

172. With the mediator selected, a date and venue were agreed upon by the parties, based in part on the mediator's availability: January 19 and 20, 2015, in Manhattan.

173. Up to the point of the mediation, Co-Lead Customer Counsel, and in particular Joseph H. Meltzer of KTMC, were charged with conveying to the Bank the parties' positions regarding the mediation, negotiations regarding the selection of the mediator, and the timing of submissions. The USAO assumed the lead in negotiating over the format of written submissions on behalf of all the parties.

174. The mediation costs were ultimately divided between the MDL Plaintiffs, the USAO and the NYAG as follows:

Plaintiff(s)	**Percentage of Cost**
Plaintiffs' Executive Committee: (LCHB, KTMC, and BLBG):	69%
USAO	10%
ERISA Plaintiffs	4%
NYAG	10%
LACERA/LADWP Plaintiffs	4%
NYC Plaintiffs	3%

175. Plaintiffs, the DOJ, and the NYAG met several times, in person and through telephone conference calls, to develop a strategy for the mediation, with the goal of maximizing the benefits for each of their constituencies.

176. In advance of the mediation, Plaintiffs' Executive Committee and the DOJ took the lead in preparing a global mediation statement. That statement included an extended discussion of the facts underlying the claims, which cited extensively to voluminous deposition testimony and documentary exhibits Plaintiffs had developed. The mediation statement also included discrete case-specific discussions about BNYM's liability, including the legal theories unique to each of the cases. The omnibus mediation statement, which consisted of the positions of all plaintiff constituents participating in the mediation and was due on January 9, 2015, was drafted, edited, and finalized over four weeks, an effort that required the organizing and editing of submissions from seven plaintiff groups. In preparing the global mediation statement, Co-Lead Customer Counsel were responsible for coordinating the drafting process, including editing and finalizing the omnibus mediation statement and submitting it to the mediator.

177. Simultaneously, Plaintiffs were working with their experts to prepare and finalize class certification rebuttal expert reports, which were due on January 12 (discussed above) and draft opening class certification briefs and declarations, which were due on January 30. The push to prepare mediation materials also coincided with an onslaught of third party and party depositions that the parties were attempting to schedule before the January 30, 2015 close of fact discovery. As Co-Lead Customer Counsel were working on experts, class certification and the mediation statement, the USAO was taking the lead on third party discovery during this period.

178. Beginning at 9 a.m. on January 19 and concluding late in the evening on January 20, the parties engaged in a highly contentious mediation before Layn Phillips. Toward the conclusion of the mediation on January 20, while the parties remained far apart in their respective views, there was sufficient momentum to continue mediating. However, the mediator was not again available until Wednesday, February 4, 2015, and so the parties agreed to engage

in a third mediation day at that time. Given the substantial third party depositions scheduled between January 20 and January 30, together with expert depositions (more than 22 depositions in all) as well as class certification briefing due by January 30, the parties agreed that a temporary discovery stay until February 5 could avoid potentially needless and expensive discovery. Late in the afternoon of January 20, the parties jointly called the Court to request a temporary discovery stay and the Court granted the relief while indicating that to the extent the parties were going to seek any further relief, they had better be further along toward resolution.

179. The fact that Plaintiffs, the USAO, and the NYAG were mediating with the Bank become known to the DOL and the U.S. Securities and Exchange Commission. Each of these entities had ongoing investigations into the Bank's conduct and sought to be included in the third mediation day. Ultimately, the DOL, during the course of the last mediation day, reached an agreement with the Bank in which the Bank agreed to pay a further $14 million to resolve the DOL's investigation, all of which would be allocated to the ERISA plans that are members of the Customer Class. The $14 million DOL settlement will be distributed to Class Members who are ERISA plans pursuant to the Plan of Allocation that has been developed by Plaintiffs and is subject to the Court's approval. Co-Lead Customer Counsel worked with the DOL and with Defendants to identify each and every ERISA plan within the Customer Class and those efforts are reflected in the Plan of Allocation submitted herewith.

180. At close to 11 p.m. on February 5, 2015, the parties reached an agreement in principle to settle the Customer Class Cases, the DOJ Action, the NYAG Action, and the DOL Action. The settlement, pursuant to the prior agreements reached between these groups, broke down as follows:

- The Customer Class Cases would be allocated $335 million, from which Customer Counsel could seek attorneys' fees. Of this $335 million recovery, $70 million would be allocated to Customer Class members who are ERISA funds.

- The USAO would be allocated $167.5 million (together with certain admissions and other non-monetary relief which was negotiated after February 5)

- The NYAG would be allocated $167.5 million, $155 million of which would be allocated to the Customer Class to be distributed through the Plan of Allocation. No counsel are permitted to seek a fee from that portion of the Customer Class recovery.

181. Separately, the DOL resolved its claims for $14 million, all of which would be allocated to the ERISA funds in the Action and, following further discussions between Customer Counsel and the DOL following the announcement of the Settlement, has been placed into the Settlement Fund and will be distributed pursuant to the Plan of Allocation if approved by the Court.

182. The settlements described above are a global resolution of the Customer Class Cases, ERISA Actions, the DOL investigation, the DOJ Action, and the NYAG Action. The settlements in the NYAG Action and the DOJ Action are dependent on approval of this Settlement.

183. In total, the mediation resulted in a $504 million recovery for the Class.

B. Reasons for the Settlement

184. Plaintiffs and Lead Settlement Counsel endorse the Settlement. Each of the Plaintiffs in the Customer Class Cases has actively overseen and participated in the prosecution

of this Action. Co-Lead Customer Counsel are among the largest national law firms that specialize in complex class action litigation, and have been involved in numerous financial and consumer class actions, many of them notable in their size and complexity. Based on their experience and close knowledge of the facts and applicable laws, Plaintiffs and their counsel determined that the Settlement was in the best interests of the Settlement Class.

185. As described herein, at the time of the Settlement, the parties were very close to the end of fact discovery, had commenced expert discovery and were poised to stake out their positions on class certification. Defendants' motion to strike the expert report of Dr. David DeRosa, a key expert on the issue of "best execution," was pending before the Court. While Plaintiffs were confident that the Court would permit the case to proceed as a class action covering all of BNYM's domestic custodial clients who used the Bank's standing instructions during the Class Period, there were serious risks that the case would not be certified, would be certified on a much smaller basis so as to not encompass all of BNYM's custodial customers, would be reduced to only certain certifiable claims that could substantially lower the damages sought by the resulting class, or would cover a shorter time period.

186. Plaintiffs and the Customer Class also faced serious risks associated with proving liability and establishing damages. As this Court acknowledged at the very first status conference after it issued the SEPTA Opinion, in establishing liability in this case, Plaintiffs faced "an infinite number of law school examination questions." May 17, 2013 MDL Status Conference Tr. at 13:25-14:1. As the Court is aware, in attempting to establish Defendants' liability, Plaintiffs ultimately advanced theories of liability based on four core claims: (1) breach of contract (MCCC ¶¶ 217-30); (2) breach of fiduciary duty (MCCC ¶¶ 208-16); and (3) violation of state unfair trade practice statutes (MCCC ¶¶ 248-75), including N.Y. GBL § 349

claims. Plaintiffs also set forth alternative claims, including conversion (MCCC ¶¶ 234-40), breach of the implied covenant of good faith and fair dealing (MCCC ¶¶ 231-33), and unjust enrichment (MCCC ¶¶241-47). As highlighted below, each theory proved challenging both for liability and class certification.

187. In order to construct their breach of contract allegations, Plaintiffs faced two primary challenges: *First*, Plaintiffs had to show that a valid contract existed. *Second*, Plaintiffs needed to prove that terms of the contracts actually supported plaintiffs' theory of liability; in other words, that the scope of BNYM's contractual duties included either the best rate of the day or, at least, substantially similar rates to those received by non-SI FX ("negotiated FX") customers.

188. As the Court has noted, "[t]he challenge in assessing this claim is that the parties did not reduce their relationship to a single writing." Dkt. No. 188, at 19. Instead, a plethora of documents contained BNYM's (and its predecessor entities') SI FX pricing obligations. These contractual documents varied across time and with respect to which entity—BNY, Mellon or the merged entity—authored the contract. Further, clients did not uniformly update these agreements. Therefore, Plaintiffs had to prove a consistent set of contractual terms existed for every Class Member throughout the Class Period. While Plaintiffs believed that this burden was not insurmountable, it carried significant risk.

189. Even after proving legally enforceable contracts with common terms applying to all Class Members, Plaintiffs faced the challenge of convincing the Court or jury that terms such as "best execution" or "comparable arms' length transactions" or "best rate of the day" had the same meaning with respect to every Class Member, or indeed, the same meaning with respect to every transaction with respect to any individual Class Member. Defendants sought to establish

via expert testimony and voluminous third party discovery that there was no common understanding or application of such terms in the FX markets, a defense that Plaintiffs vigorously contested. Nevertheless, the risk existed that a jury or the Court on summary judgment would agree with Defendants.

190. For instance, Plaintiffs argued that BNYM breached its obligation to provide "best execution" pricing. The meaning of "best execution" was hotly contested by the parties. BNYM consistently argued that "best execution" itself had no industry meaning that could support Plaintiffs' theory of liability.[43] At the motion to dismiss stage, Plaintiffs successfully argued that the meaning of "best execution" would benefit from a more complete record, and thus, this became a central focus of discovery efforts and expert analysis. As noted above, Plaintiffs' expert Dr. David DeRosa submitted a 77-page report rebutting BNYM's several class certification experts, each of which, in some form or another, addressed the meaning of "best execution," or a comparable term. Therefore, Plaintiffs faced substantial risks in advancing their proffered definition of "best execution."

191. Plaintiffs also developed a claim based on the fiduciary obligation to provide full disclosure to beneficiaries, which involved difficult questions of law. "When you start with a fiduciary obligation [BNYM is] prohibited under law from enriching [itself] at [SEPTA's] expense without providing [SEPTA] with disclosure." Motion to Dismiss Hearing Tr. at 65:13-16, SEPTA Action, 2:11-cv-01628-JHS (Oct. 6, 2011). This proposition posed two distinct challenges that Plaintiffs met with creative and innovative theories of liability: *First*, Plaintiffs had to establish that BNYM and the putative Class had a fiduciary relationship. *Second*, they

[43] Although BNYM argued that Plaintiffs' claims hinged entirely on the meaning of "best execution," in fact, as noted above, Plaintiffs alleged that BNYM made a variety of representations that each supported Customer Class Plaintiffs' theory of liability in like manner.

had to establish the scope of BNYM's duty (arising out of the duty of loyalty) to fully and fairly disclose its practices. Each portion of this argument involved substantial risk.

192. Plaintiffs had to prove an untested definition: BNYM served as a fiduciary by nature of its agreements and its custodial relationship with its clients. However,

> [a]fter surprisingly lengthy research….challenges in understanding U.S. custody law start with the fact that "custody" is not usually a legal term of art, and while traditionally most analysis starts with common law concepts of trust, agency, and bailment, no one—including legislators, courts, and even the U.S. Federal Deposit Insurance Corporation (the "FDIC")—applies them consistently or always accurately.

68 Bus. Law. 103, 105 (Nov. 2012). The dearth of "custodian" law made proving a consistent fiduciary duty across the class extremely risky.

193. After establishing that BNYM owed a fiduciary duty, Plaintiffs had to prove that BNYM owed a duty to fully and fairly disclose its FX pricing practices. State law uniformly holds that a fiduciary owing a duty of loyalty owes a duty to fully and fairly disclose material terms. However, state law did not alleviate the fact gathering challenges, discussed *infra*, arising out of BNYM's failure to make the same disclosures to each of its clients. Thus, Plaintiffs had to develop proof, and demonstrate to the jury or the Court, that BNYM failed to properly disclose its SI FX practices to each of the more than 1,200 putative Class Members.

194. With respect to the violation of state statutes, such as the N.Y. GBL § 349 claims, there existed substantial risk that the Court, at summary judgment, would find that these statutes did not reach the conduct at issue in this litigation. Indeed, during the course of this litigation, the Hon. Denise Cote held, in another case challenging the automated foreign exchange practices of JPMorgan, that N.Y. GBL § 349 did not apply to contracts between sophisticated financial institutions as such institutions could not be considered "consumers." *La. Mun. Police Empls. Ret. Sys. v. JPMorgan Chase & Co.*, 12-cv-6659, 2013 U.S. Dist. LEXIS 93692, at *50 (S.D.N.Y. July 3, 2013).

195. Even assuming that Plaintiffs' theories of liability could be proven both individually and on a classwide basis, the appropriate measure of damages was highly contested. While Plaintiffs' damages expert presented a model of damages that measured the margins that BNYM earned from standing instructions, BNYM argued that such margins were not a proper damages measure as they did not account for the large costs associated with maintaining the SI FX program, they did not account for the various cost savings that the Plaintiffs (and their investment managers) enjoyed by ceding FX to the Plaintiffs' custodial bank and avoiding the costs of developing FX expertise or the infrastructure to identify, process, and settle FX transactions. Plaintiffs faced significant risk that the damages that form the basis for the Settlement could never be proven at trial or would be greatly offset. Given these risks, it is an outstanding result for the Settlement Class that this global settlement reflects 35% of the margins that BNYM earned from SI FX during the Class Period.

196. Losing at trial following class certification also could have implicated BNYM's asserted counterclaims, which sought reimbursement to BNYM for the cost of the litigation and defending the claims. While Plaintiffs believed the counterclaims had little merit, the Court largely upheld them at the motion to dismiss stage against SEPTA and IUOE Local 39 and left open the potential for BNYM to bring them against Class Members once a class was certified.

197. The Settlement eliminates the above litigation risks and guarantees the Settlement Class a substantial cash recovery now. We firmly believe that settling the Action at this juncture and for the amount negotiated was and is in the best interests of the Settlement Class.

V. NOTICE TO THE CLASS AND THE PLAN OF ALLOCATION

198. A key feature of this Settlement is that there is no claims process. The recovery for each Class Member has been calculated based on transaction data furnished by the Bank and

analyzed by Plaintiffs' damages expert. Upon final approval of the Settlement, the Net Settlement Fund will be distributed to Class Members on a proportionate basis based on their recognized losses under the Plan of Allocation. Thus, the notice process has primarily been an instrument to advise the approximately 1,218 Class Members of the fact of this settlement, their estimated recoveries, and the rights to opt-out or object if they so choose. As set forth below, the notice campaign conducted by the Garden City Group ("GCG"), the Court appointed claims administrator, under the supervision and guidance of Lead Settlement Counsel clearly meets the requirements of due process.

A. The Notice to the Settlement Class Meets the Requirements of Due Process and Rule 23 of the Federal Rules of Civil Procedure

199. Lead Settlement Counsel have been directly involved in the notice process, both in terms of direct communications with Class Members and by supervising the notice process conducted by GCG. Attached as Exhibit 15 to this Joint Declaration is the Affidavit Of Stephen J. Cirami Regarding (A) Mailing of The Notice; (B) Publication of The Summary Notice; and (C) Report on Requests for Exclusion Received to Date, sworn to on August 14, 2015 ("Cirami Affidavit"). Mr. Cirami is a principal at the GCG and the Cirami Affidavit, describes GCG's efforts in effectuating the notice ordered by the Court.

200. Prior to this case resolving, and in connection with class certification, Lead Settlement Counsel had worked to identify each and every Class Member that would be covered by this Action. There are approximately 1,218 Class Members and they are collectively associated with 11,267 custodial accounts maintained at BNYM. The Class is comprised exclusively of institutions which include corporations large and small, many of which are Fortune 500 corporations, institutional investors, such as public pension funds, mutual funds, unions, charities, and not-for-profits institutions, among many other categories of institutions.

Plaintiffs' damages expert, Professor Brown, as discussed above, using the Bank's transaction data produced in discovery, developed a damages methodology to calculate the damages for each of the custodial accounts associated with each of the approximately 1,218 Class Members. This analysis is the basis for the Plan of Allocation. As the notice campaign has proceeded, the list of Class Members has been revised as additional information from recipients of the notice has been received. For instance, some entities identified as domestic custodial clients in BNYM's records are actually subcustodians with accounts being held for the benefit of other clients, some BNYM clients identified as domestic custodial clients were discovered to be foreign entities and therefore not members of the Settlement Class. If the Settlement is finally approved, the final tally of Class Members will be furnished to the Court in connection with Lead Settlement Counsel's application for distribution of the Net Settlement Fund.

201. In connection with the Settlement, Co-Lead Customer Counsel worked with Defendants to get addresses for each of the Class Members that had been previously identified. Many of the Class Members are no longer clients of BNYM.

202. On March 27, 2015, working with Professor Brown, we aggregated all the information gathered regarding the Class Members and provided GCG with an Excel file containing addresses and the Plan of Allocation and calculating the Recognized Losses and Estimated Net Recovery for each of the approximately 1,218 Class Members and their 11,267 custodial accounts. Working with GCG, we continued to research mailing addresses for institutions that had obviously outdated and/or incomplete addresses. We interfaced with Defendants to obtain missing addresses, and worked with GCG in researching addresses for Settlement Class Members for whom Defendants had no additional contact information.

203. The additional address information was furnished to GCG to facilitate mailing and the initial mailing was conducted by GCG on May 7, 2015 per order of the Court.

204. In addition to working with GCG to accomplish the mailing to all Class Members, we worked with GCG to develop the content for the settlement website which can be found at this URL: www.bnymellonforexsettlement.com. In addition to posting Notices, court documents, and contact information relevant to the Settlement, GCG, under the guidance of Lead Settlement Counsel, created a claimant portal accessible through the website. Settlement Class Members can log in to the claimant portal and review each of their accounts and their personalized claim information. In addition to viewing the Plan of Allocation data specific to their claim, Class Members are encouraged to confirm their address and provide a point of contact for correspondence regarding the Settlement. This process is simply to ensure that checks and wires of recoveries are set to the correct addresses or individuals within the institutions who are Class Members.

205. As set forth in the Cirami Affidavit, the Settlement website and claimant portal became operational on May 7, 2015, and are accessible 24 hours a day, 7 days a week. The website and portal are updated as needed to inform Class Members of the status of the Settlement and of any changes to their claim. The Settlement website had 926 distinct visitors and a total of 1,386 website hits through August 12, 2015. A total of 311 Settlement Class Members have logged on to the Claimant Portal through August 12, 2015.

206. As part of the notice campaign, GCG maintains a toll-free telephone number (1-877-940-1504) to accommodate Class Members who had questions about the Settlement and to allow Class Members the opportunity to request copies of the Notice Packet as needed. The telephone helpline is accessible 24 hours a day, 7 days a week. As of August 12, 2015, GCG

received a total of 173 calls to the toll-free telephone number. In addition, we, and other individuals at our firms, have fielded numerous calls personally from Class Members inquiring about the Settlement, and our contact information was furnished in the mailed and published Notice.

207. In preparation for the mailing of the Notice, we worked with GCG to create a personalized cover letter (the "Cover Letter" and, collectively with the Notice, the "Notice Packet") that provided information about the Settlement; listed the Settlement Class Member's custodial account numbers ("CID") and corresponding legal entity names included in the Settlement; and provided the login information for the claimant portal. A copy of the Notice Packet is attached to the Cirami Affidavit as Exhibit A. On May 7, 2015, 1,266 Notice Packets were disseminated.[44]

208. Where Notice Packets were returned undeliverable, we worked with Defendants and GCG to ascertain updated addresses. Much of this effort required us to personally research the institutions and call them to verify mailing addresses and persons to whom to direct the Notice. As a result of these efforts, as of August 12, 2015, GCG mailed an additional 118 Notice Packets. In the aggregate, GCG has mailed a total of 1,385 Notice Packets to Settlement Class Members by first-class mail.

209. The Court's Preliminary Approval Order also directed that the Summary Notice be published once in *The Wall Street Journal* and once over *PRNewswire*, no later than May 12, 2015. Accordingly, at the direction of Lead Settlement Counsel, the Summary Notice was published in *The Wall Street Journal* and over *PRNewswire* on May 11, 2015. Copies of the

[44] The BNYM data contained two or more addresses for 43 Settlement Class Members, resulting in multiple Notice Packets being mailed to those parties.

Summary Notice and confirmations of publication are attached to the Cirami Affidavit as Exhibit B.

210. Since dissemination and publication of the Notice, we have been working with GCG to ensure that every Class Member has been informed about the Settlement. For instance, GCG began received inquiries from Class Members requesting additional information in order to identify their accounts. Because BNYM maintains an internal customer number for each of its clients that is different from the account numbers to which the clients have access, we worked with Defendants to match client account numbers with BNYM's internal numbers and then disseminated a supplemental notice to provide Class Members with this additional information, as well as to remind Class Members to log into their client portal and confirm their mailing addresses with GCG.

211. As set forth in the Cirami Affidavit, on June 25, 2015, GCG disseminated Supplemental Letters by first-class mail to 1,266 addresses.

212. In addition to the Supplemental Letter mailing, we directed GCG to conduct a call campaign to ensure that Class Members received the Notice Packet and Supplemental Letter. GCG performed research to obtain telephone numbers, and where possible, an appropriate contact person. For Class Members for whom no contact person could be identified through preliminary research, GCG obtained contact information for the Settlement Class Member's legal, financial, or investment offices whenever possible. As a result of the research, GCG was able to identify telephone numbers for 686 Class Members[45] who had not confirmed their address through the claimant portal. Beginning on July 13, 2015, GCG called these 686 Class Members to confirm they received the Notice Packet and were aware of the additional

[45] Lead Settlement Counsel requested that these 686 Settlement Class Members be targeted for outreach because they had not logged on to the claimant portal and had estimated net recovery amounts of $1,000 or more.

information available to them. If GCG was unable to reach a representative of the Class Member, GCG left messages, performed additional research, and made follow-up calls. As a result of the outreach, as of the date of August 12, 2015, GCG was able to confirm or correct the mailing information for 239 of these Class Members and an additional 63 Class Members registered for the claimant portal.

213. This extensive notice campaign not only meets the requirements of due process in affording all Class Members with ample opportunity and information to assess their rights, but also has facilitated Lead Settlement Counsel's ability to expeditiously and immediately distribute the Settlement upon its final approval by the Court pursuant to the Plan of Allocation.

B. The Plan of Allocation

214. The Plan of Allocation for the distribution of the Settlement Amount was prepared in consultation with Plaintiffs' damages expert, and is based on transaction data maintained by BNYM for custodial clients who used the SI FX services at BNY, Mellon, and BNYM. The Settlement Fund to be distributed to the Settlement Class will consist of the net Settlement Amount after attorneys' fees and expenses, as well as the NYAG Settlement Amount and the DOL Settlement Amount. The NYAG and DOL have reviewed and approved the Plan of Allocation.

215. In developing the Plan of Allocation, Professor Brown compiled the sales margin data from BNYM's transaction records for each SI FX transaction BNYM executed with Settlement Class Members during the Class Period. BNYM determined its sales margin on SI FX transactions by calculating the difference between a proxy for the interbank FX rate at the time BNYM determined the price to assign to an SI transaction with a Class Member (the "Reference Rate") and the FX rate BNYM gave Settlement Class Members (the "Deal Rate"). For purposes of the Plan of Allocation, this sales margin is deemed to be each Class Member's

"Recognized Claim," and each Class Member's recovery in this litigation will be based on its Recognized Claim. Under the Plan of Allocation, ERISA plans will be allocated the equivalent of $70 million, on a gross basis, from the Settlement Fund.

216. Recoveries for ERISA plans will be on a pro rata basis relative to other Class Members who are ERISA plans, and recoveries for Class Members who are not ERISA plans will be on a pro rata basis relative to other non-ERISA plan Class Members. In addition, the DOL Settlement Amount will be distributed on a pro rata basis to ERISA plans relative to other Class Members who are ERISA plans.

217. Recognized Claims for Class Members will vary depending on the volume of FX transactions a Settlement Class Member executed using BNYM's SI FX Program, the currency pairs involved in its SI transactions, the applicable Deal Rates and Reference Rates used on any given trading day, and volatility in the FX markets when the Class Member's FX transactions were executed, among other variables. It is important to understand that the Recognized Claims under the Plan of Allocation do not equate to provable damages but rather provide a fair and reasonable methodology to evaluate each Class Member's relative stake in the Settlement.

218. As set forth above, there is no claims process for this Settlement. In developing the Plan of Allocation, Plaintiffs identified each and every custodial client of BNYM, based on BNYM's own records, who entered into an SI FX with the Bank during the Class Period. The Plan of Allocation determines a Recognized Loss, if any for each of those Class Members. Class Members, upon final approval of this Settlement, will receive checks or wire transfers in the amounts of their net recovery.

VI. THE APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

219. In addition to seeking final approval of the Settlement and Plan of Allocation, Lead Settlement Counsel are also applying to the Court for an award of attorneys' fees and expenses for all Plaintiffs' Counsel,[46] and for Service Awards for Plaintiffs in recognition of the work they have performed for the benefit of Class Members.

220. Specifically, Plaintiffs' Counsel are applying for attorneys' fees of $83.75 million and for reimbursement of $2,901,734.10 in Plaintiffs' Counsel's Litigation Expenses.

221. In determining whether a requested award of attorneys' fees is fair and reasonable, district courts are guided by the factors first articulated by the Second Circuit in *City of Detroit v. Grinnell Corp*., 495 F.2d 448 (2d Cir. 1974). As summarized in *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43 (2d Cir. 2000), these factors include: "'(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.'" *Id.* at 50. Based on consideration of each of the foregoing factors, as further discussed below, and on the additional legal authorities set forth in the accompanying Memorandum of Law in Support of Lead Settlement Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Service Awards to Plaintiffs (the "Fee Memorandum") filed contemporaneously herewith, we respectfully submit that Plaintiffs' Counsel's application should be granted.

A. Application for Attorneys' Fees

222. For their extensive efforts on behalf of the Settlement Class, Plaintiffs' Counsel are applying for compensation from the Settlement Fund based on a percentage of the fund and

[46] In this Section, Plaintiffs' Counsel refers to Customer Counsel and ERISA Counsel.

applying a lodestar methodology that incorporates a multiplier to account for Plaintiffs' Counsel's efforts, the risk and complexity of the litigation, and the extensive time committed on a contingency basis, without any compensation to date. As discussed in the Fee Memorandum, Lead Settlement Counsel submits that a fee award of $83.75 million for all Plaintiffs' Counsel is justified based on the consideration of these factors, and should be approved.

223. We respectfully submit that the work undertaken by Plaintiffs' Counsel in prosecuting this case and arriving at this Settlement has been time-consuming and challenging. From the outset, Plaintiffs' Counsel appreciated the unique and significant risks inherent in this litigation. Indeed, this litigation would not have arisen, nor this Settlement been achieved, had counsel not been involved at the outset in developing the testimony of a BNYM whistleblower whose revelations formed the basis for all of the MDL Actions and the NYAG Action. Yet, even with the information provided by a whistleblower, there were significant risks in establishing BNYM's liability to the Customer Class, which we have discussed in detail above.

224. A case substantially similar to this one, before the Honorable Denise Cote, failed even to survive a motion to dismiss. *See La. Mun. Police Empls. Ret. Sys. v. JPMorgan Chase & Co.*, 2013 U.S. Dist. LEXIS 93692 (S.D.N.Y. July 3, 2013). Moreover, constructing a class theory across a 13-year Class Period covering three distinct legal entities and several thousand contracts, and assessing damages, were extremely complex and fraught with risk. Indeed, at the outset, no plaintiff understood how damages or the basis for its calculation, would be determined by BNYM's practices; nor did the whistleblower. This concept remained highly contested throughout the litigation.

225. As a result, it was unclear at the time of the filing of the original complaints in these Actions whether Plaintiffs would overcome Defendants' anticipated motions to dismiss –

much less obtain class certification, survive summary judgment, and prevail at trial and on any post-trial appeals. In fact, it was only Plaintiffs' Counsel and Plaintiffs who sought to represent this class of investors, and no other institutions throughout the litigation sought to assume this responsibility despite the fact the Settlement Class is composed of some of the most sophisticated financial institutions in the United States. Moreover, many of the risks and novel issues present at the outset of the case continued to affect the litigation as it progressed up through the date the Settlement was reached.

226. We have set forth in detail above the herculean efforts by Plaintiffs' Counsel, and Co-Lead Customer Counsel in particular, in forging this Settlement—which date back to well before the MDL ever existed.

227. Listed in the attached declarations are Plaintiffs' Counsel's lodestar (Lodestar Schedules) as well as the expenses incurred by category (the "Expense Schedules").[47] For the benefit of the Court, Co-Lead Customer Counsel requested that all Plaintiffs' Counsel summarize their total lodestar by timekeepers and categories of work performed by each timekeeper. The Lodestar Schedules have been generated from the daily timekeeping records maintained by Plaintiffs' Counsel. Each Lodestar Schedule catalogues work into the following ten categories:

Category	Description
1	Private Investigations and independent fact research;
2	Review and coding of documents gathered from Plaintiffs' custodians and plaintiffs' productions, including privilege and redaction reviews;
3	Review and Coding of Defendants' and third party productions
4	All other Discovery including drafting discovery requests and subpoenas, meet and confers with Defendants and third parties, synthesis and analysis of discovery materials, drafting discovery and

[47] *See* Exs. 1-10, attached hereto.

	witness memos, analyzing redaction logs for redaction challenges, drafting discovery requests, meet and confers with Defendants, and communications with Defendants re: same
5	Deposition preparation and Depositions; logistics and support for same.
6	Pleadings and Briefing, including complaints, discovery motions, Pretrial Motions, class certification, settlement approval briefing, and legal research for all of the above.
7	Court appearances; prep and follow-up re: same.
8	Litigation strategy and case management including all conference calls, client meetings/calls, case meetings (also including weekly hot doc meetings), and executive committee meetings.
9	Mediation, Settlement, and Settlement Administration
10	Expert work and consultations, expert reports.

228. The Fee and Expense Schedules indicate the amount of time spent by each attorney and paraprofessional employed by Plaintiffs' Counsel, and the lodestar calculations based on their 2015 billing rates and titles.

229. The Fee and Expense Schedules contained in these declarations were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which records are available at the request of the Court. The hourly rates for attorneys and paraprofessionals included in these schedules have been accepted in other financial litigation. For attorneys or paraprofessionals who are no longer employed by Plaintiffs' Counsel, the lodestar calculations are based upon the billing rates for such person in his or her final year of employment.

230. Plaintiffs' Counsel expended a total of 113,404.89 hours litigating these Actions. None of that includes time devoted to preparing Plaintiffs' Counsel's fee application. The vast majority of the time spent on this litigation occurred after this Action was transferred to the MDL and the bulk of the time was incurred by Co-Lead Customer Counsel. The chart below

summarizes the attorney hours, lodestar and expense committed to this work by Plaintiffs' Counsel:

Firm	Lodestar Totals	Expenses Totals	Hours Total
LCHB	$20,256,579.50	$1,296,448.27	42,549.30
KTMC	$15,435,388.15	$947,168.68	39,246.64
TLF	$1,600,683.00	$95,361.95	2,640.20
Murray Murphy	$2,115,135.50	$19,631.33	4,104.00
Hausfeld	$2,578,086.50	$107,804.08	4,923.20
Hach Rose	$2,989,868.75	$43,039.42	6,736.50
Nix Patterson	$732,600.00	$13,004.07	1,988.00
McTigue Law	$2,784,375.73	$142,864.22	5,503.35
Beins Axelrod	$624,944.43	$5,751.17	1,351.70
Keller Rohrback	$2,979,540.50	$230,993.07	4,362.00
Totals:	**$52,097,202.06**	**$2,902,066.26**	113,404.89

231. Plaintiffs' Counsel took this case on a contingency basis, committed their resources and then aggressively litigated it for approximately four years without any compensation or guarantee of success. Based on the excellent result achieved for the Settlement Class, the quality of work performed, the risks of the Action and the contingent nature of the representation, Co-Lead Customer Counsel submits that the request for an $83.75 million award, or 25% of the Settlement Fund, a sum that reflects a blended multiplier of 1.61 of the total lodestar of all Plaintiffs' Counsel, is fair and reasonable and consistent with other similar cases in the Second Circuit.

B. Class Counsel Were Highly Efficient in Prosecuting This Complex Action

232. Throughout this litigation, Co-Lead Customer Counsel has ensured that the work performed on behalf of the Class was not only of the highest standards and reflecting the most zealous advocacy, but also, by absolute necessity, ruthlessly efficient. We have discussed the efforts of Co-Lead Customer Counsel above in coordinating all aspects of this litigation with the other parties in the MDL to ensure the maximum benefits flowed to the Class.

233. In order to avoid duplication of efforts and to promote efficiency, Co-Lead Customer Counsel maintained daily control and monitoring of the work performed in this case. While we personally devoted substantial time to this case, other experienced attorneys at our respective firms undertook particular tasks appropriate to their levels of expertise, skill and experience, and more junior attorneys and paralegals worked on matters appropriate to their experience levels. Following the MDL transfer and the appointment of Co-Lead Customer Counsel as interim class counsel, the vast majority of the work on this Action was coordinated by two partners and three associates at KTMC and four partners and one associate at LCHB. The work of these partners and associates, with respect to discovery and depositions, was supported by teams of staff attorneys. KTMC deployed twelve staff attorneys to assist with discovery analysis and deposition preparation in connection with Defendants' depositions. In addition, KTMC separately deployed nine attorneys to concurrently conduct a review of Plaintiffs' productions, for relevance and privilege, coordinate the production of those documents to Defendants and prepare for plaintiff depositions. Similarly, LCHB employed fourteen attorneys who were principally responsible for discovery analysis and deposition preparation.

234. With respect to the allocation of resources, Co-Lead Customer Counsel worked collaboratively with the other member of Plaintiffs' Executive Committee, BLBG, where the

Securities Plaintiffs interests were joined with those of Plaintiffs, to divide discovery assignments across all three firms and among the other Plaintiffs' Counsel. For instance, privilege challenges, briefing discovery issues, confidentiality challenges, document review, deposition assignments, were coordinated across firms with the goal of ensuring that efficiencies were maximized by having one firm take the lead on specific assignments. With respect to Co-Lead Customer Counsel, senior attorneys took and defended depositions all over the country, while junior attorneys concentrated more on fact gathering and legal research and analysis. Mid-level attorneys took the laboring oar in drafting and preparing non-dispositive motions at the same time that senior attorneys negotiated settlement. The firms that made up Plaintiffs' Executive Committee shared discovery work product, such as the document coding, witness kits, search results, deposition transcripts and so forth, with the USAO and the NYAG. Expert analysis and associated work product was also shared with these parties and with respect to the USAO, this was reciprocated. Thus, despite the tremendous hours required to litigate this case, Plaintiffs' Counsel maximized efficiencies that could be had by collaborating with all parties with shared interests.

235. Co-Lead Customer Counsel, as members of the Executive Committee, further prioritized efficient coordination of litigation tasks throughout this MDL. At the height of the litigation, senior members of Plaintiffs' Executive Committee held weekly telephone calls to strategize and set priorities, while other teams met as frequently, if not more, to schedule and prepare for depositions; review various types of FX Contract Documents; handle multitudinous discovery disputes with BNYM; brief motions; draft letters to BNYM and/or the Court; and meet and confer with BNYM. By dividing tasks, Plaintiffs' Executive Committee worked efficiently and effectively to develop subject matter expertise and effectively communicate any issues

affecting any relevant constituency. As a result of all Plaintiffs' counsels' effort, attorneys kept the duplication of efforts to a bare minimum.

236. With this framework of Plaintiffs' Executive Committee and Plaintiffs' Steering Committees sharing work horizontally among Plaintiffs' Counsel and vertically within firms, and the institution of clear rules of the road, all counsel were able to litigate individual and collective issues in the most time- and cost-efficient manner. For instance, certain attorneys focused on BNYM's FX trading operations, while others concentrated on identifying commonalities in BNYM's representations to custodial clients through numerous documents disseminated over the 13-year Class Period. Senior attorneys took and defended depositions all over the country, while junior attorneys concentrated on fact-gathering as well as legal research and analysis; mid-level attorneys took the laboring oar in drafting and preparing non-dispositive motions, while senior attorneys negotiated settlement. Upon the issuance of a Scheduling Order on the same day as the Confidentiality Order, which was modified only once on July 11, 2014 (other than in connection with Settlement), all parties were ready to ramp up the discovery process in earnest, and did so.

237. Despite the at times divergent interests (such as whether and to what extent third party discovery was necessary) and claims, Plaintiffs' Executive Committee and the USAO worked efficiently together, and Plaintiffs regularly shared their work product and resources with the USAO including the analysis prepared by their experts. The damages models used in the litigation were developed by Plaintiffs and used by both the USAO and the NYAG. In addition, by way of further example of the collaboration between Plaintiffs and the USAO, the parties shared "witness kits" in advance of BNYM and third party depositions, worked together to develop a joint strategy for reviewing and categorizing thousands of RFPs produced by BNYM, coordinated their positions on meet and confers, had almost weekly and sometimes daily strategy

calls regarding discovery issues, and worked cooperatively in drafting and responding to various discovery motions.

238. Plaintiffs' Counsel operated efficiently despite the complexities inherent in transferring eight private actions into a single MDL as well as coordination with the USAO and NYAG Actions.

239. Efficiency challenges arose out of the multiple legal theories of liability presented in response to BNYM's conduct. Because the legal theories of liability amongst the MDL Actions greatly varied, so too, did the evidence necessary to prove their cases. Specifically, the corporate insiders' knowledge critical in the Securities Cases, while important to the Customer Class's consumer claims, had less weight in the Customer Class's primary contract and fiduciary claims. Insider knowledge likewise had little weight in the ERISA or LACERA/LADWP Actions. Similarly, the emphasis on representations in the LACERA/LADWP and Securities Actions, while relevant, did not have the same weight in the Customer Class Cases and ERISA Actions. And, the in-depth analyses of numerous agreements were exclusively required in the Customer Class and ERISA Actions. Thus, Plaintiffs had to work cooperatively with all MDL Plaintiffs, the USAO and the NYAG, in order to efficiently prioritize discovery efforts to ensure that each party obtained the information necessary to prove its case while at the same time avoiding unnecessary and duplicative discovery or motion practice.

240. While BNYM successfully argued for transfer to the Court because of its concern over litigating this matter all across the U.S., in fact, pre-trial discovery still occurred in more than 20 states throughout the country as well as in the United Kingdom, much of it precipitated by BNYM's pursuit of third party discovery to refute Plaintiffs' class claims. Moreover, during the majority of the Class Period, Mellon operated headquarters in Pittsburgh and extensive

operations in Boston (the headquarters of a Mellon predecessor, Boston Safe Trust Co.). Hence, numerous BNYM employees were made available for depositions in Pittsburgh and Boston, in addition to New York.

1. Standing and Expertise of Class Counsel

241. The expertise and experience of counsel are other important factors in setting a fair fee. As demonstrated by the firm résumés attached to their individual declarations, Plaintiffs' counsel are highly experienced in the area of complex class action and commercial litigation and have a successful track record such cases throughout the country.

2. Standing and Caliber of Opposing Counsel

242. The quality of the work performed by counsel in attaining the Settlement should also be evaluated in light of the quality of opposing counsel. Plaintiffs' Counsel was opposed in this case by very skilled and highly respected counsel. Here, BNYM was represented by two of the premier national law firms, Kellogg Huber Hansen & Figel, LLP ("Kellogg Huber") and Paul, Weiss, Rifkind, Wharton & Garrison LLP. These firms are highly skilled and experienced in the area of complex litigation, with vast resources. Over the course of this litigation, Kellogg Huber aggressively litigated this case, and twelve of its thirty-two partners were actively involved in litigating the Action. In the face of this knowledgeable and formidable defense, Class Counsel were nonetheless able to develop a case that was sufficiently strong to persuade Defendants to settle on terms that are favorable to the Settlement Class.

3. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel In High-Risk, Contingent Cases

243. As noted above, the Action was undertaken on a wholly contingent basis. From the outset, Plaintiffs' Counsel understood that they were embarking on a complex and expensive litigation with no guarantee of compensation for the investment of time, money and effort that

the case would require. At the outset of the case, Plaintiffs' Counsel understood that this case was unique and would raise extremely difficult challenges of proof, class certification and damages, and that it would be heavily contested with no assurance of success.

244. In undertaking the responsibility for prosecuting the Action, Plaintiffs' Counsel assured that sufficient attorney resources were dedicated to the investigation of the Settlement Class' claims against the Defendants and that sufficient funds were available to advance the expenses required to pursue and complete such complex litigation. As set forth below, Class Counsel received no compensation and, in total, incurred $2,902,066.26 in expenses in prosecuting and resolving this Action for the benefit of the Settlement Class. Notably, although this case was coordinated with collaboration with the USAO and the NYAG, Class Counsel bore the majority of expert, discovery and mediation expenses.

245. Plaintiffs' Counsel also bore the risk that no recovery would be achieved. As discussed herein, this case presented a number of risks and uncertainties which could have prevented any recovery whatsoever. Despite the vigorous and competent efforts of Plaintiffs' Counsel, success in contingent-fee litigation, such as this, is never assured. To the contrary, it takes hard work and diligence by skilled counsel to develop the facts and theories that are needed to sustain a complaint or win at trial, or to induce sophisticated defendants to engage in serious settlement negotiations.

4. The Reaction of the Settlement Class to Date

246. The class is comprised exclusively of sophisticated institutions which include, but are not limited to, public pension funds, mutual funds, ERISA funds, Taft-Hartley funds, public and private corporations, and private and public trusts. There are no individual persons that are members of the Settlement Class. As set forth in the Cirami Affidavit, to date, only two Class Members out of approximately 1,218 Class Members has sought to exclude themselves from the

Settlement. One of those Class Members seeking exclusion does not believe it is a member of the class as it cannot find a custodial contract between itself and BNYM, a claim which Defendants are examining. To the extent that this entity is correct, its exclusion is moot as it would never have been part of the defined Settlement Class at all. Moreover, to date, there have been no objections filed with the Court or delivered to Lead Settlement Counsel.

5. Application for Reimbursement of Expenses

247. Plaintiffs' Counsel also seek reimbursement of $2,902,066.26 in Litigation Expenses, detailed below, and in the Individual Declarations by each Plaintiffs' Counsel submitted herewith reasonably and actually incurred by Plaintiffs' Counsel in connection with commencing and prosecuting the claims against the Defendants over the course of the last three years. The Notice apprises potential Settlement Class members that Plaintiffs' Counsel intend to seek reimbursement of expenses in an amount not to exceed $5 million. The amount of the unreimbursed Litigation Expenses actually requested is less than what was stated in the Notice and, to date, no objection has been raised to Plaintiffs' Counsel's request for reimbursement of Litigation Expenses.

248. To share in the costs associated with the more substantial expenses associated with complex litigation, Co-Lead Customer Counsel created a Litigation Fund following the MDL transfer in which each firm contributed. Each of KTMC's and LCHB's contributions to the Litigation Fund are summarized on the Expense Schedules set forth in the individual declarations, see Exs. 1-C and 2-C. The Litigation Fund was monitored by LCHB and was used to cover the following costs:

LITIGATION FUND EXPENSES

DEPOSITS	
Bernstein Litowitz Berger & Grossmann	35,000.00

Keller Rohrback	1,620.00
Kessler Topaz Meltzer & Check	473,466.08
Lieff, Cabraser, Heimann & Bernstein	473,467.00
	983,553.08
DISBURSEMENTS	
8 Rivers Capital, LLC	(699,076.00)
D4, LLC	(86,337.60)
DeRosa Research & Trading, Inc.	(114,132.17)
Keating & Walker Attorney Service, Inc.	(92.50)
Legalink	(18,529.10)
Phillips ADR Enterprises	(60,098.35)
Ralph Fink & Associates	(4,955.20)
	(983,220.92)
CURRENT BANK BALANCE	332.16

249. In addition to cost paid through the Litigation Fund, each Plaintiffs' Counsel incurred additional costs associated with the Litigation. These are also set forth in Plaintiffs' Counsel's individual declarations submitted herewith. The total expenses including expenses paid through the Litigation Fund and individually incurred by each of the Lead Customer Plaintiffs' firms totals $2,902,066.26. As set forth in Plaintiffs' Counsel's Individual Declarations, These expenses are reflected on the books and records maintained by Plaintiffs' Counsel. These books and records are prepared from expense vouchers, check records and other source materials, and are an accurate record of the expenses incurred. The Litigation Expenses for which Plaintiffs' Counsel seek reimbursement were largely incurred for professional fees, including the costs of experts, consultants, discovery management, and depositions.

250. The other expenses for which Plaintiffs' Counsel seek reimbursement are also the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, long distance telephone and facsimile charges, postage and delivery expenses, computerized research, overtime expenses, filing fees and photocopying.

251. From the beginning of the case, Plaintiffs' Counsel were aware that they might not recover any of their expenses, and would not recover anything until the Action was partially or fully resolved. Plaintiffs' Counsel also understood that, even assuming that the case was ultimately successful, reimbursement for expenses would not compensate them for the lost use of the funds advanced to prosecute this Action. Thus, Plaintiffs' Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case.

252. As set forth in the Individual Declarations, all of the Litigation Expenses incurred were necessary to the successful prosecution and resolution of the claims against the Defendants. In view of the complex and novel nature of the Action, the expenses incurred were reasonable and necessary to pursue the interests of the Settlement Class. Accordingly, we respectfully submit that the Litigation Expenses incurred by Plaintiffs' Counsel should be reimbursed in full.

6. Application for Service Awards for the Lead Customer Plaintiffs

253. Co-Lead Customer Counsel also seek service awards on behalf of each of the Plaintiffs in the amount of $25,000 each to compensate them for the time, expense and unwavering commitment to this Litigation.

254. Not only have these Plaintiffs fully and diligently discharged their core responsibilities by monitoring the litigation, conferring with Plaintiffs' Counsel, reviewing significant pleadings and authorizing the resolution of this Action, they endured an onslaught of

discovery demands well beyond anything we have seen in class action in our collective class action experience. Plaintiffs were subjected to Defendants unrelenting onslaught of discovery demands, deposition requests, meet and confers to request more discovery and depositions, motions to compel, interrogatories and requests for admission. As set forth in the declarations submitted by each Plaintiff's Counsel in support of Final Approval of the Settlement, an Award of Attorneys' Fees, Service Awards and Reimbursement of Expenses, annexed hereto as Exs. 1-10, each committed enormous time and resources to meeting these demands.

255. Moreover, this was the first case, in our experience, where the Defendant has attempted to counter-sue Plaintiffs in the litigation (and putative Class Members) for indemnification of their attorneys' fees and expenses in defending the litigation (and litigation brought by the DOJ and NYAG). Defendants' counterclaims, sustained by the Court, while clearly designed to intimidate Plaintiffs, was given serious consideration by Plaintiffs as to whether to proceed with their representation of the Class. It is through their fortitude and willingness to endure this risk that a Settlement was possible in this case as had any Plaintiff withdrawn in the face of this threat, it was likely no other institution would have been willing to take up the mantle.

256. As discussed above, one of the principal strategies deployed by the Defendants in this litigation was to wear down Plaintiffs and Plaintiffs' Counsel through an unrelenting litigation strategy. Each of Plaintiffs were served with voluminous document requests and interrogatories. These requests required Plaintiffs' Counsel to meet with various employees of the respective Plaintiff institutions, assist them in conducting searches reviews of their electronic and archival records and interfacing, for a period of several weeks, almost weekly with Plaintiffs' employees to satisfy Defendants' discovery demands.

257. In all, Plaintiffs produced more than 550,000 documents (totaling more than 6 million pages),which was a fraction of the electronic documents that were collected and reviewed for relevance and privilege.

258. Defendants took ***thirty-two*** **(32)** depositions of Plaintiffs—these included depositions of eighteen (18) Ohio witnesses,[48] five (5) SEPTA witnesses,[49] and nine (9) IUOE-affiliated witnesses.[50] Defendants marked 298 exhibits at the Ohio witness depositions (which averaged more than 6.2 hours in length each), 141 at the SEPTA depositions (which averaged 4.3 hours in length), and 113 at the IUOE-affiliated depositions (which averaged 5 hours in length), for a total of 552 exhibits marked in the Plaintiff depositions by BNYM. These exhibits comprise 12,660 pages.

[48] Michael Abankwah (OP&F) (26 new exhibits (7 hrs.)), Cynthia Beck (Ohio Treasurer) (7 new exhibits, 10 previously marked (7 hrs.)), Denise Blain (Ohio Treasurer) (18 new exhibits, 7 previously marked (5 hrs. 46 mins.)), Jeffrey Breeckner (OP&F) (2 new exhibits, 6 previously marked (1 hr. 30 mins.)), Virginia Brizendine (SERS) (10 new exhibits, 10 previously marked (7 hrs.)), Robert Cowman (SERS) (12 new exhibits, 25 previously marked (7 hrs.)), Stacy Easterday (SERS) (29 new exhibits, 6 previously marked (7 hrs.)), Ted Hall (OP&F) (6 new exhibits, 15 previously marked (7 hrs.)), Judi Masri (SERS) (12 new exhibits, 2 previously marked (7 hrs.)), Lisa Michalowski (SERS) (19 new exhibits (7 hrs.)), Jason Naber (SERS) (34 new exhibits, 2 previously marked (7 hrs.)), Timothy O'Brien (OP&F) (17 new exhibits, 14 previously marked (7 hrs.)), Philip Roblee (SERS) (14 new exhibits, 8 previously marked (2 hrs. 35 mins.)), Timothy Steitz (SERS) (9 new exhibits, 1 previously marked (2 hrs. 43 mins.)), Robert Theller (OP&F) (two days) (19 new exhibits, 25 previously marked (11 hrs.)), Yvette Tubman (OP&F) (27 new exhibits (5 hrs. 20 mins.)), Timothy Viezer (SERS) (26 new exhibits, 7 previously marked (7 hrs.)), and Joseph Yeboah (OP&F) (11 new exhibits, 3 previously marked (6 hrs.)).

[49] Richard Burnfield, SEPTA's CFO (44 new exhibits, 4 previously marked, (4 hrs. 53 mins.)), Thomas McFadden, SEPTA's Assistant Treasurer (19 new exhibits, 21 previously marked (6 hrs. 12 mins.)), Kurt Weidenhammer, SEPTA's former Assistant Treasurer (34 new exhibits, 17 previously marked (4 hrs. 10 mins.)), Alex Greenwald, an employee reporting to SEPTA's Assistant Treasurer, (22 new exhibits, 13 previously marked (2 hrs. 37 mins.)), and Michael O'Donoghue, Chairman of SEPTA's Pension Commitee (22 new exhibits, 18 previously marked (3 hrs. 46 mins.)).

[50] Paul Bensi (IUOE trustee) (17 new exhibits, 4 previously marked (7 hrs.)), George Buhalis (BeneSys (fund administrator)) (19 new exhibits (2 hrs. 23 mins.)), William Dobbs (The Dobbs Group (investment consultant)) (8 new exhibits, 5 previously marked (5 hrs. 26 mins.)), John Gualy (Eagle Global Advisors (investment manager)) (22 new exhibits (6 hrs.)), Michael Schumacher (ATPA (fund administrator) (7 new exhibits, 3 previously marked (2 hrs. 54 mins.)), William Sokol (Weinberg, Roger & Rosenfeld (fund counsel) (5 new exhibits, 1 previously marked (2 hrs. 23 mins.)), Bart Florence (IUOE trustee) (3 new exhibits, 23 previously marked (6 hrs.), Lyle Setter (IUOE trustee) (1 new exhibit, 23 previously marked (7 hrs.)), and Jerry Kalmar (IUOE trustee) (31 new exhibits (6 hrs.)). The first six (6) of these witnesses were deposed in 2012, prior to the MDL consolidation, while the IUOE Local 39 Action was still being litigated in the N.D. Cal.

259. At the time of Settlement, there were still negotiations between Plaintiffs and Defendants as to additional Plaintiff depositions Defendants were seeking. Moreover, Defendants also served Rule 30(b)(6) depositions on each of the Plaintiffs after the aforementioned deposition discovery had already been complete. To avoid motion practice, the parties engaged in protracted negotiations to determine whether deposition testimony could be designated as responsive to this belated Rule 30(b)(6) notice and Plaintiffs were involved in approving the designation of such testimony. At the time of Settlement, there were still ongoing negotiations as to whether Plaintiffs would move to quash the notice.

260. Also significant in the efforts of Plaintiffs was their willingness, reflected in a cooperation agreement reached with the USAO, to provide as many as two of their employees, to travel to New York and offer testimony in any trial of the USAO's action. The USAO wanted to secure the testimony of Plaintiffs to support their FIRREA claims and avoid having to expend resources to take depositions of Plaintiffs.

261. For these reasons, and in recognition of Plaintiffs' extraordinary efforts, we respectfully submit that service awards in the amount of $25,000 for each of the Lead Customer Plaintiffs is warranted. The aggregate amount of the Service Award is less than .03% of the Settlement. Class Members were informed that Lead Customer Plaintiffs could seek up to $25,000 in service awards and to date, no Class Member has objected to this request.

VII. CONCLUSION

262. For all the reasons set forth above, Counsel, on behalf of all Plaintiffs' Counsel, respectfully submit that the Settlement and the Plan of Allocation should be approved as fair, reasonable and adequate. Co-Lead Customer Counsel further submit that the requested fee in the amount of $83.75 million, or 25% of the Settlement Amount, should be approved as fair and

reasonable, and the request for reimbursement of Counsel's expenses in the amount of $2,902,066.26, as well as Service Awards for the Lead Customer Plaintiffs in the amount of $25,000 each, should also be approved.

We declare, under the penalty of perjury under the laws of the United States of America, that the foregoing facts are true and correct.

Executed this 17th day of August, 2015, in New York, New York.

Daniel P. Chiplock

Executed this 17th day of August, 2015, in Radnor, Pennsylvania

Sharan Nirmul