

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BENJAMIN MICHAEL MERRYMAN, AMY  
WHITAKER MERRYMAN TRUST, B  
MERRYMAN AND A MERRYMAN 4TH  
GENERATION REMAINDER TRUST AND  
CHESTER COUNTY EMPLOYEES  
RETIREMENT FUND, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

CIVIL ACTION NO. 1:15-cv-09188-VEC

**DECLARATION OF LANCE CAVALLO IN SUPPORT OF PLAINTIFFS’  
MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

I, Lance Cavallo, declare and state as follows:

1. I am a Vice President of Class Actions at Kurtzman Carson Consultants LLC (“KCC”). Pursuant to the Court’s Order Preliminarily Approving Settlement and Providing for Notice (ECF No. 104) (“Preliminary Approval Order”), Lead Counsel was authorized to retain KCC as the Claims Administrator in connection with the proposed Settlement of the above-captioned action (“Litigation”).<sup>1</sup> I have personal knowledge of the matters stated herein and, if called upon, could and would testify thereto.

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement (ECF No. 99) (“Stipulation”), the Declaration of Justin R. Hughes regarding Registered Holder Data and Nominee Outreach and Response (ECF No. 106-4) (“Initial Hughes Declaration”), the Supplemental Declaration of Justin R. Hughes (ECF No. 115-3) (“Supp. Hughes Declaration”), the Declaration of Justin R. Hughes Regarding (A) Receipt of Registered Holder Data; (B) Mailing of the Postcard Notice; (C)

2. In accordance with the Preliminary Approval Order and subsequent Order Approving Modifications to Notice Plan and Schedule for Approval of Settlement (ECF No. 118) (“Notice Modification Order”), KCC, as Claims Administrator, was responsible for providing notice of the Settlement to the Settlement Class.<sup>2</sup> KCC has among other things: (i) mailed the Court-approved Notice Packet (consisting of the long-form Notice and Claim Form) to Nominees; (ii) created 702,568 unique Registered Holder Settlement Class Member Claims using the Registered Holder data provided by JPM’s transfer agent; (iii) mailed Postcard Notices to Registered Holder Settlement Class Members; (iv) created and maintains a website, [www.JPMorganADRFXSettlement.com](http://www.JPMorganADRFXSettlement.com), and toll-free telephone hotline, 1-866-637-9457, in order to provide additional information regarding the Action and the Settlement;<sup>3</sup> (v) received and processed Claim Forms from Non-Registered Holder Settlement Class Members and supplemental submissions from Registered Holder Settlement Class Members; and (vi) calculated Recognized Claims for all Registered Holder Settlement Class Member and Non-Registered Holder Settlement

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Establishment of the Telephone Hotline; (D) Establishment of the Settlement Website; and (E) Report on Requests for Exclusion Received to Date (ECF No. 125-1) (“Initial Mailing Declaration”), or the Supplemental Declaration of Justin R. Hughes Regarding (A) Mailing of the Postcard Notice; (B) Outreach to Third-Party Filers; (C) Update on Telephone Hotline and Settlement Websites; (D) Report on Requests for Exclusion Received; and (E) Report on Claims Received to Date (ECF No. 131-1) (“Supp. Mailing Declaration”).

<sup>2</sup> The “Settlement Class” consists of all Persons or entities who are or were holders (directly or indirectly, registered or beneficially) of or otherwise claim any entitlement to any payment (whether a dividend, rights offering, interest on capital, sale of shares or other distribution) in connection with: (1) the securities listed in Appendix 1 to the Stipulation (including any predecessor or successor securities) from November 21, 2010 to July 18, 2018, inclusive; or (2) the securities listed in Appendix 2 to the Stipulation (including any predecessor or successor securities) from November 21, 2012 to July 18, 2018, inclusive.

<sup>3</sup> In addition to the website for this Settlement, KCC, in coordination with Lead Counsel, also created and maintains a general ADR FX website, [www.ADRFXSettlement.com](http://www.ADRFXSettlement.com), which serves as a landing page for this Settlement as well as the settlements obtained in the related ADR FX cases, *In re: The Bank of New York Mellon ADR FX Litigation*, No. 16-CV-00212-JPO-JLC (S.D.N.Y.) and *Merryman et al. v. Citigroup, Inc. et al.*, No. 1:15-cv-09185-CM-KNF (S.D.N.Y.).

Class Member Claims pursuant to the Court-approved Plan of Allocation set forth in the long-form Notice.

3. On November 22, 2019, the Court entered its Opinion and Order (ECF No. 146) and Order and Final Judgment (ECF No. 144), granting final approval to the Settlement reached in the Litigation. Pursuant to the terms of the Settlement, \$9,500,000 in cash has been paid into escrow for the benefit of the Settlement Class. The Effective Date of the Settlement has occurred and the Net Settlement Fund may be distributed to Authorized Recipients pursuant to Order of this Court. *See* Stipulation, ¶¶ 28, 39.

4. KCC has completed the processing of all Claims for the Settlement, including all supplemental submissions from Registered Holder Settlement Class Members, received as of the date of this Declaration in accordance with the terms of the Stipulation and the Court-approved Plan of Allocation, and hereby submits its administrative determinations accepting and rejecting the Claims in preparation for distribution of the Net Settlement Fund to Authorized Recipients. KCC also submits this Declaration in support of Plaintiffs' Motion for Approval of Distribution Plan.

## **I. DISSEMINATION OF NOTICE OF THE SETTLEMENT**

### **A. Postcard Notice Mailing**

5. Pursuant to the Preliminary Approval Order, and as more fully described in the Initial Hughes Declaration, in June of 2018, KCC received from Lead Counsel, by way of Dorsey & Whitney LLP, who represented JPM's transfer agent, Equiniti Trust Company, 75 separate spreadsheets collectively containing the names, addresses, and cash distribution information for Registered Holder Settlement Class Members. The spreadsheets contained approximately 2.3 million lines of raw data. *See* Initial Hughes Decl., ¶ 2.

6. Following the receipt of the Registered Holder data, KCC spent approximately eight weeks processing the data. KCC's efforts with respect to this data included: (i) aligning like data points across all 75 spreadsheets; (ii) separating account name information from account address information; (iii) processing the names and addresses through the National Change of Address ("NCOA") database to update any addresses on file with the United States Postal Service ("USPS"); (iv) grouping transactions together based on identical name/address information for the purpose of creating one Claim per account; and (v) loading all of the data into a case-specific database. These efforts resulted in contact, holding, and distribution information for 702,568 unique Registered Holder Settlement Class Members.

7. Pursuant to the Preliminary Approval Order and subsequent Notice Modification Order, and as more fully described in the Supplemental Mailing Declaration, KCC mailed approximately 728,000 Postcard Notices to Registered Holder Settlement Class Members. *See Supp. Mailing Decl.*, ¶ 2. KCC also mailed Notice Packets to Nominees and Settlement Class Members upon request.

**B. Publication Notice Plan**

8. As set forth in the Declaration of Jeanne C. Finegan, APR Concerning Implementation of Notice to Settlement Class Members Through Multi-Media Notice Program (ECF No. 125-2) ("Finegan Decl."), HF Media, LLC conducted a notice campaign consisting of notice via various media, including print, Internet banner ads and social media. This notice campaign was targeted to provide notice to Non-Registered Holder Settlement Class Members. *See Finegan Decl.*, ¶¶ 15-45.

**C. Settlement Websites and Toll-Free Telephone Hotline**

9. KCC established and continues to maintain: (i) a website dedicated to the Settlement ([www.JPMorganADRFXSettlement.com](http://www.JPMorganADRFXSettlement.com)) (“Settlement Website”); (ii) a toll-free telephone hotline (1-866-637-9457) dedicated to the Settlement; and (iii) a general ADR FX website, [www.ADRFXSettlement.com](http://www.ADRFXSettlement.com), which serves as a landing page for this Settlement as well as for the settlements obtained in the related ADR FX cases. *See* Initial Mailing Decl., ¶ 13.

10. The websites and toll-free telephone hotline enable Settlement Class Members to obtain information about the Settlement. Specifically, the Settlement Website contains links to downloadable copies of the Stipulation, the Preliminary Approval Order, the Notice Modification Order, the long-form Notice (with the Plan of Allocation), the Claim Form, and the operative complaint for the Action. The Settlement Website also contained a Claim Portal that allowed Registered Holder Settlement Class Members to access their distribution information provided by Equiniti Trust Company, using the Claim Number and PIN set forth on the Postcard Notice they received. Registered Holder Settlement Class Members were also provided with instructions on how to amend or supplement their Claim if they believed the information contained on the Claim Portal was incorrect or incomplete. In addition, the Settlement Website provided Non-Registered Holder Settlement Class Members with the ability to file a Claim online.

11. In connection with establishing and maintaining the websites and toll-free telephone hotline, KCC, among other things, formulated a system to ensure that proper responses were provided to all inquiries regarding this matter.

**II. PROCEDURES FOLLOWED IN PROCESSING CLAIMS**

12. Under the terms of the Preliminary Approval Order and subsequent Notice Modification Order and as set forth in the long-form Notice, each Non-Registered Holder

Settlement Class Member who wished to be eligible to receive a distribution from the Net Settlement Fund was required to complete and submit to KCC a properly executed Claim Form postmarked or received (or submitted online) no later than September 19, 2019, together with adequate supporting documentation for the transactions and holdings reported therein. Registered Holder Settlement Class Members did not need to take any additional action in order to be potentially eligible to receive a distribution from the Net Settlement Fund unless the information provided by Equiniti Trust Company (and contained on the Claim Portal) was incomplete or inadequate and, in that event, they were encouraged to supplement their Claims. Through the date of this Declaration, KCC has received and processed 1,804,463 Claims from Non-Registered Holder Settlement Class Members and supplemental submissions in connection with 58 Claims from Registered Holder Settlement Class Members.

13. In preparation for receiving and processing the unique Claims for this Settlement, KCC: (i) conferred with Lead Counsel to define the project guidelines for processing Claims; (ii) created a unique database to store Claim details, images of Claims, and supporting documentation (“Settlement Database”); (iii) trained staff in the specifics of the project so that Claims would be properly processed; (iv) formulated a system so that telephone and email inquiries would be properly responded to; (v) developed various computer programs and screens for entry of Settlement Class Members’ identifying information as well as their cash distribution information; and (vi) developed a proprietary “calculation module” that would calculate Recognized Claims pursuant to the Court-approved Plan of Allocation set forth in the long-form Notice.

14. As noted above, Non-Registered Holder Settlement Class Members seeking to share in the Net Settlement Fund were directed in the long-form Notice to submit a Claim either

online or to the Post Office Box address specifically designated for the Settlement. KCC sorted incoming mail to the Post Office Box into Claim Forms and administrative mail.<sup>4</sup> Administrative mail was reviewed and, where necessary, appropriate responses were provided to the senders.

**A. Non-Registered Holder Settlement Class Members**

**1. Paper Claims**

15. As of the date of this Declaration, KCC has received 1,804,463 Claims from Non-Registered Holder Settlement Class Members, of which 2,052 were submitted via postal mail (“Paper Claims”). Once received, Paper Claims were opened and prepared for scanning. This process included unfolding documents, removing staples, copying non-conforming sized documents, sorting documents, and, where Claimant identification information was not provided on the Claim Form, copying and attaching the envelope with the return address to the file. This manual task of preparing a Paper Claim for processing is laborious and time intensive. Once prepared, Paper Claims were scanned into a database together with all submitted documentation and assigned a unique Claim number. Once scanned, the information from each Paper Claim, including the Claimant’s name and address, as well as the Claimant’s cash distribution information, was entered into the Settlement Database. Next, the information provided by each Claimant in support of his, her, or its Paper Claim was reviewed to determine whether the Claimant received cash distributions related to one of the 54 eligible ADRs during the relevant time periods, as required to be an eligible Settlement Class Member.

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<sup>4</sup> Administrative mail includes all mail other than Claim Forms and supporting documentation and responses to Notices of Rejection (*e.g.*, requests for blank Claim Forms, notifications of a change of address, and questions regarding the administration process or status of the administration).

16. In order to process the cash distributions detailed in the Paper Claims, KCC utilized internal Claim codes (also known as “message codes”) to identify and classify Paper Claims and any deficiency or ineligibility conditions that existed within those Paper Claims. The appropriate message codes were assigned to the Paper Claims as they were processed. For example, where a Paper Claim was submitted by a Claimant who did not receive any cash distributions related to one of the 54 eligible ADRs, that Paper Claim received a “Claim-level” message code that denoted ineligibility. Similar “Claim-level” ineligible message codes were used to denote other ineligible conditions, such as duplicate Claims. These message codes indicated to KCC that the Claimant is not eligible to receive any payment from the Net Settlement Fund with respect to that Paper Claim unless the deficiency is cured.

17. Because a Claim may be deficient only in part, but otherwise acceptable, KCC also utilized message codes that only applied to specific cash distributions within a Claim. For example, if a Claimant submitted a Claim with supporting documentation for all but one cash distribution, that one cash distribution received a “cash distribution-level” message code. That message code indicated that one cash distribution was deficient, but that the Claim was otherwise eligible for payment if the other cash distributions in the Claim calculated to a Recognized Claim pursuant to the Court-approved Plan of Allocation. Thus, even if the cash distribution-level deficiency was never cured, the Claim could still be paid in part.

## **2. Web (Online) Submitted Claims**

18. Of the 1,804,463 Claims received from Non-Registered Holder Settlement Class Members, 244 were submitted by Claimants via the Claim Portal on the Settlement Website (“Web Claims”). Once received, Web Claims were imported into the Settlement Database. This process included assigning a unique Claim number to each Web Claim and mapping the



submission form to the database so that entries made for any of the 54 eligible ADRs could be evaluated and calculated according to the Court-approved Plan of Allocation. Next, and identical to the process utilized for processing Paper Claims, the information provided by each Claimant in support of his, her, or its Web Claim was reviewed to determine whether the Claimant actually received the claimed cash distributions. KCC utilized the same internal Claim codes (also known as “message codes”) to identify and classify Web Claims and the appropriate message codes were assigned to the Web Claims as they were processed.

### **3. Electronically Submitted Claims**

19. Of the 1,804,463 Claims received from Non-Registered Holder Settlement Class Members, 1,802,167 were submitted electronically (“Electronic Claims”). Electronic Claims are typically submitted by institutional investors who may have hundreds or thousands of transactions during the relevant period. Rather than provide reams of paper requiring data entry, the institutional investors filing Electronic Claims either mail a computer disc or email a file to KCC, so that KCC may electronically upload all cash distributions to the Settlement Database.

20. KCC maintains an electronic filing operations team (“Electronic Filing Team”) to coordinate and supervise the receipt and handling of all Electronic Claims. In this case, as in all other claims administrations handled by KCC, the Electronic Filing Team reviewed and analyzed each electronic file to ensure that it was formatted in accordance with KCC’s required format, and to identify any potential data issues or inconsistencies within the file. If any issues or inconsistencies arose, KCC immediately notified the sender. If the electronic file was deemed to be in an acceptable format, it was then forwarded to KCC’s data team with detailed loading instructions including the number of Claims and cash distribution totals that the institution provided when it sent the electronic file.

21. Once the electronic file was loaded, KCC's Quality Assurance personnel reviewed the electronic file to confirm that the number of Claims and transactions matched the information provided by the filer.

22. Once the above criteria were confirmed, the Electronic Claims were coded just like manually processed Claims with messages to identify and classify Electronic Claims and any deficiency or ineligibility conditions that existed within them. These message codes are the same as those applied to manually submitted Claims; however, the process in applying codes to Electronic Claims differs from the process used for Paper Claims/Web Claims. Rather than manually applying message codes, the Electronic Filing Team performed programmatic reviews on Electronic Claims to identify deficient and ineligible conditions (such as, but not limited to, ineligible securities, ineligible transaction types, and cash distributions outside of the relevant time periods). The appropriate message codes were then assigned programmatically once the output of the reviews was thoroughly analyzed and confirmed as accurate.

23. The review process also included flagging any Electronic Claims that were not accompanied by the following: (i) a signed Claim Form, which serves as a "Master Claim Form" for all accounts referenced on the electronic file submitted; (ii) an electronic filing summary sheet; (iii) supporting documentation, such as a signed or notarized letter on company letterhead attesting to the truth and accuracy of the data on the electronic file, dividend confirmations, and/or brokerage account statements; (iv) a notarized affidavit, corporate resolution, or corporate by-laws verifying that the individual who executed the Claim Form and submitted the electronic file is an authorized signatory of his/her company with the authority to file such information; and (v) documentation to demonstrate the authority to file on behalf of the Claimant(s). This portion of the review process was also reviewed by KCC's Quality Assurance personnel, who worked in

conjunction with the Electronic Filing Team to contact the institutional filers whose electronic files were missing information. This process ensures that only fully completed Claims, submitted by a properly authorized representative of a Claimant, are considered eligible for payment from the Net Settlement Fund.

24. With respect to processing Electronic Claims in particular, there were a number of factors involved with this administration that were particularly unique from a “typical” securities class action settlement administration. For example, this Settlement covers two time periods that span between six and eight years, and there are 54 separate eligible securities, which ultimately resulted in more than 1.8 million Claims being submitted electronically. Further, in order to calculate Recognized Claims in accordance with the Court-approved Plan of Allocation, Non-Registered Holder Settlement Class Members were required to provide their cash distribution payment amounts, such as dividends, rights offerings, or interest on capital that resulted from holding any of the 54 eligible securities during the relevant time periods. In a typical securities class action administration, purchases, sales, and holdings for a particular security are required, so for this administration, the existing queries and processes used by Electronic Claim filers needed to be modified accordingly. For these reasons, KCC undertook an unprecedented effort to review and assess submissions and proactively and effectively communicate with Electronic Claim filers in order to be as efficient as possible.

25. First, at the outset of the administration, KCC sent an email to the largest and most common third-party filers (“Third-Party Filer”) for which it had email addresses. These emails pointed out to the Third-Party Filers that the requirements for this Settlement were particularly unique and suggested that they begin working on pulling the appropriate data required for their Claim submissions as soon as possible, rather than waiting until closer to the Claims

submission deadline as they might otherwise do. The email also provided KCC's contact information in case the Third-Party Filer had any questions.

26. Upon receipt of each Electronic Claim submission, KCC reviewed the information submitted to confirm that the information matched the information that was required for this administration. If, for instance, the file contained references to purchases and sales, the file was immediately rejected and KCC notified the filer that the file did not meet the requirements for this case. Until the information was corrected and re-submitted, these Claims were considered to have not been successfully submitted.

27. Once a file was deemed to be acceptable on its face, it was loaded into the Settlement Database for further analysis. While a more typical administration would only require a single round of audits and rejection communications with Electronic Claim filers, it was determined that in this case in particular, there was a population of files that were still likely to require the filer to re-submit the Claims entirely. In particular, Claims with particularly high loss amounts and Claims with unknown security identifiers (CUSIPs, ISINs, etc.) were closely scrutinized to ensure all claimed cashed distributions were, in fact, cash distributions and not purchase or sale transaction proceeds. Therefore, KCC endeavored to reach out to such filers specifically in an effort to prompt the re-submissions as early as possible. This process proved very successful as it resulted in the re-submission of approximately 181,000 Claims thus reducing down-stream costs.

**B. Registered Holder Settlement Class Member Claims**

28. As noted above, KCC received distribution information for 702,568 unique Registered Holder Settlement Class Members from Equiniti Trust Company and automatically created Claims for all such Registered Holder Settlement Class Members. While such Registered

Holder Settlement Class Members did not need to take any additional action in order for their Claims to be considered for payment, they were provided the opportunity to access their distribution information via the Settlement Website and amend or supplement their Claim(s) if they believed the information contained on the Claim Portal was incorrect or incomplete. Of the 702,568 Registered Holder Settlement Class Member Claims, KCC received supplemental information for 58 Claims. If the documentation provided in these supplemental submissions was sufficient to prove additional distributions, KCC updated the Settlement Database accordingly.

**C. Excluded Persons and Entities**

29. KCC also reviewed all Claims to ensure that they were not submitted by, or on behalf of, Persons or entities excluded from the Settlement Class by definition, to the extent that the identities of such Persons or entities were known to KCC through the list of excluded Persons and entities set forth in the Stipulation and the long-form Notice. KCC also reviewed all Claims against the list of Persons and entities excluded from the Settlement Class pursuant to request (as set forth on Exhibit 1 to the Order and Final Judgment).

**III. THE CLAIMS DETERMINATION PROCESS**

30. Many of the Claims received by KCC were incomplete, not signed, not properly documented, or were otherwise deficient. Much of KCC's efforts in handling an administration involve claimant communications so that all claimants have sufficient opportunity to cure any curable deficiencies in their claim and submit a complete claim. Here, the "Claims Determination Process," which involved letters, emails, and outbound calls to Claimants, was intended to assist Claimants in properly completing their otherwise deficient submissions so that they could participate in the Settlement (if eligible). As a result of this process, a significant number

of Claimants who submitted Claims with curable deficiencies are now eligible to participate in the Settlement.

**A. Notices of Rejection for Paper and Web Claims**

31. As described above, KCC utilized internal Claim codes to identify and classify Claims and conditions that existed within them. These Claim conditions included, among other things, notations about which Claims were deficient. If a Claim was determined to be deficient (for example, if the Claim was missing required documentation, was unsigned, did not provide enough information to calculate the Claim, or if the Claim was determined to have no Recognized Claim when calculated pursuant to the Court-approved Plan of Allocation), KCC mailed a “Notice of Rejection” to the Claimant. This notice described for the Claimant the defect(s) with his, her, or its Claim and, if the defect was curable, what was necessary to cure it. The notice also advised the Claimant that submission of the appropriate information and/or documentary evidence to complete the Claim was required within twenty (20) days from the date of the notice, or the Claim would be recommended for rejection. KCC mailed a Notice of Rejection in connection with approximately 1,133 Paper and Web Claims during the administration of the Settlement. Attached hereto as Exhibit A are examples of the notices sent to notify Claimants of the deficiencies in, or the ineligibility of, their Claims.<sup>5</sup>

32. Claimants’ responses to these notices were scanned by KCC into the Settlement Database and associated with the related Claims. The responses were carefully reviewed and evaluated by KCC’s team of processors. If a Claimant’s response corrected the

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<sup>5</sup> Portions of Exhibit A have been redacted to protect Claimants’ confidential personally identifiable information.

defect(s) in their Claim, KCC updated the Settlement Database manually to reflect the change in the status of the Claim.

**B. Claims Determination Email Notifications to Electronic Filers**

33. KCC, appreciating the uniqueness of the Settlement and the challenges filers faced compiling and preparing Claims, endeavored to provide filers with a full picture of their Claim submissions, including any submissions that were ultimately replaced in favor of revised submissions, so that filers had ample opportunity to question and/or dispute the determinations communicated. As such, KCC provided Electronic Claim filers with “Claims Determination Email Notifications” that communicated the status of all Claims submitted by that filer, whether eligible, rejected, or replaced with revised Claims. The Claims Determination Email Notifications contained language consistent with the Notices of Rejection that were sent for Paper and Web Claims, plus spreadsheets containing the status information for *all* Claims submitted by the filer. The emails advised filers that submission of the appropriate information and/or documentary evidence to complete any deficient or otherwise rejected Claim(s) was required within twenty (20) days from the date of the email, or the Claim(s) would be recommended for rejection. KCC sent the first round of Claims Determination Email Notifications to 88 Electronic Claim filers on May 14, 2020.

34. After processing all responses to the first round of Claims Determination Email Notifications, KCC undertook a *second* round of Claims Determination Email Notifications to 88 Electronic Claim filers on August 25, 2020. All responses from Electronic Claim filers in response to the Claims Determination Email Notifications were processed and the Settlement Database updated where appropriate.

**C. Requests for Court Review**

35. Both the Notices of Rejection that were sent for Paper and Web Claims and the Claims Determination Email Notifications that were sent for Electronic Claims explained that this deficiency process was the Claimant's only opportunity to cure the deficiencies in his, her, or its Claim (to the extent that the deficiencies could be cured). Also, each notice/email explained that the Claimant had the right to contest KCC's administrative determination regarding their Claim and to ask that the Court review such determination. The notice/email also explained that if Court review was desired, the Claimant was required to submit a written statement to KCC requesting such review and setting forth the basis for the request within twenty (20) days from the date of the notice/email. Out of the 1,133 Notices of Rejection mailed for Paper and Web Claims and the 88 Claims Determination Email Notifications sent to Electronic Claims filers for the 1,802,167 Electronic Claims, KCC did not receive a single request for Court review.

**D. Call and Email Campaign to Claimants Who Did Not Cure Deficiencies**

36. After responses to the Notices of Rejection and Claims Determination Email Notifications were received and evaluated, and the Claims updated in the Settlement Database, KCC called and/or emailed all Claimants with still-deficient (but potentially curable) Claims and a potential Recognized Claim to provide them with a final opportunity to cure the deficiencies in their Claims.

37. During this calling campaign, when a KCC agent spoke with a Claimant, he or she explained that the Claimant's Claim was still deficient, and advised the Claimant of the steps required to cure the deficiency in their Claim. KCC provided assistance to Claimants where possible, depending on the nature of the deficiency. For example, if a Claimant needed additional documentation to cure their Claim, KCC explained the types of documentation that would render



the Claim eligible, and how the Claimant could obtain the necessary documentation. KCC also provided Claimants with KCC agents' contact information, such as a direct phone number and email, so that Claimants could receive continued personalized attention and assistance.

38. If KCC contacted a Claimant by telephone and could not reach the Claimant to speak one-on-one, KCC left a voice message, if possible, requesting a return call. KCC explained in that voice message that it was calling to assist the Claimant in remedying outstanding deficiencies in his, her, or its Claim.

39. If, in response to a telephone call or email, a Claimant cured the deficiency in their Claim by providing the appropriate information and/or supporting documentation, KCC updated the Settlement Database to reflect the change in the status of the Claim.

#### **IV. LATE BUT OTHERWISE ELIGIBLE CLAIMS**

40. To date, KCC has received and processed 272,317 Claims that were postmarked after the September 19, 2019 postmark deadline established by the Court. Of these Claims, 233,591 have been found to be otherwise eligible in whole or in part ("Late But Otherwise Eligible Claims"). The Recognized Claims for these Late But Otherwise Eligible Claims, calculated pursuant to the Court-approved Plan of Allocation, represents approximately 15% of the total Recognized Claims of all Claims that KCC is recommending for acceptance. KCC has not rejected any Claim received solely based on its late submission, and KCC believes no delay has resulted from the provisional acceptance of the Late But Otherwise Eligible Claims. To the extent these Claims are eligible but for the fact that they were late, they are recommended herein for payment.

41. However, there must be a final cut-off date after which no additional Claims will be accepted for processing so that there may be a proportional allocation of the Net Settlement

Fund and the Initial Distribution of the Net Settlement Fund may be accomplished. Accordingly, KCC recommends that this Court order that no Claims received after the date of this Declaration (“Post-Distribution Claims”) be eligible for any reason whatsoever subject only to the provisions of ¶ 52(d) of the proposed Distribution Plan set forth below. More specifically, if the Court adopts the proposed Distribution Plan, and if Lead Counsel determines that a further re-distribution to existing Claimants is not cost effective, then, prior to any contribution of residual funds to a nonsectarian charitable organization, such Post-Distribution Claims (to the extent they would have been eligible for payment if timely received) may be paid to the extent permitted by the amount of remaining funds on a *pro rata* basis so as to bring them into parity with other Authorized Recipients who have cashed all their prior distribution checks in accordance with ¶ 52(d) below. With respect to Claims received by KCC on or before the date of this Declaration that are cured or adjusted after the date of this Declaration (“Late-Adjusted Claims”), such Claims will be reevaluated upon receipt of the adjustment and, to the extent they are found eligible for a distribution or additional distribution, they will be treated in the same manner as Post-Distribution Claims. However, should an adjustment to such Claim be received prior to the Initial Distribution that results in a lower Recognized Claim amount, that adjustment will be made and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.

**V. QUALITY ASSURANCE, FRAUD PREVENTION, AND REGULATORY COMPLIANCE**

42. An integral part of all of KCC’s settlement administration projects is its Quality Assurance review. KCC’s Quality Assurance personnel worked throughout this entire administration process to ensure that Claims were processed properly; that deficiency and ineligibility message codes were properly applied to Claims; that Notices of Rejection and Claims

Determination Email Notifications were mailed to the appropriate Claimants; and that KCC's computer programs were operating properly.

43. Once all of the Claims were processed, Notices of Rejection and Claims Determination Email Notifications were mailed, and responses to such notices/emails were reviewed and processed, KCC's Quality Assurance team performed a final project wrap-up to ensure the correctness and completeness of all Claims before KCC prepared its final reports to Lead Counsel. Here, in connection with this Quality Assurance wrap-up, KCC: (i) confirmed that valid Claims have no messages denoting ineligibility; (ii) confirmed that Claims that are ineligible have messages denoting ineligibility; (iii) confirmed that Claims that contained cash distributions that occurred before or after the relevant time periods contain appropriate ineligibility messages; (iv) confirmed that all Claims requiring Notices of Rejection or Claims Determination Email Notifications were sent such notifications; (v) performed a sample review of deficient Claims; (vi) reviewed Claims with large dollar losses; (vii) sampled Claims that had been determined to be ineligible, including those with no calculated Recognized Claim under the Court-approved Plan of Allocation, in order to verify that all cash distributions had been captured correctly; and (viii) tested the accuracy of the calculation program.

44. In support of the work described above, KCC's computer staff designed and implemented, and KCC's Quality Assurance team tested, the following programs for this administration: (i) data entry screens that store Claim information (including all cash distribution data included on each Claim) and attach message codes and, where necessary, text to denote conditions existing within the Claim; (ii) programs to load and analyze cash distribution data submitted electronically for all Electronic Claims; (iii) a calculation program to analyze the cash distribution data for all Claims and calculate each Claimant's Recognized Claim pursuant to the

Court-approved Plan of Allocation; (iv) programs to generate various reports throughout and at the conclusion of the administration, including lists of all eligible and ineligible Claims; and (v) programs that calculate each Authorized Recipient's distribution amount by determining the proration factor for the Settlement, and applying it to each Claimant's Recognized Claim.

45. KCC also used a variety of fraud protection controls throughout the administration process to identify potential fraudulent Claims. Searches for duplicate Claims, high-value reviews, spot reviews, and other standard audit reports that examined the information in a variety of ways, were used during KCC's Quality Assurance review.

46. In addition, KCC reviewed and compared the entire Settlement Database against its proprietary "Watch List" of known potential fraudulent filers that KCC or its affiliate, Gilardi & Co. LLC, have developed over the course of their more than 30 years in the claims administration business.<sup>6</sup> KCC works with law enforcement to update its Watch List with the latest information available.

47. Also, in accordance with the Office of Foreign Asset Control, known as OFAC, KCC will perform searches on every check that it will issue to identify any potential payees whose names appear on the federal government's restricted person's list or who reside in countries to which payments are prohibited. KCC regularly monitors changes to OFAC regulations and guidelines.

## **VI. DISPOSITION OF CLAIMS**

48. KCC has completed the processing of the 2,507,031 Claims received for the Settlement, and has determined that: (a) 1,219,549 Claims are acceptable in whole or in part, and

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<sup>6</sup> KCC acquired class action claims administrator Gilardi & Co. LLC in August 2015.

(b) 1,287,482 Claims should be wholly rejected because they are ineligible for recovery from the Settlement. The 1,287,482 wholly rejected Claims are ineligible for the following reasons:

**Summary of Rejected Claims**

Reason for Ineligibility/Rejection	Number of Claims
Claim Did Not Result in a Recognized Claim under the Court-approved Plan of Allocation	1,104,269
Claim Did Not Fit Definition of the Settlement Class ( <i>e.g.</i> , Claimant’s cash distributions were not received during the relevant time periods)	57
Deficient Claim Never Cured	178
Duplicate Claim	175
Withdrawn Claim	1,802
Replaced Claim <sup>7</sup>	181,001
<b>TOTAL</b>	1,287,482

49. A list of the Claims received by KCC and their ultimate disposition is contained in KCC’s Claims Administrator’s Report, attached hereto as Exhibit B. Exhibit B-1, entitled “Timely Eligible Claims,” lists all timely-submitted, provisionally-accepted Claims and states their Recognized Claim amounts. Exhibit B-2, entitled “Late But Otherwise Eligible Claims,” lists all late-submitted (*i.e.*, Claims postmarked (or received) after August 12, 2019 through the date of this Declaration) but provisionally accepted Claims, and states their Recognized Claim amounts. Exhibit B-3, entitled “Rejected Claims,” lists all wholly rejected Claims and states the reason for each Claim’s ineligibility. For privacy reasons, Exhibit B provides only the Claimant’s unique Claim number assigned by KCC, along with that Claim’s Recognized Claim or Reason for Rejection (no names, addresses, or social security or other taxpayer identification numbers are disclosed).

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<sup>7</sup> Replaced Claims are Claims that were re-submitted by Electronic Claim filers to correct issues with the data initially presented.

50. The total Recognized Claims for all provisionally-accepted Claims (as set forth on Exhibits B-1 and B-2 hereto) calculated in accordance with the Court-approved Plan of Allocation is \$25,569,714.56 (the total Recognized Claims for the 985,958 Timely Eligible Claims is \$21,757,405.11 and the total Recognized Claims for the 233,591 Late But Otherwise Eligible Claims is \$3,812,309.45). According to the Plan of Allocation, each Authorized Recipient shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Claim as compared to the total Recognized Claims of all Authorized Recipients; however, as set forth in the Court-approved Plan of Allocation, if an Authorized Recipient's prorated payment calculates to less than \$1.00, it will not be included in the calculation and the Claimant will not receive any distribution. Upon approval by the Court, KCC will prepare and mail checks (or wire transfers, where applicable) to all Authorized Recipients for their *pro rata* share of the Net Settlement Fund, subject to the \$1.00 minimum payment threshold.<sup>8</sup>

## **VII. KCC'S REQUESTED FEES AND DISBURSEMENTS**

51. KCC agreed to be the Claims Administrator in exchange for payment of its fees and expenses. Lead Counsel received reports on all of the work KCC performed with respect to the administration of the Settlement and authorized the work detailed herein. Attached hereto as Exhibit C-1 is a copy of KCC's paid invoice totaling \$296,381.70 that reflects printing and postage expenses incurred in connection with the mailing of the Postcard Notices and Notice Packets. Attached hereto as Exhibit C-2 is KCC's current outstanding invoice totaling \$897,468.75 for the fees and expenses KCC has incurred from May 1, 2018 through November 30, 2022, plus a \$317,330.00 estimate for the work that KCC will perform and the costs that KCC will incur in

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<sup>8</sup> Of the 1,219,547 eligible Claims, approximately 1,070,000 of these Claims will not receive a distribution from the Settlement due to the size of their Recognized Claim and potential payment amount.

order to conduct the Initial Distribution of the Net Settlement Fund to Authorized Recipients as described below.<sup>9</sup> Additional fees and expenses may be incurred if additional tasks beyond the scope of KCC's estimate are required or, for example, a second distribution takes place. Conversely, should the estimated fees and expenses set forth in Exhibit C-2 exceed the actual cost to conduct the Initial Distribution, KCC shall return the excess to the Settlement Fund, and such returned amounts will be available for subsequent distributions of the Net Settlement Fund to Authorized Recipients.

### VIII. DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND

52. Should the Court concur with KCC's determinations concerning the provisionally-accepted and rejected Claims, including the Late but Otherwise Eligible Claims, KCC recommends the following distribution plan ("Distribution Plan"):

(a) KCC will conduct an initial distribution ("Initial Distribution") of the available balance of the Net Settlement Fund, after deducting all payments previously approved by the Court and requested herein, and after deducting payment of any estimated taxes, the costs of preparing tax returns, and any escrow fees, as follows:

(i) Pursuant to the Court-approved Plan of Allocation, KCC will calculate each Authorized Recipient's *pro rata* share of the Net Settlement Fund based on the amount of the Authorized Recipient's Recognized Claim in comparison to the total Recognized Claims of all Authorized Recipients.

(ii) KCC will, pursuant to the terms of the Court-approved Plan of Allocation, eliminate from the distribution any Authorized Recipient whose *pro*

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<sup>9</sup> The estimated fees and expenses listed above are based on actual fees and expenses incurred in connection with the distribution completed in the Bank of New York Mellon ADR FX Litigation.

*rata* share of the Net Settlement Fund as calculated under subparagraph (a)(i) above is less than \$1.00. Such Claimants will not receive any payment from the Net Settlement Fund.

(iii) After eliminating Claimants who would have received less than \$1.00, KCC will recalculate the *pro rata* share of the Net Settlement Fund for Authorized Recipients who would have received \$1.00 or more pursuant to the calculation described in subparagraph (a)(i) above. This *pro rata* share is the Authorized Recipient's "Distribution Amount."

(iv) To encourage Authorized Recipients to cash their distribution checks promptly, and to avoid or reduce future expenses relating to unpaid distribution checks, all Initial Distribution checks will bear the notation: "CASH PROMPTLY. VOID AND SUBJECT TO RE-DISTRIBUTION IF NOT CASHED 90 DAYS AFTER ISSUE DATE."<sup>10</sup>

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<sup>10</sup> In an effort to have as many Authorized Recipients as possible cash their checks, and where possible and to the extent economically feasible, KCC will perform follow-up with those Authorized Recipients whose checks are initially uncashed, either because they are returned to KCC as undeliverable or because the Authorized Recipient simply did not cash the check after a period of time elapses ("Outreach Program"). For Authorized Recipients whose checks are returned as undeliverable, KCC will endeavor to locate new addresses by running the undeliverable addresses through the USPS NCOA database and, where appropriate, via Internet search techniques and by calling the Authorized Recipients. Where a new address is located, KCC will update the Settlement Database accordingly and re-issue a distribution check to the Authorized Recipient at the new address. For any Authorized Recipients whose checks are not returned but who simply do not cash their checks, KCC will use a mix of automated calls, personalized telephone calls, and e-mails to urge such Authorized Recipients to cash their distribution checks. In the event an Authorized Recipient loses or damages his, her, or its check, or otherwise requires a new check, KCC will issue replacement checks. Distribution reissues will be undertaken only upon written instructions from the Authorized Recipient, provided that the Authorized Recipient returns the previous check where appropriate. For all checks, KCC will void the initial payment prior to reissuing a payment. Authorized Recipients will be informed that, if they do not cash their distribution checks within 90 days of the mail date, or they do not cash check reissues within 30 days of the mailing of such reissued check, their check will lapse, their



(v) Authorized Recipients who do not cash their Initial Distribution checks within the time allotted or pursuant to further action as set forth in footnote 10, will irrevocably forfeit all recovery from the Settlement. The funds allocated to all such stale-dated checks will be available to be re-distributed to other Authorized Recipients in a potential subsequent distribution. Similarly, Authorized Recipients who do not cash subsequent distribution checks within the time allotted or pursuant to further action as set forth in footnote 10 will irrevocably forfeit any further recovery from the Settlement.

(b) If any funds remain in the Net Settlement Fund after the Initial Distribution because of uncashed checks or otherwise, then, after KCC has made reasonable and diligent efforts to have Authorized Recipients cash their distribution checks (which efforts shall consist of the follow-up efforts described in footnote 10 above), any balance remaining in the Net Settlement Fund nine (9) months after the Initial Distribution, or as reasonably soon thereafter, shall, if Lead Counsel, in consultation with KCC, determines it to be cost-effective to do so, be used to make a second distribution to Authorized Recipients who cashed their checks from the Initial Distribution and who would receive at least \$1.00 from such re-distribution (“Second Distribution”), after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution.

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entitlement to recovery will be irrevocably forfeited, and the funds will be reallocated to other Authorized Recipients. Reissue requests for lost or damaged checks will be granted after the void date on the checks as long as the request for the reissue is received no later than 45 days prior to the next planned distribution. Requests for reissued checks in connection with the Second Distribution and any subsequent distributions (should such distributions occur) will be handled in the same manner.

(c) Consistent with the Court-approved Plan of Allocation, following the Second Distribution, additional re-distribution(s) to Authorized Recipients who have cashed their prior checks and who would receive at least \$1.00 on such additional re-distribution(s) may occur thereafter if Lead Counsel, in consultation with KCC, determines that additional re-distribution(s), after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distribution(s), would be cost-effective. At such time as Lead Counsel, in consultation with KCC, determines that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, if sufficient funds remain to warrant the processing of Claims received after the date of this Declaration, such Claims will be processed, and any such Claims that are otherwise valid as well as any earlier received Claims for which an adjustment was received after the date of this Declaration, which resulted in an increased Recognized Claim will be paid in accordance with ¶ 52(d) below. If any funds remain in the Net Settlement Fund after payment of such late or late-adjusted Claims (also referred to herein as Post-Distribution Claims and Late-Adjusted Claims), Lead Counsel shall seek an order from the Court: (i) approving the recommendation that any further re-distribution is not cost-effective or efficient; and (ii) ordering the contribution of the funds remaining in the Net Settlement Fund to a nonsectarian charitable organization selected by the Court upon application by the Settling Parties. *See* Notice, Exh. 1 (POA), p. 16.

(d) No new Claims received after the date of this Declaration may be accepted, and no further adjustments to Claims received after the date of this Declaration, that would result in an increased Recognized Claim may be made for any reason after the date of this Declaration, subject to the following exception. If Claims are received after the date of this

Declaration that would have been eligible for payment (or modified after the date of this Declaration so as to be eligible for additional payment) under the Plan of Allocation if they had been timely received with all relevant information, then, if Lead Counsel (in consultation with KCC) determines that a re-distribution is not cost effective as provided in ¶ 52(c) above (and after allowing for payment of any unpaid fees or expenses incurred in connection with administering the Settlement), Claimants with respect to such Post-Distribution Claims and Late-Adjusted Claims, at the discretion of Lead Counsel, may be paid their distribution amounts or additional distribution amounts on a *pro rata* basis so as to bring them into parity (to the extent possible) with other Authorized Recipients who have cashed all of their prior distribution checks.

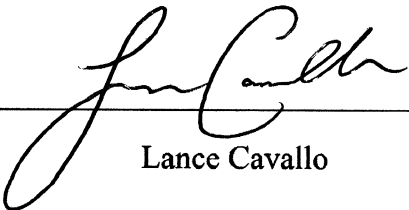
(e) Unless otherwise ordered by the Court, KCC will dispose of the paper copies of Claims and all supporting documentation one (1) year after the final distribution date of the Net Settlement Fund and will dispose of electronic copies of the same three (3) years after the final distribution date of the Net Settlement Fund.

## **IX. CONCLUSION**

53. KCC respectfully requests that the Court enter an Order approving its administrative determinations accepting and rejecting the Claims received by KCC, together with the proposed Distribution Plan. KCC further respectfully submits that the balance of its fees and expenses as well as its estimated fees and expenses to conduct the Initial Distribution, are accurately reflected on the invoice attached hereto as Exhibit C-2, and should also be approved.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Wantagh, NY on January 20, 2023.



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Lance Cavallo