UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re DEUTSCHE BANK AG SECURITIES LITIGATION	Master File No. 1:09-cv-01714-GHW-RWL
	CLASS ACTION
This Document Relates To: ALL ACTIONS.	DECLARATION OF ERIC I. NIEHAUS IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION AND FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND AN AWARD TO CLASS PLAINTIFFS PURSUANT TO 15 U.S.C. §77z-1(a)(4)

I, ERIC I. NIEHAUS, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California, and I have been admitted before this Court *pro hac vice.* I am a member of the firm Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), one of the Court-appointed Lead Counsel for Class Plaintiffs in this action.[1] I was actively involved in the prosecution of this action (hereinafter, the "Litigation") and have personal knowledge of the matters set forth herein based upon my supervision of, and participation in, all material aspects of the Litigation.[2]

2. I submit this Declaration in support of Class Plaintiffs' motion, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for approval of: (a) the Stipulation, which provides for a cash settlement of $18,500,000 on behalf of the Class (the "Settlement" or "Settlement Amount"); and (b) the proposed Plan of Allocation. I also submit this Declaration in support of Lead Counsel's motion for an award of attorneys' fees and expenses and an award to Class Plaintiffs in connection with their prosecution of the Litigation on behalf of the Class.[3]

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[1] Lead Plaintiffs and Class Representatives in this action, Norbert G. Kaess and Maria Farruggio, are referred to herein as "Class Plaintiffs."

[2] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Stipulation of Settlement filed with the Court on November 15, 2019 (the "Stipulation"). ECF No. 290.

[3] Pursuant to this Court's October 2, 2018 Order (ECF No. 224) granting Class Plaintiffs' motion for class certification and the Stipulation (¶1.3), the Class is defined as:

> all persons or entities who purchased or otherwise acquired the 7.35% Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X ("7.35% Preferred Securities"), and/or the 7.60% Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III ("7.60% Preferred Securities"), pursuant or traceable to the public offerings that commenced on or about November 6, 2007 and February 14, 2008. Excluded from the Class are Defendants, the officers and directors of Deutsche Bank and the Underwriter Defendants at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Also excluded from the Class are any Class Members that validly and timely exclude themselves from the Class.

I. SUMMARY OF LITIGATION AND REASONS FOR SETTLEMENT

3. This securities class action was brought on behalf of all persons who purchased or otherwise acquired the 7.35% Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X, and/or the 7.60% Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III (the "Trust Preferred Securities"), pursuant or traceable to the public offerings that commenced on or about November 6, 2007 and February 14, 2008 (the "November 2007 Offering" and "February 2008 Offering," respectively). The action was brought against Deutsche Bank AG ("Deutsche Bank" or the "Company"), the DB Defendants[4] and the Underwriter Defendants[5] (collectively, "Defendants"), on behalf of the Class, for violations of §§11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act") (15 U.S.C. §§77k, 77l(a)(2) and 77o). Class Plaintiffs alleged that the Defendants omitted material facts required to be stated in the Offering Documents or necessary to make other facts stated therein not materially misleading in contravention of the Securities Act.[6]

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[4] "DB Defendants" means Deutsche Bank Contingent Capital LLC II, Deutsche Bank Contingent Capital Trust II, Deutsche Bank Capital Funding Trust IX, Deutsche Bank Capital Funding LLC IX, Deutsche Bank Capital Funding LLC X, Deutsche Bank Capital Funding Trust X, Deutsche Bank Contingent Capital LLC III, Deutsche Bank Contingent Capital Trust III, Deutsche Bank Contingent Capital LLC V, Deutsche Bank Contingent Capital Trust V, Deutsche Bank Capital Funding LLC VIII, Deutsche Bank Capital Funding Trust VIII, Deutsche Bank Securities Inc., Josef Ackermann, Jonathan Blake, Hugo Banziger, Anthony Di Iorio, Martin Edelmann, Hermann-Josef Lamberti, Rainer Rauleder, Peter Sturzinger and Marco Zimmermann.

[5] "Underwriter Defendants" means UBS Securities LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, individually and as successor by merger to defendant Banc of America Securities LLC, Wachovia Capital Markets, LLC (n/k/a Wells Fargo Securities, LLC) and Morgan Stanley & Co.

[6] The "Offering Documents" refers to a Form F-3 Registration Statement and Prospectus filed with the U.S. Securities and Exchange Commission ("SEC") on October 10, 2006 and various prospectus supplements to that Registration Statement used to conduct the November 2007 and February 2008 Offerings.

4. This case was vigorously litigated for over ten years, from its commencement on February 24, 2009, until the proposed Settlement was reached in September 2019, while the parties were in the midst of briefing summary judgment.

5. The Settlement was not achieved until Class Plaintiffs had conducted extensive litigation, including, *inter alia*: (a) successfully opposing Defendants' motion to dismiss the Third Consolidated Amended Complaint for Violation of the Federal Securities Laws (the "Complaint" or "TCAC") (ECF No. 98), which first required numerous rounds of briefing on motions to dismiss and appeals to both the Second Circuit Court of Appeals (the "Second Circuit") and the United States Supreme Court (the "Supreme Court"); (b) obtaining certification of this action as a class action and successfully opposing Defendants' motion to deny class certification; (c) successfully opposing Defendants' Fed. R. Civ. P. 23(f) petition to the Second Circuit of this Court's order granting class certification; (d) completing fact discovery, including the filing of numerous letter motions to compel in order to obtain needed discovery, reviewing and analyzing the electronic equivalent of more than 2 million pages of documentary evidence produced by Deutsche Bank, the Underwriter Defendants and non-parties, and taking or defending 22 depositions; (e) retaining experts in the fields of public securities offerings, underwriter due diligence, mortgage-backed securities and economics to prepare and exchange reports with Defendants' experts; (f) in the process of briefing oppositions to two motions for summary judgment; (g) mediating with a nationally recognized mediator; and (h) assessing the risks of prevailing on their claims at trial and the Class' ability to collect on a final judgment, if obtained.

6. The Settlement was negotiated with the assistance and oversight of Hon. Layn R. Phillips (Ret.), a respected mediator with substantial experience in mediating class action cases involving alleged violations of the federal securities laws. The parties attended an in-person

mediation held on May 1, 2019. In advance of the mediation session, Class Plaintiffs and Defendants prepared comprehensive mediation briefs, supported by evidentiary materials, and vigorously advanced and defended their positions at the mediation. At the mediation itself, the parties further presented arguments on the merits of their positions. The parties did not reach a settlement during the mediation, however, and Judge Phillips was kept apprised of developments in the case and facilitated further negotiations between the parties leading up to the Settlement. Ultimately, on September 12, 2019, the parties reached a resolution with the assistance of Judge Phillips.

7. The proposed Settlement is the result of over ten years of hard-fought and contentious litigation pursued by zealous advocates on both sides, and takes into consideration the significant risks specific to the case. It was negotiated by experienced counsel for Class Plaintiffs and Defendants with a solid understanding of both the strengths and weaknesses of their respective positions.

8. Lead Counsel believes that this Settlement represents an exceptional result for the Class. Based on its factual discovery, investigation, research, analysis, motion practice and pre-trial preparation, Lead Counsel believes that the case has significant merit, but also recognizes there would be significant risks at trial, which had to be carefully evaluated in determining the course that was in the best interests of the Class (*i.e.*, whether to settle and on what terms, or to continue to litigate through a trial on the merits and the inevitable appeals process). As set forth below, the specific circumstances involved here presented many risks and uncertainties if the case proceeded to trial. And, if they were to win at trial, Class Plaintiffs would have to take into account in evaluating the proposed Settlement the risk of a potentially multi-year appeal process, during which time the Class would be denied any recovery.

9. Lead Counsel's perseverance through the Litigation resulted in the discovery of substantial evidence in support of the alleged claims. Lead Counsel believes that discovery had revealed evidence sufficient to sustain a jury verdict in Class Plaintiffs' favor, including evidence that Lead Counsel believed would demonstrate Defendants' failure to disclose material facts regarding Deutsche Bank's business in the Offering Documents, including facts concerning Deutsche Bank's exposure to risky mortgage-backed securities. Specifically, Lead Counsel believes it would be able to prove at trial that Defendants omitted from the Offering Documents Deutsche Bank's true exposure to tens of billions of dollars of risky mortgage-backed securities, such as subprime and non-prime residential mortgage-backed securities ("RMBS") and collateralized debt obligations ("CDOs"), known to Deutsche Bank at the time of the November 2007 and February 2008 Offerings, but not to the public, that had, and were reasonably likely to continue to have, a materially adverse impact on Deutsche Bank's financial and operating results, and that these risks were required to be disclosed in the Offering Documents under Items 303 and 503(c) (now Item 105) of Regulation S-K (17 C.F.R. §229.303 and 17 C.F.R. §229.105), which are regulations governing the preparation of SEC filings and the kinds of information that must be included in them.

10. Despite the strength of the evidence developed in discovery, there were substantial risks to Class Plaintiffs' ability to obtain, protect and recover on a favorable judgment at trial. Defendants vigorously contested each of the foregoing allegations, and made clear their plan to marshal evidence at trial they hoped would convince the jury that: (a) the Offering Documents contained no misleading omissions; (b) any alleged omission or misstatement was not material; (c) the Offering Documents contained all the information required under the federal securities laws; (d) the allegedly omitted information was, in fact, timely disclosed to the public; and (e) any drop in the price of the securities at issue was unrelated to the allegedly omitted information.

11. Damages were indeed subject to reduction if the jury determined that the decline in the price of the Trust Preferred Securities following the November 2007 and February 2008 Offerings resulted from factors unrelated to the material omissions or misstatements alleged by Class Plaintiffs (the "negative causation" defense). A defense expert was expected to testify that the stock drops relevant to Class Plaintiffs' damage claims were caused by events unrelated to the alleged omissions and misrepresentations and/or could not be attributed to Class Plaintiffs' allegations. While Lead Counsel believes it had substantial responses to each of these arguments, were the jury to credit any or all of them, the damages recoverable at trial could have been significantly reduced or eliminated altogether.

12. In addition to damages issues, any of Class Plaintiffs' four experts could have potentially been the target of a *Daubert* motion by Defendants before trial to exclude them from testifying. These experts were critical to the presentation of Class Plaintiffs' case. If any one expert was prevented from testifying, Class Plaintiffs' ability to present their case at trial would have been significantly weakened.

13. Even if Class Plaintiffs received a favorable ruling on any potential *Daubert* motion and their experts were allowed to testify, this would still result in a battle of the experts at trial with respect to key disputed issues. Specifically, Class Plaintiffs retained four experts and Defendants retained three experts who were expected to offer opposing testimony about: (a) disclosure practices and investor expectations in connection with public offerings; (b) securities underwriting and the due diligence conducted in connection with public offerings; (c) the mortgage-backed securities industry and Deutsche Bank's exposure to it; and (d) the economic materiality of the allegedly omitted information and damages. Even having retained experts who are respected in these fields, there

could be no guarantee that Class Plaintiffs would prevail on the issues of their testimony, as Defendants too hired competent experts to counter Class Plaintiffs' experts' theories.

14. There was also significant risk of delay in providing Class Members with compensation for the harm caused by Defendants' Securities Act violations. Further litigation would require the expenditure of significantly more time, expense and risk to brief motions *in limine*, negotiate pretrial issues and a joint pretrial order, try the case and defeat Defendants' post-trial motions.

15. Finally, there was a substantial risk that Defendants would appeal any verdict achieved in Class Plaintiffs' favor. The appeals process could then span years, during which time the Class would receive no recovery. For example, one securities class action tried by Robbins Geller obtained a verdict in favor of the plaintiff class seven years after the case was filed, had judgment entered 11 years after the case was filed, and then had a major portion of the verdict reversed in 2015, 13 years after the case was filed. A second trial of that case was set to occur in 2016, 14 years after the case was filed, when a settlement was finally reached. Prevailing at trial does not equate to an immediate cash payment to the victimized class members. Any appeal would also create the risk of reversal, in which case the Class would receive nothing after having prevailed at trial.

16. All of these factors, together with the other factors discussed herein, were considered by Class Plaintiffs and Lead Counsel in concluding that the proposed $18.5 million Settlement provided fair, reasonable and adequate consideration in light of the risks and uncertainties of trial. In reaching the determination to settle, Lead Counsel weighed the documentary evidence, deposition testimony, expert reports, and legal authority supporting Class Plaintiffs' allegations against Defendants' evidence and arguments which they legitimately believed undercut Class Plaintiffs'

claims. On balance, considering all the circumstances and risks both sides faced at summary judgment and at trial, in addition to Class Plaintiffs' ability to collect on a final judgment, Class Plaintiffs came to the conclusion that the Settlement on the terms agreed upon provided fair, reasonable and adequate consideration for the claims alleged and was in the best interests of the Class.

17. The Settlement confers a substantial benefit on the Class and eliminates the significant risks of summary judgment and *Daubert* challenges, as well as the risks inherent at trial, and in post-trial proceedings and appeals, the outcome of which was far from certain. It is respectfully submitted that the Settlement should be approved as fair, reasonable and adequate; that the Plan of Allocation should be approved; that Lead Counsel should be awarded attorneys' fees in the amount of one-third of the Settlement Amount and expenses of $1,203,502.39; that the Plan of Allocation should be approved; and that Class Plaintiffs should be awarded $20,000 in the aggregate pursuant to 15 U.S.C. §77z-1(a)(4) in connection with their representation of the Class.

18. Lead Counsel has, as described below, vigorously prosecuted this action on a wholly contingent basis for more than ten years and advanced or incurred significant litigation expenses. Lead Counsel has not received any compensation for its substantial effort and has long borne the risk of an unfavorable result.

19. The fee application for one-third of the Settlement Amount is fair both to the Class and Lead Counsel, has been approved by Class Plaintiffs, and warrants this Court's approval. This fee request is within the range of fees awarded in these types of actions and is justified in light of the substantial benefits conferred on the Class, the risks undertaken, the quality of representation, and the nature and extent of legal services performed. Indeed, the Settlement here represents approximately 47% of estimated recoverable damages consistent with Class Plaintiffs' currently

proposed plan of allocation. This is a very good result, especially when compared to the median ratio of settlement to investor losses of 2.1% for securities class action settlements in 2019. Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* (NERA Feb. 12, 2020) at 20, fig. 13.

20. Lead Counsel should also be awarded litigation expenses of $1,203,502.39, which were reasonably and necessarily incurred in prosecuting the Litigation. This amount includes the fees and expenses for: (a) investigators, consultants and experts whose services Lead Counsel required for the successful prosecution, analysis and resolution of this case; (b) stenographic and videographer services for depositions; (c) travel and lodging for Lead Counsel to attend Court hearings, mediations and conduct discovery; (d) factual and legal research, as well as photocopying, imaging and printing thousands of pages of documents; (e) litigation database costs for serving, cataloging and facilitating the review and analysis of the electronic equivalent of more than two million pages of documents; and (f) mediation fees.

21. As described in detail below, these expenses were reasonably and necessarily incurred to plead Class Plaintiffs' claims, certify the Class, conduct discovery, respond to summary judgment and other pre-trial motions, prepare this case for trial and obtain a settlement on the terms proposed.

II. PROCEDURAL HISTORY OF THE LITIGATION

22. This litigation was highly contentious, involving significant disputes at all phases of the case. Defendants mounted vigorous challenges at the pleading, class certification and summary judgment phases and the parties had numerous disputes over the scope and adequacy of discovery. As described below, extensive briefing was required to sustain and maintain the claims asserted through the Litigation.

23. Detailed communications were also exchanged with defense counsel regarding multiple disputes that arose during the pendency of this case. Extensive meet and confers, and ultimately motion practice, were required to compel Defendants to locate and produce documents responsive to Class Plaintiffs' discovery requests. Due to the extent of the disputes and communications, hundreds of hours of attorney and staff time were required just to obtain the documents responsive to discovery requests. Then, thousands more hours were required to review and analyze these documents in order to complete discovery and prepare this case for trial.

24. These efforts, described in more detail below, contributed to the over 26,000 hours of attorney and staff time that were needed to complete discovery and prepare this case for trial, and to develop Class Plaintiffs' claims in the manner that led Defendants to agree to the Settlement that is now before the Court for approval.

A. The Amended Complaints and Motions to Dismiss

1. The Consolidated Amended Complaint and Subsequent Appeals to the Second Circuit and Supreme Court

25. On February 24, 2009, the first of six putative class action complaints was filed. The complaints were consolidated by the Court on August 11, 2009. ECF No. 19. Pursuant to the Private Securities Litigation Reform Act of 1995, on November 23, 2009, the Court appointed Class Plaintiffs and Lead Counsel and directed the filing of a Consolidated Amended Complaint ("CAC"). ECF No. 27. Based on an extensive analysis of the Company's SEC filings, public statements, media, analyst reports and investigation by Lead Counsel, the CAC, filed on January 25, 2010, alleged violations of §§11, 12(a)(2) and 15 of the Securities Act by Deutsche Bank and certain individual defendants, underwriters and the auditor relating to the offering materials used to conduct multiple offerings, including a Form F-3 Registration Statement and Prospectus filed with the SEC

on October 10, 2006, and various prospectus supplements to that Registration Statement. ECF No. 34.[7]

26. Specifically, Class Plaintiffs alleged that the offering materials misrepresented or omitted material facts including: (i) that the Company had more than $20 billion in exposure to high-risk subprime and non-prime residential mortgage markets through RMBS, CDO and other assets, in violation of Generally Accepted Accounting Principles ("GAAP"), SEC regulations and International Financial Reporting Standards ("IFRS"); (ii) that the Company's disclosures concerning market risks and credit risks were false and misleading because they misrepresented Deutsche Bank's true exposure to RMBS/CDO securities and other mortgage-backed securities; (iii) that the Company's assertions regarding GAAP compliance were false because their disclosures regarding Deutsche Bank's true exposure to mortgage-backed securities did not comply with GAAP; and (iv) that the Company engaged in extensive high-risk proprietary trading and Deutsche Bank's disclosures failed to reflect the actual risks associated with the Company's proprietary trading activities.

27. Defendants moved to dismiss the CAC on March 26, 2010. ECF Nos. 44, 48. The DB Defendants filed a nearly 50-page memorandum of law in support of their motion to dismiss, which argued that Class Plaintiffs' case amounted to non-actionable fraud by hindsight that Deutsche Bank should have foreseen the 2008 Financial Crisis and that the CAC failed to plead that the alleged misstatements and omissions were materially false and misleading when made and that

[7] These offerings included: (a) the 6.375% Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust VIII, issued October 10, 2006; (b) the 6.55% Trust Preferred Securities of Deutsche Bank Contingent Capital Trust II, issued May 16, 2007; (c) the 6.625% Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust IX, issued July 16, 2007; (d) the 7.35% Noncumulative Trust Preferred Securities of Deutsche Bank Capital Funding Trust X, issued November 6, 2007; (e) the 7.60% Trust Preferred Securities of Deutsche Bank Contingent Capital Trust III, issued February 14, 2008; and (f) the 8.05% Trust Preferred Securities of Deutsche Bank Contingent Capital Trust V, issued May 5, 2008.

certain claims were untimely. ECF No. 46. The Underwriter Defendants also filed a 16-page memorandum of law in support of their own motion to dismiss, joining the DB Defendants' arguments, but also asserting additional arguments that the CAC should have, but did not, meet higher pleading standards for claims that sound in fraud, that Class Plaintiffs lacked standing for certain claims and that other claims were time-barred. ECF No. 49.

28. Class Plaintiffs opposed Defendants' motions in a 54-page omnibus response and also filed a motion to strike certain materials outside of the CAC included with Defendants' motions. ECF Nos. 50, 52. Class Plaintiffs argued in their opposition that the CAC properly pled Defendants' knowledge of the risks at issue, as the Company had already begun taking large scale mortgage-related losses at the time of certain offerings included in the CAC, and that Defendants had a duty to disclose those risks. The opposition also addressed the other arguments Defendants raised in their motions. On August 19, 2011, the Court granted in part and denied in part Defendants' motion to dismiss. ECF No. 59. Specifically, the Court granted with prejudice Defendants' motions with respect to Class Plaintiffs' §§11, 12(a)(2) and 15 claims relating to the October 2006 offering. *Id.* The Court denied Defendants' motions with respect to the remaining offerings and also granted Class Plaintiffs' motion to strike. *Id.*

29. On August 23, 2011, the Second Circuit issued an opinion in *Fait v. Regions Fin. Corp.*, 655 F.3d 105 (2d Cir. 2011). Defendants subsequently moved for reconsideration of the Court's August 19, 2011 Order, arguing that *Fait* constituted an intervening change in the governing law requiring that opinion liability be supported by a showing that that the defendant subjectively disbelieved the opinion at issue, that the alleged false and misleading statements and omissions concerned opinions regarding the value of mortgaged-backed assets and other securities, and that Class Plaintiffs had not made the requisite showing to plead the falsity of such opinions. ECF Nos.

60-61. Class Plaintiffs opposed Defendants' motion on September 16, 2011, taking the position that *Fait* was not a change in controlling law that would require reconsideration of the Court's motion to dismiss order. ECF No. 64.

30. On August 9, 2012, the Court granted Defendants' motion to reconsider and dismissed the CAC with prejudice and without leave to amend. ECF No. 70. Judgment against Class Plaintiffs was the entered on August 17, 2012. ECF No. 71. On September 13, 2012, Class Plaintiffs moved for reconsideration of the Court's dismissal with prejudice and sought leave to file a proposed TCAC on the basis of newly discovered evidence regarding Deutsche Bank's exposure to mortgage-backed securities disclosed in the United States Senate Permanent Subcommittee on Investigations report entitled "Wall Street and the Financial Crisis: Anatomy of a Financial Collapse" (the "Levin-Coburn Report") and the Financial Crisis Inquiry Report and on the basis that Class Plaintiffs should be afforded the opportunity to address the legal standard set forth in *Fai*t and this Court's prior order. ECF Nos. 72-73. The Court denied Class Plaintiffs' motion with prejudice and without leave to amend on May 15, 2013, citing Fed. R. Civ. P. 59. ECF No. 78.

31. Class Plaintiffs were not dissuaded and appealed the Court's decision to the Second Circuit on June 13, 2013 on the grounds that: (a) the CAC properly pled that Item 503 of Regulation S-K required the disclosure of the allegedly omitted risks Deutsche Bank faced because the CAC alleged Defendants' knowledge of those risks prior to the offerings; (b) that *Fait* was inapposite in the context of Item 503; and (c) that Class Plaintiffs should have been permitted to file the TCAC because it properly addressed the *Fait*-based deficiencies that the Court identified in dismissing the CAC. 2d Cir. No. 13-2364 , ECF Nos. 1, 91. Following the completion of briefing and oral argument, on July 16, 2014, the Second Circuit affirmed the Court's dismissal of the action. 2d Cir. No. 13-2364, ECF No. 148-1.

32. Class Plaintiffs continued to litigate the case, filing a petition for a writ of certiorari with the Supreme Court on February 13, 2014 on the issue of whether §11 required that a plaintiff plead that a statement of opinion not only contains false statements of material facts or omits material facts required to make the statements in the registration statement not misleading, but also that the speaker actually knew that the statements were false or misleading. While Class Plaintiffs' petition was pending, the Supreme Court issued a decision in *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S. 175 (2015), rejecting the requirement that a plaintiff must always allege that the speaker disbelieved her own opinion in cases arising under §11's omissions provision.

33. On June 8, 2015, the Supreme Court granted Class Plaintiffs' petition for certiorari, vacating the judgment and remanding "for further consideration in light of [*Omnicare*]." Defendants then moved for additional briefing on this issue in the Second Circuit, which Class Plaintiffs opposed on June 26, 2015 as inappropriate and not in accordance with prior precedent. 2d Cir. No. 13-2364, ECF Nos. 162, 164. On July 21, 2015, the Second Circuit recalled the mandate, vacated the Court's judgment, and remanded the case for further proceedings which "may, but shall not necessarily, include allowing plaintiffs to replead their causes of action." ECF No. 89.

2. The Third Amended Consolidated Complaint

34. On July 27, 2015, Defendants filed a preemptive motion requesting that the Court dismiss Class Plaintiffs' complaint and deny leave to amend. ECF No. 90. On August 7, 2015, Class Plaintiffs informed the Court of their intention to request leave to file the TCAC to incorporate the new *Omnicare* pleading standard, and, shortly thereafter, filed their opposition to Defendants' motion to deny leave to amend, which argued Defendants' motion was premature, as no amended complaint had been filed yet, and further demonstrated why the TCAC should be upheld under the

new *Omnicare* standard. ECF Nos. 92, 94. On September 15, 2015, the Court denied Defendants' motion and granted Class Plaintiffs leave to file the TCAC. ECF No. 97.

35. The TCAC, filed on October 15, 2015, alleged that Deutsche Bank, certain individuals and the underwriters violated §§11, 12(a)(2) and 15 of the Securities Act by, *inter alia*, misrepresenting or omitting material facts concerning the Company's mortgage-backed securities, such as RMBS and CDO securities, required to be disclosed in the offering materials used to conduct five offerings of trust preferred securities, in violation of SEC regulations and accounting standards. ECF No. 98. The TCAC specifically alleged, *inter alia*, that Deutsche Bank omitted to disclose and made misrepresentations regarding its exposure to over $20 billion of RMBS, CDOs and other assets backed by risky mortgages and its losses on those assets during 2007. As a result, the TCAC alleged that Deutsche Bank failed to disclose and misstated the true extent of the risks facing the Company.

36. Defendants moved to dismiss the TCAC on December 14, 2015, contending that the TCAC did not sufficiently plead Defendants' knowledge of the risks and the falsity of their statements at the time they were made. ECF No. 103. In a 40-page brief, Defendants argued that Class Plaintiffs failed to plead facts showing the Defendants had knowledge of any alleged trends or demonstrating that the Defendants reasonably expected, at the time of the offerings, the alleged trends to cause a material impact on Deutsche Bank's business and that the risk disclosures the Company made were sufficient. Defendants also argued that Class Plaintiffs failed to plead facts showing that Deutsche Bank's accounting violated GAAP or IFRS or that the Company misrepresented the valuation of or risk management for mortgage-backed securities.

37. Class Plaintiffs responded to Defendants' motion in a 40-page opposition, and asserted that SEC Regulation S-K and accounting principles required the disclosure of Deutsche Bank's material exposure to highly risky mortgaged-backed assets, which Defendants understood

were rapidly losing value during the onset of the 2008 Financial Crisis, and that the Company's risk disclosures were too generic to protect Deutsche Bank from liability. ECF No. 106. Class Plaintiffs highlighted in their opposition the internal Deutsche Bank communications disclosed in the Levin-Coburn Report and the Financial Crisis Inquiry Report and pled in the TCAC showing that high-level executives at the Company understood the serious risks posed by the mortgage-backed securities at issue. Class Plaintiffs further moved on March 21, 2016 for leave to file a sur-reply to address new case law and arguments raised in Defendants' reply, which the Court granted on March 29, 2016. ECF No. 108, 110.

38. On July 25, 2016, the Court granted in part and denied in part Defendants' motion to dismiss, upholding Class Plaintiffs' claims concerning the November 2007 and February 2008 Offerings with respect to the allegations regarding omissions under Items 303 and 503(c) (now re-codified as Item 105) of Regulation S-K. ECF No. 114. Defendants moved for reconsideration on August 8, 2016. ECF No. 116. Class Plaintiffs opposed on August 25, 2016, on the grounds that Defendants' motion improperly re-litigated issues already decided by the Court in its motion to dismiss order and did not provide proper grounds for reconsideration. ECF No. 118. The Court denied Defendants' motion for reconsideration on September 8, 2016. ECF No. 122.

39. Defendants filed their Answers on October 24, 2016. The Underwriter Defendants denied all of Class Plaintiffs' substantive allegations and asserted 22 separate affirmative defenses. The DB Defendants similarly denied all of Class Plaintiffs' substantive allegations and asserted 24 separate affirmative defenses. ECF Nos. 124-125.

B. Class Certification and Defendants' Petition to Appeal the Court's Class Certification Order

40. Class Plaintiffs moved to certify the class on November 17, 2016, and filed an amended motion on January 20, 2017, naming Class Plaintiffs Norbert G. Kaess and Maria G.

Farruggio and additional plaintiff Sylvia M. Laiti ("Laiti") as Class Representatives. ECF Nos. 126, 133. Defendants filed a letter with the Court two days before a February 10, 2017 status conference raising concerns regarding whether plaintiffs could demonstrate that they were damaged and whether Laiti's claims were time-barred. ECF No. 136. Class Plaintiffs responded the next day to each of Defendants' argument. *See* ECF No. 142. Following the February 10 status conference, the Court required that proof be provided showing that plaintiffs sold the Trust Preferred Securities for a loss. ECF No. 141.

41. After an exchange of information concerning plaintiffs transactions in the Trust Preferred Securities, Defendants filed a preemptive letter on March 22, 2017 challenging the standing of all plaintiffs (ECF No. 144), to which plaintiffs responded, in accordance with the deadlines set at the February 10 status conference, on March 27, 2017 with a showing regarding plaintiffs' losses. ECF No. 145. On April 6, 2017, the Court rejected Defendants' arguments with respect to the November 2007 Offering, finding that Class Plaintiffs had standing, but stayed the issue with respect to Laiti's standing as to the February 2008 Offering until the Supreme Court decided *Cal. Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, __ U.S. __, 137 S. Ct. 2042, 2044 (2017) (ECF No. 151), which was decided on June 26, 2017.

42. After *ANZ* was decided, the Court permitted Defendants to file a motion to dismiss all claims related to the February 2008 Offering on statutes of limitation and repose grounds (ECF No. 157), which Defendants filed on August 18, 2017. ECF No. 158. Plaintiffs opposed and further argued that even if Laiti's claims were dismissed, Class Plaintiffs had class standing to represent purchasers in the February 2008 Offering. ECF No. 161. Following oral argument, the Court disqualified Laiti as a plaintiff on October 16, 2017 and further struck the pending class certification

motion from the record, but found that Class Plaintiffs had class standing to represent the putative class for the February 2008 Offering. ECF No. 163.

43. Defendants then preemptively moved to deny class certification on February 21, 2018, asserting that Class Plaintiffs could not establish under Fed R. Civ. P 23(b)(3) that common questions of law or fact would predominate over individual issues. ECF Nos. 171, 173. Specifically, Defendants argued that Plaintiffs were inadequate, lacked standing due to a purported lack of damages, and that their trades may have been foreign and not subject to United States federal securities laws. ECF No. 173. On March 7, 2018, Class Plaintiffs filed an opposition to Defendants' motion and an affirmative motion to certify a class for both the November 2007 and February 2008 Offerings, addressing all of the requirements of Fed R. Civ. P. 23 and refuting Defendants' arguments. ECF Nos. 175-176.

44. Defendants then filed a reply in support of their motion to deny class certification and an opposition to Class Plaintiffs' motion to certify the class (ECF Nos. 178-179), to which Class Plaintiffs responded in their reply in further support of class certification. ECF No. 181. Class Plaintiffs' reply responded to Defendants' arguments and further supported Class Plaintiffs' position that: (a) they were adequate class representatives who had produced all relevant documents; (b) they were damaged by Defendants' conduct; (c) their purchases of the Trust Preferred Securities were domestic and therefore implicated federal securities laws; and (d) that they had class standing to represent purchasers in the February 2008 Offering, as the Court had already decided.

45. On June 25, 2018, Defendants filed a letter with the Court requesting a stay of the case pending the Court's decision on class certification. ECF No. 198. Class Plaintiffs opposed that request by letter the next day, arguing Defendants' request was an improper attempt to delay

producing documents in an already longstanding litigation. ECF No. 199. On July 17, 2018, the Court denied Defendants' request for a stay. ECF No. 208.

46. On September 18, 2018, the Court requested additional evidence in support of Class Plaintiffs' class certification motion demonstrating that their transactions in the Trust Preferred Securities had sufficient connection to the United States. ECF No. 220. Class Plaintiffs filed their supplemental submission on September 27, 2018, which included a submission by former SEC chairman Harvey Pitt in support thereof, demonstrating that Class Plaintiffs purchased the Trust Preferred Securities in a domestic transaction. ECF Nos. 221-222. On October 2, 2018, the Court granted Class Plaintiffs' motion to certify the class and named Norbert G. Kaess and Maria G. Farruggio as class representatives for the November 2007 and February 2008 Offerings. ECF No. 224.

47. Defendants then submitted a motion for permission to file a Fed. R. Civ. P. 23(f) appeal to the Second Circuit on October 16, 2018. 2d Cir. No. 18-3036, ECF No. 1-1. Class Plaintiffs opposed Defendants' petition to appeal on October 26, 2018, arguing that the basis for Defendants' appeal, that Class Plaintiffs' suffered no harm when later transactions in the Trust Preferred Securities post-dating corrective disclosures were included in damages calculations, lacked merit and improperly included transactions irrelevant to Class Plaintiffs' Securities Act claims. 2d Cir. No. 18-3036, ECF No. 17. Defendants thereafter moved to file a reply in further support of their petition to appeal and attached their proposed reply. 2d Cir. No. 18-3036, ECF No. 24. Class Plaintiffs opposed Defendants' motion as procedurally improper and included a rebuttal of the new arguments made in Defendants' proposed reply. 2d Cir. No. 18-3036, ECF No. 29.

48. On December 17, 2018, in a letter to the Court, Defendants again requested a stay of discovery until the petition to appeal was decided. ECF No. 227. Class Plaintiffs opposed the requested stay in a December 19, 2018 letter as premature and prejudicial to Class Plaintiffs. ECF

No. 228. The Court denied Defendants' motion for a stay (ECF No. 229), and, on February 20, 2019, the Second Circuit denied Defendants' petition. 2d Cir. No. 18-3036, ECF No. 40.

C. Fact Discovery

49. During fact discovery, Class Plaintiffs reviewed and analyzed the electronic equivalent of more than 2 million pages of documents from Defendants and 6 non-parties, deposed 20 fact witnesses in the United States and Europe, and defended the deposition of Class Plaintiff and one of Class Plaintiffs' experts in connection with class certification.

50. But, before that, months of negotiation and motion practice were necessary for Class Plaintiffs to first obtain documents responsive to their discovery requests. Once the relevant materials had been received, Lead Counsel undertook the substantial task of reviewing, organizing and analyzing the documents in preparation for depositions, expert reports, summary judgment and trial. This effort was critical to Class Plaintiffs' ability to prepare this case for trial.

1. Protective Order for Confidential Documents and Testimony

51. The parties negotiated the terms of a proposed protective order to govern the confidential treatment of evidence produced in this case. The parties exchanged drafts of a proposed order and met and conferred to discuss the terms of the protective order. The parties also negotiated the extent to which, and the conditions under which, confidential information could be shown to deponents, non-parties and others not previously privy to such information. On December 1, 2016, the Court approved the parties' Stipulated Protective Order for the Production and Exchange of Confidential Information. ECF No. 132.

52. Later, due to the implementation of the European General Data Protection Regulation on May 25, 2018, Defendants requested further amendments to the protective order before documents would be produced from Europe. The parties again exchanged drafts of the amendments

to the order and met and conferred to negotiate the terms. A Stipulated Amended Protective Order for the Production and Exchange of Confidential Information was then entered by the Court on September 14, 2018. ECF No. 219.

2. Requests for Production of Documents

53. On November 23, 2016, Class Plaintiffs served their First Request for Production of Documents to the Individual and Deutsche Bank Defendants containing 49 requests regarding all aspects of their claims. The requests sought documents and communications related to: (a) financial and risk reports related to mortgage-backed securities, such as RMBS, CDOs and Alt-A mortgage products, and pricing, valuation and risk management information concerning those products; (b) the application of accounting standards and SEC disclosures rules concerning mortgage-backed securities; (c) Deutsche Bank's mortgage origination practices and analysis, including by MortgageIT; (d) regulator and government investigations into Deutsche Bank's asset-backed securities business; (e) the Underwriter Defendants' due diligence; (f) the materials supporting Deutsche Bank's statements and disclosures in the Offering Documents; and (g) Deutsche Bank's exposure to monoline insurers.

54. The Individual Defendants and the DB Defendants served their responses to Class Plaintiffs' first set of document requests on June 20, 2017. They objected to every request on the grounds of relevance and overbreadth, and did not agree to produce any documents. The parties had widely diverging views regarding the scope of the claims remaining in the case, and the documents relevant to those claims, and motion practice was ultimately required to resolve these disputes.

55. On May 2, 2017, Class Plaintiffs served their First Request for Production of Documents to the Underwriter Defendants, containing 19 requests. The requests sought documents and communications related to: (a) the Offering Documents; (b) the due diligence performed; and

(c) valuations of Deutsche Bank's asset-backed securities, including subprime and Alt-A holdings. The Underwriter Defendants served their responses on June 12, 2017, and objected to every document request on the grounds of relevance and overbreadth. Extensive negotiations and meet and confers were required before the Underwriter Defendants agreed to produce any documents.

56. On June 22, 2018, Class Plaintiffs served their Second Request for Production of Documents to the Underwriter Defendants, containing ten requests regarding the offerings at issue. The Underwriter Defendants served their responses on July 23, 2018, and again objected to every document request on the grounds of relevance and overbreadth, and the parties subsequently meet and conferred to resolve any disputes regarding the responses and objections.

57. On June 26, 2018, Class Plaintiffs served their Second Request for Production of Documents to the Individual and Deutsche Bank Defendants. This set contained an additional 17 requests for documents concerning: (a) testimony provided by witnesses in other cases or investigations concerning the value of and risks related to Deutsche Bank's mortgage-backed securities; (b) documents referenced or described in the Levin-Coburn and FCIC reports and other regulatory or other investigations concerning Deutsche Bank's mortgage-backed securities business and exposure; and (c) the February 2008 Offering.

58. The Individual Defendants and the DB Defendants served their responses to Class Plaintiffs' second set of requests on July 26, 2018. They objected to every document request on the grounds of relevance and overbreadth, and did not agree to produce any documents. The parties met and conferred and were able to resolve certain disputes regarding the requests. Other disputes, however, resulted in motion practice.

59. Significant time was spent by Lead Counsel meeting and conferring and exchanging correspondence with defense counsel to resolve Defendants' objections to Class Plaintiffs' document

requests. Motion practice was ultimately required to resolve disputes between the parties over the scope of the production and the search for electronically stored information ("ESI"), necessitating significant time spent by Lead Counsel to brief and argue these issues, which significantly extended the length of fact discovery.

3. Negotiations Concerning the Production of Defendants' Electronically Stored Information

60. Multiple additional meet and confer discussions were necessary to address the identification and production of relevant ESI. Virtually all of the relevant materials were maintained electronically, making these discussions particularly important to the prosecution of this case. Lead Counsel, based on consultation with in-house ESI experts, engaged in extensive meet and confers with Defendants concerning: custodial and non-custodial sources of ESI; search terms and date ranges to be used in identifying relevant ESI; and ESI retention and deletion policies and practices.

61. Lead Counsel initiated and participated in written and telephonic exchanges with Defendants' counsel regarding the use of de-duplication, file type filtering, date filtering, review by thread-view and technology-assisted review as potential methods to efficiently search, review and produce the documents from agreed-upon custodians. In response to Defendants' concerns regarding the burden of review for privilege, Lead Counsel provided suggestions as to how to further reduce Defendants' burden, including the use of search terms.

62. The parties worked to reach agreement on search terms, which required numerous meet and confer discussions and negotiations spanning a series of months. This process involved running and testing various alternatives to Class Plaintiffs' and Defendants' proposed searches. Lead Counsel utilized the services of in-house e-discovery experts and researched the capabilities of the vendor Defendants had proposed to manage the production of ESI. However, because of disputes regarding the scope of the production, including regarding the custodians and relevant time

period, and due to the volume of the documents captured, the fact discovery deadline was extended to allow additional time for Defendants to complete their productions once these threshold issues were resolved and for Lead Counsel to review and analyze these productions before commencing with depositions.

4. Discovery Disputes

63. Lead Counsel devoted substantial time to analyzing documents produced in discovery, preparing for meet and confer conferences with counsel for Defendants, conducting meet and confer conferences and preparing correspondence memorializing those conversations in order to narrow the scope of discovery disputes while still aggressively pursuing the discovery rights of the Class.

64. The parties engaged in dozens of meet and confers regarding Defendants' document discovery and production alone, as the parties disagreed on almost every aspect regarding the scope of Defendants' discovery and how the search for ESI should proceed. Such disputes included: which party would provide initial search terms and custodians; which search terms and custodians should be used; the relevant time period; whether document productions from related litigations and government investigations should be searched and produced; and the extent to which analytics should be used and shared among the parties to determine the efficacy of proposed search terms and custodians in identifying relevant information. As a result, numerous letter motions to compel were filed to resolve these threshold discovery issues.

a. Discovery Disputes with Defendants Regarding Scope of Production

65. Counsel for all parties engaged in meet and confers to negotiate numerous issues concerning Defendants' anticipated production, which were memorialized in letters and e-mails documenting the parties' positions and outstanding issues. The issues in dispute included, among

others, the relevance of the documents sought to Class Plaintiffs' surviving allegations, Defendants' obligations to search for and locate relevant ESI, the relevant time period of responsive documents, the number of custodians and the burden of production.

(1) Disputes Regarding Documents Produced to the Government and Board Materials

66. On April 18, 2018, Class Plaintiffs filed two letter motions asking the Court to compel the production of documents. ECF Nos. 183-184. The first requested that the Court compel the production of documents Deutsche Bank had produced to the U.S. Senate Permanent Subcommittee on Investigations and U.S. Department of Justice in investigations into Deutsche Bank's mortgage-backed securities business. The second requested that the Court compel the production of high-level board and committee materials and presentations, as well as organizational charts relevant to Deutsche Bank's senior management and mortgage-backed securities business. The Court held oral argument on both motions on May 24, 2018, and granted in part and denied in part Class Plaintiffs' motions, ordering that the documents produced to the government would be subject to the search protocols agreed-upon by the parties and that Deutsche Bank produce relevant board materials and organization charts. *See* ECF No. 189.

(2) Disputes Regarding the Relevant Time Period and Custodians

67. On June 19, 2018, Class Plaintiffs filed a letter motion requesting that the Court compel Deutsche Bank to utilize the relevant time period of September 2006 through May 2008 for searches of ESI, instead of the narrower September 2007 through May 2008 Defendants proposed, and include an additional 14 custodians in their searches, each of whom served as an executive involved in Deutsche Bank's mortgage-backed securities related businesses. ECF No. 192. After Class Plaintiffs successfully opposed a request by Deutsche Bank for an extension to respond to the

letter motion (ECF Nos. 194-195), oral argument was heard on July 2, 2018 and thereafter the Court granted in part and denied in part Class Plaintiffs' motion, allowing Class Plaintiffs to choose a subset of the 14 proposed additional custodians and expanding the relevant time period to July 2007 to May 2008 for ESI and for the period July 2007 through December 2008 for any retrospective analysis concerning the time period leading up to the November 2007 and February 2008 Offerings. ECF No. 200. At the request of Class Plaintiffs (ECF No. 203), the Court further clarified its order on July 11, 2018. ECF No. 204.

(3) Dispute Regarding Document Subpoena to KPMG

68. On July 17, 2018, Class Plaintiffs opposed a letter motion by Deutsche Bank attempting to quash a subpoena issued to Deutsche Bank's auditor, KPMG, who had already begun producing documents on work the firm conducted related to the November 2007 and February 2008 Offerings and Deutsche Bank's mortgage-backed securities. ECF No. 209. On July 18, 2018, the Court denied Deutsche Bank's letter motion. ECF No. 211.

(4) Dispute Regarding Production of Prior Testimony

69. On January 31, 2019, Class Plaintiffs moved the Court in a letter to compel Deutsche Bank to produce transcripts of prior testimony, and the related exhibits, by the deponents and 12 other witnesses to this action concerning Deutsche Bank's exposure to RMBS, CDO and mortgage-backed securities. ECF No. 232. On February 6, 2019, the Court granted Class Plaintiffs' motion in part, compelling Deutsche Bank to produce relevant testimony and related exhibits for up to ten individuals chosen by Class Plaintiffs. ECF No. 234.

b. Discovery Disputes with Third Parties

(1) Dispute Regarding Document Subpoena to KPMG

70. On February 13, 2019, Class Plaintiffs moved the Court in a letter to compel KPMG to produce full copies of its audit documentation and instructions for work concerning Deutsche Bank's exposure to RMBS, CDO and other mortgage-backed securities. ECF No. 235. Based on the materials KPMG had produced to date and KPMG's representations regarding what would continue to be produced, however, the Court found that further production would not be proportional to the needs of the case. ECF No. 240.

(2) Dispute Regarding Deposition of Non-Party Anilesh Ahuja

71. On March 25, 2019, Class Plaintiffs moved the Court in a letter for an order requiring that a former Deutsche Bank executive, Anilesh Ahuja, who ran the bank's residential mortgage-backed securities origination and trading business during the relevant period, sit for a deposition prior to the discovery cut-off. ECF No. 250. The Court granted Class Plaintiffs' motion in part, requiring that Mr. Ahuja sit for a deposition prior to any summary judgment motion made by Defendants. ECF No. 253.

5. Review and Analysis of Documents Produced in Discovery

72. Defendants and non-parties produced the electronic equivalent of over two million pages of documents in discovery. In addition to the larger issues related to where and how Defendants were searching for these documents, numerous smaller matters arose that required further attorney and support staff time related to the format of production, errors in the files of particular productions and improperly formatted files. All of these issues, and more, had to be addressed through the meet and confer process.

73. The size of the production in this case also required expending significant time and expense on document hosting, storage, review and analysis. Lead Counsel utilized industry-leading Relativity software, which permitted Lead Counsel to search, sort, categorize, tag, prioritize, highlight and annotate documents in preparation for depositions, summary judgment, expert reports and trial. Attorneys, forensic accountants and support staff spent thousands of hours working in Relativity to compile, review and analyze sets of documents and locate the evidence needed to support expert testimony, respond to Defendants' summary judgment motions, and prepare the case for trial.

74. Attorneys, forensic accountants and staff used search terms, date filters, analytics, technology-assisted review and metadata fields to review hundreds of thousands of documents related to key issues in the case. While these efforts substantially reduced the time needed to review Defendants' production, due to the size of the document production, Lead Counsel still had to review the electronic equivalent of over two million pages of documents to locate the evidence needed to complete discovery and prepare this case for trial.

6. Interrogatories

75. On March 13, 2019, Class Plaintiffs served 25 interrogatories on the DB Defendants to aid in the identification of relevant documents and to garner evidence in support of their claims. The topics of these interrogatories included the basis for and documents supporting Deutsche Bank's affirmative defenses and the Company's exposure to mortgage-backed securities. Class Plaintiffs found the initial interrogatory responses insufficient and after meeting and conferring with the DB Defendants, they agreed to further supplement their answers.

7. Requests for Admission

76. Class Plaintiffs served ten requests for admission on Deutsche Bank to narrow the scope of issues that would be disputed at trial. Specifically, Class Plaintiffs requested that Deutsche Bank admit to numerous facts Deutsche Bank had previously affirmed in a statement of facts agreed-to as part of a multi-billion dollar settlement that Deutsche Bank entered into with the U.S. Department of Justice regarding the Company's mortgage securitization business and practices.

8. Discovery Taken from Non-Parties

77. Efforts were undertaken by Lead Counsel to obtain relevant evidence from non-parties, including those described below.

a. KPMG

78. Class Plaintiffs subpoenaed the United States arm of KPMG, which provided auditor services to prepare Deutsche Bank's SEC filings during the relevant period. The documents obtained from KPMG included reviews of valuation of mortgage-backed securities that the auditor conducted. Obtaining documents from KPMG required numerous lengthy meet and confers both with KPMG's in-house and outside counsel and extensive correspondence memorializing those conferrals and explaining the parties' positions.

b. FOIA Request to the SEC

79. Class Plaintiffs submitted a FOIA request to the SEC to obtain documents and testimony concerning an investigation into valuations of certain leveraged assets. The documents required numerous rounds of correspondence with the SEC, which included a successful appeal of the agency's decision to withhold all records, before documents were produced pursuant to the request.

c. William Broeksmit

80. Documents were obtained from the records of William Broeksmit, a deceased Deutsche Bank risk management executive who was heavily involved in assessing the risk of the Company, including its risks concerning mortgage-backed securities, leading up to and during the 2008 Financial Crisis.

9. Fact Depositions

81. During the course of fact discovery, Lead Counsel took 20 depositions of current and former Deutsche Bank executives and Deutsche Bank's auditor and underwriters, spending hundreds of hours preparing questions and identifying and analyzing documents to use in their examinations. These depositions included the Fed. R. Civ. P. 30(b)(6) deposition of Deutsche Bank and the two lead Underwriter Defendants, which also required serving detailed deposition topics on the Defendants, requiring additional meet and confers and correspondence to negotiate the scope of those depositions. A full listing of the depositions follows:

Deponent	Position	Date	Location
Josef Ackerman	Defendant and Chief Executive Officer of Deutsche Bank	3/12/2019	New York, New York
Anilesh Ahuja	Deutsche Bank RMBS executive	9/6/2019	New York, New York
Hugo Banziger	Defendant and Chief Risk Officer of Deutsche Bank	3/19/2019	New York, New York
Jonathan Blake	Defendant and Deutsche Bank director	4/16/2019	London, England
Mark Corteil	Deutsche Bank risk management executive	3/28/2019	New York, New York
Anthony Di Iorio	Defendant and Chief Financial Officer of Deutsche Bank	3/29/2019	New York, New York
Richard Doyle, Jr.	Merrill Lynch Rule 30(b)(6) designee	3/8/2019	New York, New York
Mark Ferron	Chief Operating Officer of Deutsche	1/29/2019	San Francisco,

Deponent	Position	Date	Location
	Bank's Global Markets division		California
Anshu Jain	Head of Deutsche Bank's Global Markets division	3/5/2019	New York, New York
Stuart Lewis	Deutsche Bank risk management executive	4/18/2019	London, England
Greg Lippmann	Deutsche Bank asset-backed securities trading executive	3/14/2019	New York, New York
Jack McSpadden, Jr.	Citigroup Rule 30(b)(6) designee	2/27/2019	New York, New York
James Musanti	Head of Deutsche Bank's SEC reporting	3/21/2019	Naples, Florida
Doug Naidus	Deutsche Bank RMBS executive	3/26/2019	New York, New York
Richard Porritt	Deutsche Bank Rule 30(b)(6) designee	2/27/2019	New York, New York
Nick Stone	Deutsche Bank risk management executive	2/8/2019	New York, New York
Peter Torrente	KPMG U.S. audit partner	4/3/2019	New York, New York
Gurdon Wattles	Deutsche Bank investor relations executive	3/7/2019	London, England
Philip Weingord	Head of Deutsche Bank's Global Markets Americas	2/13/2019	New York, New York
Boaz Weinstein	Deutsche Bank asset-backed securities trading executive	4/2/2019	New York, New York

10. Defendants' Discovery

a. Written Discovery Served on Class Plaintiffs

82. Over the course of the fact discovery period, Class Plaintiffs responded to multiple discovery requests from the Defendants, including 70 requests for production of documents, interrogatories and requests for admission.

83. On November 16, 2016, Defendants served their First Requests to Plaintiffs for the Production of Documents. In 35 separate requests, not including subparts, Defendants sought

documents and communications concerning the allegations in the TCAC, Class Plaintiffs' investments in the Trust Preferred Securities, non-party witnesses, class certification, testimony or sworn statements in other litigations, Class Plaintiffs' finances, retainer agreements and numerous other categories of information. On December 16, 2016, Class Plaintiffs responded to each of Defendants' requests, objecting to the majority as overbroad, not relevant, not proportional and seeking attorney-client privileged information.

84. On July 14, 2017, Defendants served their First Set of Requests for Admission and Interrogatories on Class Plaintiffs. The eight requests for admission and six interrogatories sought primarily to establish Defendants' purported defense that Class Plaintiffs' had no damages and had profited from their investments by including transactions in and interest payments from the Trust Preferred Securities that Class Plaintiffs contended were irrelevant to their Securities Act claims. Class Plaintiffs responded and objected to the requests for admissions and interrogatories on November 10, 2017.

85. On November 3, 2017, Defendants served their Second Request to Plaintiffs for the Production of Documents, which included two requests with multiple subparts requesting documents concerning the Item 303 and 503 claims in the TCAC and Class Plaintiffs' transactions in all five offerings at issue in the TCAC. On December 4, 2017, Class Plaintiffs responded and objected on the grounds that the document requests sought irrelevant and privileged documents and on the grounds that the requests were duplicative of earlier requests and that all relevant documents concerning the November 2007 and February 2008 Offerings still at issue had been produced.

86. On November 3, 2017, Defendants also served their Second Set of Requests for Admission and Interrogatories to Class Plaintiffs. The four requests for admission and five interrogatories sought information concerning Class Plaintiffs' §§11 and 12 damages and their

damages expert. On December 4, 2017, Class Plaintiffs responded and objected to the requests as premature, requesting a legal opinion and subject to expert testimony and referred Defendants to the factual information Class Plaintiffs had provided concerning the relevant transactions in the Trust Preferred Securities.

87. On December 14, 2018, Defendants served their Third Set of Interrogatories and Requests for Documents to Class Plaintiffs. The five interrogatories and requests for documents, not including subparts, sought documents and information concerning Class Plaintiffs' damage calculations, the dates that Class Plaintiffs alleged that corrective information entered the market and the substance of that information. On January 14, 2019, Class Plaintiffs responded and objected to the requests as premature, requesting a legal opinion and subject to expert testimony and directed Defendants to Class Plaintiffs' prior interrogatory responses and allegations in the Complaint.

b. Depositions Taken by Defendants

88. Lead Counsel defended Defendants' deposition of Class Plaintiff Norbert Kaess on December 20, 2017, in New York, New York. Prior to this deposition, Lead Counsel met with Mr. Kaess to help him prepare. Lead Counsel also defended the deposition of Professor Steven Feinstein on January 26, 2018 in Boston, Massachusetts. Professor Feinstein had provided a report at class certification for Class Plaintiffs regarding §§11 and 12 damages. Prior to his deposition, Lead Counsel discussed the report with Professor Feinstein to help him prepare.

89. In connection with his report, Defendants subpoenaed Professor Feinstein for documents. Class Plaintiffs responded and objected to the subpoena on December 22, 2017 as seeking irrelevant or privileged information not required to be produced under the Federal Rules of Civil Procedure and that Class Plaintiffs would disclose all appropriate information in accordance with the Court's schedule and the Federal Rules.

D. Experts, Investigators and Consultants Assisting in the Litigation

90. Lead Counsel utilized the services of investigators, expert witnesses, in-house accounts and other consultants to assist Class Plaintiffs in the prosecution of the Litigation. Factual investigators interviewed witnesses, which assisted Class Plaintiffs in forming a basis for their allegations and developing proof in this case. Analyses by expert witnesses assisted Lead Counsel in refining Class Plaintiffs' claims for trial, and in developing evidence to assist the jury in understanding the initial public offering process and the impact of the alleged undisclosed risks and trends on Deutsche Bank's business. The work performed by these experts, investigators and consultants provided valuable insight to Lead Counsel in preparing this case for trial and in evaluating prospects for settlement during the course of the Litigation.

91. Class Plaintiffs retained experts in the fields of mortgage-backed securities, public offerings and economics, each of whom worked a significant number of hours on this case analyzing the facts and producing their report. Class Plaintiffs identified their experts and served expert reports on Defendants on April 12, 2019. Class Plaintiffs identified the following: (a) Mr. Harvey L. Pitt as an expert in securities offerings and disclosures practices; (b) Professor Richard D. Puntillo as an expert in finance, securities offerings and due diligence; (c) Dr. Jonathan A. Neuberger as an expert in mortgage-backed securities; and (d) Professor Steven P. Feinstein as an expert in economics and damages.

1. In-House Robbins Geller Accounting Experts

92. In order to prepare the complaints, conduct effective discovery and prepare for trial, Lead Counsel employed highly specialized in-house forensic accounting professionals to provide investigative accounting, auditing and financial expertise to Lead Counsel throughout the pendency of the Litigation. They worked side by side with Robbins Geller attorneys in many facets of the

case, including, but not limited to, case investigation and evaluation, developing and drafting complaint allegations, responding to motions, and assisting with document discovery and depositions.

2. Harvey L. Pitt

93. Class Plaintiffs retained Harvey L. Pitt, a former chairman of the SEC, to opine on the offering and distribution of securities. Specifically, in his 32-page report, Mr. Pitt opined on: (a) the practices and procedures utilized in the registration, offering and sale of securities; (b) the common understandings and expectations of market professionals, issuers, market participants, investors, shareholders and regulators with respect to the disclosures made in connection with securities issued by the SEC; and (c) Deutsche Bank's own disclosures in light of the risks the Company faced at the time of the November 2007 and February 2008 Offerings.

94. Mr. Pitt's opinions were based on his distinguished career, which first began at the SEC and continued for over a decade, where he served as the SEC General Counsel for three years before leaving and then returning to serve as the 26th Chairman of the SEC from 2001-2003. Mr. Pitt was also a senior partner and Co-Chairman of Fried, Frank, Harris, Shriver & Jacobson LLP for almost 25 years, and has served as a fiduciary director to numerous public and non-public companies, for-profit and nonprofit organizations, and private sector and governmental advisory boards. Mr. Pitt also has extensive teaching experience at a number of law schools. In connection with his report, Mr. Pitt spent a significant amount of time reviewing numerous SEC filings related to the offerings at issue, deposition testimony and exhibits and consulted with Lead Counsel throughout the process.

3. Professor Richard D. Puntillo

95. Professor Richard D. Puntillo has significant academic and industry experience in the fields of finance and initial public offerings. He is a Professor Emeritus at the University of San Francisco, where he has spent over 25 years teaching at the School of Management. In addition to his academic experience, Professor Puntillo has served on the boards of public companies and as a corporate officer and investment banker during his career, and has been directly involved in the negotiating, structuring and approving of numerous public offerings and due diligence investigations. Professor Puntillo reviewed deposition transcripts and numerous exhibits related to Defendants' due diligence investigations and the disclosures made in the Offering Documents.

96. Based upon the review of these documents, Professor Puntillo provided two reports, totaling 65 pages, explaining the manner in which the DB Defendants' and the Underwriter Defendants' respective due diligence investigations and disclosures in the Offering Documents failed to comply with industry custom and practice. Specifically, Professor Puntillo discussed why the risks posed by Deutsche Bank's exposure to mortgage-backed securities were of the type of information typically disclosed to investors in offering documents.

4. Jonathan A. Neuberger, Ph.D.

97. Dr. Jonathan A. Neuberger is an economist with decades of experience in his field. He received his Ph.D. in economics and is a Principal at the consulting firm Economists Incorporated, after having served as an economist for the Federal Reserve Bank of San Francisco, Deloitte & Touche, LLP and other firms. Dr. Neuberger has worked with attorneys in the U.S. Department of Justice and the SEC in numerous cases involving financial institutions and companies and written articles and made presentations on the causes and consequences of the 2008 Financial

Crisis, including the roles played by mortgage derivatives and synthetic instruments, such as credit default swaps.

98. Dr. Neuberger reviewed voluminous materials related to Deutsche Bank's mortgage-backed securities business. Based on this review of information, Dr. Neuberger provided a 53-page report providing opinions concerning the market generally for mortgage-backed securities during the relevant time period as well as various types of specific risks Deutsche Bank's exposure posed to the Company. He also assessed Deutsche Bank's actions to mitigate that risk and whether those actions were an effective way to reduce risk.

5. Professor Steven P. Feinstein

99. Professor Steven P. Feinstein is an Associate Professor of Finance at Babson College and the president of Crowninshield Financial Research, Inc., a financial economics consulting firm. Professor Feinstein has extensive experience in the financial industry, having been selected to review papers published in the field of finance for finance journals and conferences, and having conducted analyses and presented opinions related to markets, valuation and damages in over 70 cases. Prior to entering academia, Professor Feinstein was an economist at the Federal Reserve Bank of Atlanta.

100. Professor Feinstein analyzed a wide range of Company information, including Deutsche Bank press releases, conference call transcripts, analyst reports, news articles, SEC filings, trading volume, the price of the Trust Preferred Securities, the overall market performance, and other information produced in discovery, such as deposition exhibits and testimony. This information, and an event study constructed by Professor Feinstein, formed the basis of his opinion that the allegedly misrepresented and omitted information was a material factor in the valuation of the preferred shares at issue. Indeed, Professor Feinstein's event study empirically demonstrated that the realizations of the risks allegedly undisclosed in the Offering Documents caused the prices of the preferred

securities to decline significantly, demonstrating the materiality of the alleged omissions. As part of his report, Professor Feinstein also explained and demonstrated the methodology used to compute damages under §§11 and 12 of the Securities Act.

6. Financial Markets Analysis LLC ("FMA")

101. The principal of FMA, Bjorn Steinholt, was retained by Class Plaintiffs at the inception of this Litigation to calculate damages suffered by plaintiffs and the class for all offerings alleged in the CAC.

7. Investigators

102. Soundview Intelligence LLC ("Soundview") was retained by Class Plaintiffs to assist in identifying and contacting potential (relevant) former employees of Deutsche Bank. Soundview interviewed witnesses and prepared memoranda, which assisted Class Plaintiffs in forming a basis for their allegations and developing proof in this case.

E. Summary Judgment

103. On May 23, 2019, Defendants filed letters with the Court setting forth the bases for their forthcoming motions for summary judgment. ECF Nos. 260-261. Class Plaintiffs filed a single letter response on June 3, 2019, highlighting particular evidence demonstrating that there were multiple genuine issues of material fact concerning Class Plaintiffs' Item 303 and 503 claims relating to falsity and materiality and Defendants' negative causation defense. ECF Nos. 263, 265.

104. On May 23, 2019, Defendants also requested that the Court expand the page limit on summary judgment briefing to 280 pages total for all parties. ECF No. 260. Class Plaintiffs opposed this request the next day as excessive given Defendants' repeated claims that this case was narrow in nature and no genuine disputes of material fact existed. ECF No. 262. On June 11, 2019, the Court denied Defendants' requests to extend the page limitations on summary judgment briefing

and further admonished Defendants that the Court was convinced that summary judgment was not appropriate given the factual disputes of the parties, but that Defendants were still free to file their motion, keeping in mind Fed. R. Civ. P. 11. ECF No. 268.

105. Defendants moved for summary judgment on July 31, 2019. ECF Nos. 270, 273. The DB Defendants and Underwriter Defendants motions were each accompanied by 130-page and 47-page Local Rule 56.1 Statements of undisputed facts, respectively. ECF Nos. 272, 278. In support of their motion, the DB Defendants filed 179 exhibits. ECF No. 272. The Underwriter Defendants filed 113 exhibits and 2 declarations from the lead underwriters. ECF Nos. 274-276. All together, the briefing and supporting materials totaled thousands of pages of documents.

106. The DB Defendants' summary judgment motion sought dismissal of all claims on the grounds that negative causation was a complete defense. The DB Defendants argued that Class Plaintiffs had not identified a corrective disclosure date where the price of the Trust Preferred Securities declined due to the revelation of the alleged omitted or misstated information and that Class Plaintiffs could not do so because all the alleged undisclosed risks had been disclosed in SEC filings prior to the corrective disclosure dates. Defendants also argued that Class Plaintiffs could not establish that Deutsche Bank had an obligation to disclose the allegedly omitted trends and risk under Items 303 or 503, and were therefore not liable under §11, because the risks Deutsche Bank faced due to their housing market exposure were neither quantitatively nor qualitatively material compared to the Company's total assets and were not reasonably expected to have a material negative impact on Deutsche Bank's financial or operational results.

107. The DB Defendants also contended that they had sufficiently disclosed the risks in various public filings leading up to the November 2007 and February 2008 Offerings and that Class Plaintiffs were not damaged because of their receipt of interest payments on the Trust Preferred

Securities. Lastly, the DB Defendants argued that Class Plaintiffs' §§12 and 15 claims should also be dismissed because there were no §12 damages and because there were no primary violations of the Securities Act to sustain a §15 claim.

108. The Underwriter Defendants' summary judgment motion joined in the DB Defendants' motion arguing that Class Plaintiffs were not damaged and could not prove an actionable material misstatement or omission in the Offering Documents, and that, as a result, all of Class Plaintiffs' claims failed against all Defendants, including the Underwriter Defendants. In addition, the Underwriter Defendants argued that, even if Class Plaintiffs could survive the DB Defendants' summary judgment motion, that the Underwriter Defendants were entitled to summary judgment based on the statutory due diligence defense. The Underwriter Defendants argued that there was no genuine dispute that they conducted a reasonable due diligence investigation in connection with the November 2007 and February 2008 Offerings and that the Underwriter Defendants had reasonable grounds to believe, and did believe, that the Registration Statement was accurate and complete in all material respects.

109. Shortly before Class Plaintiffs' opposition was due, the parties engaged in additional settlement discussions, which ultimately culminated with the parties agreeing to settle the Litigation for $18,500,000, subject to the terms of a Stipulation of Settlement and approval by the Court. Although the case resolved before Class Plaintiffs' opposition briefs were due, Lead Counsel expended extensive effort to respond to both of Defendants' motions. Substantial time and expense were expended to analyze both the DB Defendants' and Underwriter Defendants' briefs and evidence, locate and explain the contradictory documentary evidence and deposition testimony, and develop the legal support necessary to demonstrate to the Court that material issues of fact existed

with respect to each issue raised by Defendants, as Class Plaintiffs' summary judgment opposition was due to be filed just weeks before the Settlement was reached.

III. THE STRENGTHS AND WEAKNESSES OF THE CASE

110. Based on extensive discovery, 22 depositions, motion practice involving detailed analyses of the factual and legal issues underlying the Litigation and parties efforts briefing summary judgment, Lead Counsel had a thorough understanding of the issues and risks present in this case. While Lead Counsel believes that substantial evidence existed to support a jury verdict in favor of the Class, it recognizes that there were considerable risks and uncertainties if the case had proceeded to trial. Lead Counsel carefully considered these risks throughout the Litigation and in deciding to settle this matter.

111. While the Court granted class certification, its certification order could be revisited at any time – presenting a continuous risk that this case, or particular claims, might not be maintained on a class-wide basis through trial.

112. At the time the preliminary settlement agreement was reached, two dispositive motions for summary judgment in Defendants' favor remained outstanding. In addition, if the case proceeded past summary judgment, there would likely be numerous motions filed by the parties that would determine the extent of the evidence that could be presented at trial and the issues upon which liability could be premised that would have to be resolved by the Court. These would include disputes over the admissibility of expert testimony, specific trial exhibits, objections to deposition testimony and others. This created additional uncertainty as to what evidence would ultimately be permitted to be shown to the jury and for what purposes.

113. Once at trial, Defendants could have offered potentially effective arguments of their own to defend against Class Plaintiffs' claims. Defendants challenged the factual and legal elements

of Class Plaintiffs' claims and had articulated numerous defenses to Class Plaintiffs' allegations that the Court could have accepted at the summary judgment stage or the jury could have accepted at trial.

114. The principal basis on which Class Plaintiffs sought to establish Defendants' duty of disclosure of the omitted information were Items 303 and 503. Thus, at trial, Class Plaintiffs would have to prove that a significant risk to or declining known trend in Deutsche Bank's business was occurring at the time of the November 2007 or February 2008 Offerings and that the trend was known to management (or recklessly disregarded) and had, or was reasonably likely to have, a material effect on Deutsche Bank's financial condition or results of operations. Proving these issues at a hotly disputed trial by a preponderance of the evidence would likely have been a difficult task, as demonstrated by Defendants' summary judgment motions that were pending at the time the Settlement was reached.

115. Defendants have put forth various theories in support of their position that there were no material omissions or misrepresentations in the Offering Documents and that Class Plaintiffs had no damages. From the outset, Lead Counsel and Class Plaintiffs appreciated the unique and significant risks inherent in this Litigation. For example, Defendants claimed the allegedly omitted information concerning the Company's exposure to the U.S. housing market was immaterial to investors in comparison to Deutsche Bank's overall aggregate assets and that mortgage-backed securities were not a large part of the bank's business, that Defendants could prove that any drop in the price of the securities at issue was unrelated to the allegedly omitted information and that risks related to the Company's mortgage-related exposure had been timely disclosed to the public. If Defendants were successful in demonstrating any of the above defenses, Class Plaintiffs would be unable to prove their case, and the Class would recover nothing.

116. Further, in order to prove their case at trial, Class Plaintiffs would need to rely extensively on several expert witnesses for analysis of key issues. Each expert's testimony would be critical to demonstrating the validity of Class Plaintiffs' claims to the jury, as well as damages, including rebutting Defendants' negative causation defense, and the conclusions of each expert would be hotly contested at trial. Thus, Class Plaintiffs' case was particularly susceptible to a danger inherent in reliance on expert witness testimony, namely that the experts will be subject to a *Daubert* challenge. If, for some reason, the Court determined that even one of Class Plaintiffs' experts should be excluded from testifying at trial, Class Plaintiffs' case would become much more difficult to prove.

117. Among other things, Defendants have strenuously contended that Class Plaintiffs would be unable to prove that Defendants made any materially false or misleading statements or omissions in the Offering Documents. As noted above, Defendants maintained that they accurately disclosed all material information about the Company's exposure to risks attendant to the housing market. If Defendants prevailed on this or any one of the other grounds they articulated, the entire case could be lost.

118. Class Plaintiffs also faced risks with respect to causation and damages at trial. Defendants would have argued that Class Plaintiffs' damages methodology is inherently unreliable because it fails to take into account offsets to the Class Plaintiffs' claimed losses. Defendants further would have argued, as they did in their summary judgment briefs, that damages, if any, are zero or, at best, significantly less than Class Plaintiffs had estimated, based on their arguments with respect to a lack of, or negative, causation. While Lead Counsel believes it and its expert, Professor Feinstein, would have overcome these arguments or defenses, there is certainly no assurance that the jury would agree with Class Plaintiffs' arguments.

119. Defendants further argued that the allegedly omitted information was fully disclosed prior to any alleged corrective disclosure and that any decrease in the securities' price could not be attributed to the alleged omissions. Indeed, the Court had previously dismissed an offering from the case prior to the alleged corrective disclosures on the basis that Defendants had, as a matter of law, made disclosures sufficient to satisfy Items 303 and 503. As with contested liability issues, issues relating to causation and damages would have likely come down to an unpredictable battle of the experts.

120. Although Lead Counsel believes Class Plaintiffs have a strong case and would ultimately prevail on the merits at trial, it cannot be known how a jury would react to the various arguments and evidence presented by the parties.

121. To meet its burden of proof on these claims at trial, Lead Counsel planned to present the testimony of four expert witnesses, assuming none were excluded, on complex issues concerning the mortgage-backed securities business, the public offering process, economics and damages. Even with these highly respected experts, there could be no guarantee that Class Plaintiffs would prevail, as Defendants had also retained experts to counter Class Plaintiffs' experts' theories. Indeed, the trial of this case may have hinged as much on the testimony of experts as on fact witnesses, which always presents a substantial risk of a party prevailing not because of the merits but because of a jury's impression of one party's expert or experts.

122. Given the complex and multifaceted nature of the issues in the case, trial of this Litigation would be extremely complex and likely take weeks to complete. Then, it was also likely that Defendants would file post-trial motions and appeals to limit or overturn any verdict in Class Plaintiffs' favor. The post-trial motion and appeals process would likely span several years, during which time the Class would receive no payment. In addition, an appeal of any verdict would carry

with it the risk of reversal, in which case the Class would receive no payment despite having prevailed on the claims at trial.

123. In summary, while Lead Counsel had developed strong documentary and testimonial evidence supported by expert opinion, it faced both factual and legal challenges in presenting this matter to a jury and potentially on appeal. Based on all these factors, as well as the extensive experience of Lead Counsel in the litigation of securities class actions, Lead Counsel submits that the Settlement, which provides a very substantial recovery to Class Members, is far more beneficial than any of the realistic alternatives offered by continued litigation, and is, therefore, fair, reasonable and adequate.

124. Through very extensive negotiations, the parties compromised their differences and reached the agreement set forth in the Stipulation. In view of the $18,500,000 settlement that has been recovered for the Class, the sharply contested factual and legal issues (both as to liability and damages), and the uncertainties and enormous costs and delays inherent in continuing the Litigation, Lead Counsel believes that the recovery amount provided by the Settlement constitutes an exceptional result and is in the best interests of Class Members.

IV. NATURE AND ADEQUACY OF THE SETTLEMENT

125. The proposed Settlement was the result of arm's-length negotiation between zealous advocates on both sides, and could not have been reached without the substantial participation and assistance of a strong mediator with extensive experience in negotiating resolution of actions of this type. In the estimation of Lead Counsel, the compromise embodied in the Stipulation with Defendants represents a successful resolution of a complex and risky class action. We believe that our reputation as attorneys who will zealously prosecute a meritorious case through the trial and

appellate levels, as well as our aggressive litigation of this case, put us in a strong position in settlement negotiations with Defendants.

126. Set forth below is a description of the discussions leading up to the Settlement, and a description of the significant terms of the Settlement.

A. History of Settlement Negotiations

127. Settlement discussions occurred during the pendency of the Litigation, including at a formal mediation with Layn R. Phillips, a retired U.S. District Court Judge, which occurred on May 1, 2019. The parties also had numerous less-formal settlement communications, including communications between counsel (both in person and by phone and e-mail), as well as communications with and through the mediator. The settlement discussions were led by Samuel H. Rudman and undersigned counsel, who have extensive experience in litigating and resolving complex cases in both federal and state courts. Members of Class Plaintiffs' trial team, including other Robbins Geller attorneys, and in-house and outside experts in accounting and damages participated in or were consulted about settlement discussions, bringing substantial additional experience and insight to understanding the risks of litigation and the adequacy of defense proposals to resolve the case. The lead negotiators on the defense side had similar substantial experience in complex litigation, and included attorneys at Cahill Gordon & Reindel LLP and Skadden, Arps, Slate, Meagher & Flom LLP.

128. The parties remained far apart in their respective assessments of the strengths and weaknesses of the case during the initial negotiations, and no settlement was reached. Nevertheless, the formal mediation and follow-up discussions laid the groundwork for the continuing discussions with the mediator that occurred as this case got closer to summary judgment and ultimately resulted in the Settlement to resolve the Litigation on the terms proposed. In particular, through the parties'

settlement communications, as well as during the prosecution and defense of this case, each party obtained a solid understanding of their opponent's case, and as a result gained a better appreciation of the strengths and weaknesses of their own case.

129. Prior to the mediation with Judge Phillips, the parties exchanged detailed mediation statements, accompanied by substantial evidentiary support, explaining their positions to the mediator. Then, at the mediation, both sides responded to the other sides' mediation statement and pointed questions posed by the mediator, which further detailed the strengths and weaknesses of their respective cases through documentary and testimonial evidence as well as expert analysis. During these negotiations, Lead Counsel zealously advanced Class Plaintiffs' position and was fully prepared to try this case to a jury rather than accept a settlement that was not in the best interests of the Class. Likewise, Defendants, through their counsel, zealously advanced their position and were fully prepared to, and did in fact, continue to prepare for trial rather than accept a settlement that was not in their best interests.

130. The parties drafted, finalized and signed the formal settlement agreement detailing the terms of the proposed Settlement, which was submitted to the Court with the Motion for Preliminary Approval filed on November 15, 2019. ECF Nos. 288-291.

131. On February 27, 2020, the Court granted preliminary approval of the Settlement as well as the form and manner of notice of the Settlement to the Class. ECF No. 297.

B. The Settlement Is in the Best Interests of the Class and Warrants Approval

132. Class Plaintiffs believe they could have prevailed on the merits of the case. Defendants were just as adamant that the claims would fail. There was a very real risk, as discussed in detail above, that the Class would not prevail at trial. Had Class Plaintiffs' case successfully reached trial, the Class faced the risk that the Court would find Defendants' omissions non-

actionable or a jury would not be convinced that Defendants' omissions were misleading, material or that they should have been disclosed. There was also the risk that the jury would reduce the damages awarded for the reasons described above. Furthermore, even if Class Plaintiffs prevailed at trial, there was a significant risk that any recovery would be delayed by post-trial proceedings and appeals.

133. Having considered the foregoing, and evaluating Defendants' likely defenses at trial, it is the informed judgment of Lead Counsel, based upon all the proceedings to date and its extensive experience in litigating shareholder class actions, that the proposed settlement of this matter before the Court upon a payment of $18.5 million in exchange for a mutual release of all claims, and on the other terms set forth in the Stipulation, provides fair, reasonable and adequate consideration and is in the best interests of the Class.

C. The Plan of Allocation

134. The straightforward Plan of Allocation, set forth in the Notice, was developed in consultation with Class Plaintiffs' damages expert and follows the statutory framework adopted by Congress in the Securities Act. Class Plaintiffs further filed, at the Court's direction, an affidavit from their expert, Professor Feinstein, describing the means used to calculate the amounts described in the Plan of Allocation. ECF Nos. 294, 299.

D. Lead Counsel's Application for Attorneys' Fees and Expenses Is Reasonable

135. The successful prosecution of this action required Lead Counsel and its forensic accountants and paraprofessionals to perform more than 26,000 hours of work and incur $1,203,502.39 in expenses. *See* Declaration of Eric I. Niehaus Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."), Ex. A; Declaration of Brian P. Murray Filed on Behalf of Glancy Prongay

& Murray LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Glancy Prongay Decl."), Ex. A; and Declaration of Brian P. Murray Filed on Behalf of Murray Frank LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Murray Frank Decl."), Ex. A, submitted herewith. Based on the extensive efforts on behalf of the Class, as described above, Lead Counsel is applying for compensation from the Settlement Fund on a percentage basis, and has requested a fee in the amount of one-third of the Settlement Amount, plus interest.

1. The Requested Fee Is Reasonable

136. In light of the nature and extent of the Litigation, the diligent prosecution of the action, the complexity of the factual and legal issues presented, and the other factors described above and in the accompanying application for attorneys' fees and expenses, Lead Counsel believes that the requested fee of one-third of the Settlement Amount, plus interest, is fair and reasonable.

137. A one-third fee award is consistent with percentages awarded by courts in this District and around the country, and is justified by the specific facts and circumstances in this case and the substantial risks that Lead Counsel had or would have to overcome at the pleadings, class certification, discovery and summary judgment phases of the Litigation, and at trial, as set forth herein.

2. The Requested Fee Is Supported by the Class Plaintiffs

138. Class Plaintiffs actively monitored the Litigation and consulted with counsel during the course of settlement negotiations. Class Plaintiffs spent considerable time and effort fulfilling their duties and responsibilities in this case, including answering discovery requests, reviewing documents, producing documents, sitting for deposition and consulting with counsel concerning the merits of this Litigation.

139. As reflected in the accompanying Joint Declaration of Class Representatives Norbert G. Kaess and Maria Farrugio, Class Plaintiffs approved the fee request before it was submitted to the Court, believe the requested fee is fair and reasonable in light of the result achieved, and support the award of Lead Counsel's requested fee.

3. The Requested Fee Is Supported by the Effort Expended and Results Achieved

140. As set forth herein, the $18.5 million cash Settlement was achieved as a result of extensive and creative prosecutorial and investigative efforts, contentious and complicated motions practice, hard-fought discovery, analysis of voluminous evidence and preparation for trial, as detailed herein.

141. As discussed in greater detail above, this case was fraught with significant risks concerning liability and damages. Class Plaintiffs' success was by no means assured. Defendants disputed whether the alleged omissions were even actionable, disputed that Deutsche Bank had any duty to disclose the omitted information, and sought to attribute any harm suffered to factors unrelated to the alleged omissions. Were this Settlement not achieved, and even if Class Plaintiffs prevailed at trial, Class Plaintiffs potentially faced years of costly and risky appellate litigation, with ultimate success far from certain. It is also possible that a jury could have found no liability or no damages.

142. As a result of this Settlement, thousands of Class Members will benefit and receive compensation for their losses and avoid the very substantial risk of no recovery in the absence of a settlement. These factors also support Lead Counsel's request for an award of attorneys' fees of one-third of the Settlement Amount, plus interest.

4. The Risk of Contingent Class Action Litigation Supports the Requested Fee Award

143. As set forth in the accompanying application for attorneys' fees and expenses, a determination of a fair fee should include consideration of the contingent nature of the fee, the financial burden carried by Lead Counsel, and the difficulties that were overcome in obtaining the Settlement.

144. This action was prosecuted by Lead Counsel on a contingent fee basis. Lead Counsel committed over 26,000 hours of attorney, accountant and paraprofessional time and incurred $1,203,502.39 in expenses in the prosecution of the Litigation, as set forth in the accompanying Robbins Geller, Glancy Prongay and Murray Frank Declarations. Lead Counsel fully assumed the risk of an unsuccessful result. Lead Counsel has received no compensation for its services during the course of this Litigation and has incurred very significant expenses in litigating for the benefit of the Class. Any fees or expenses awarded to Lead Counsel have always been at risk and are completely contingent on the result achieved. Because the fee to be awarded in this matter is entirely contingent, the only certainty from the outset was that there would be no fee without a successful result, and that such a result would be realized only after a lengthy and difficult effort.

145. Lead Counsel's efforts were performed on a wholly contingent basis, despite significant risk and in the face of determined opposition. Under these circumstances, Lead Counsel is justly entitled to the award of a reasonable percentage fee based on the benefit conferred and the common fund obtained for the Class. A one-third fee, plus expenses, is fair and reasonable under the circumstances present here.

146. There are numerous cases, including many handled by Robbins Geller, where class counsel in contingent fee cases such as this, after expenditure of thousands of hours of time and incurring significant costs, have received no compensation whatsoever. Class counsel who litigate

cases in good faith and receive no fees whatsoever are often the most diligent members of the plaintiffs' bar. The fact that Defendants and their counsel know that the leading members of the plaintiffs' bar are able to, and will, go to trial even in high-risk cases like this one gives rise to meaningful settlements in actions such as this. The losses suffered by class counsel in other actions where insubstantial settlement offers were rejected, and where class counsel ultimately received little or no fee, should not be ignored. Lead Counsel knows from personal experience that despite the most vigorous and competent of efforts, success in contingent litigation is never assured.

147. Lawsuits such as this are expensive to litigate. Those unfamiliar with the efforts required to litigate class actions often focus on the aggregate fees awarded at the end but ignore the fact that those fees fund enormous overhead expenses incurred during the course of many years of litigation, are taxed by federal and state authorities, are used to fund the expenses of other contingent cases prosecuted by class counsel, and help pay the monthly salaries of the firms' attorneys and staff.

V. CONCLUSION

148. For all of the foregoing reasons, Lead Counsel respectfully requests that the Court approve the Settlement and Plan of Allocation, award Lead Counsel one-third of the Settlement Amount and $1,203,502.39 in expenses, plus the interest earned on both amounts at the same rate and for the same period as that earned on the Settlement Fund until paid, and approve the award of $20,000 to the Class Plaintiffs pursuant to 15 U.S.C. §77z-1(a)(4).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 7th day of May 2020, at San Diego, California.

s/Eric I. Niehaus
ERIC I. NIEHAUS

CERTIFICATE OF SERVICE

I, Eric I. Niehaus, hereby certify that on May 7, 2020, I authorized a true and correct copy of the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

s/ ERIC I. NIEHAUS

ERIC I. NIEHAUS

ROBBINS GELLER RUDMAN
& DOWD LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: ericn@rgrdlaw.com