

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by the Attorney General of the State of California (“Attorney General”), on behalf of the People of the State of California, HSBC Bank U.S.A., N.A. (“HSBC”), and Relator James “Jim” Connolly (the “Relator”). The persons and entities entering into this Settlement Agreement are at times referred to individually as a “party” and/or collectively as the “parties.”

WHEREAS, on or about December 4, 2014, the Relator filed a qui tam complaint (“Complaint”) under seal entitled *State of California ex rel. Connolly v. HSBC North America Holdings, Inc., et al.*, 34-2014-00172480, in the Superior Court of California, County of Sacramento (the “Action”), alleging claims under the California False Claims Act (“CFCA”);

WHEREAS, HSBC is a major financial institution and a leading foreign exchange market-maker in all tradable currencies. HSBC conducts business and maintains offices throughout the United States and California;

WHEREAS, for the time period of 2006 through 2011, Relator alleges that HSBC took orders from the California Public Employees Retirement System (“CalPERS”) to carry out foreign currency trades at an exchange rate determined by the market trading price at a certain fixed time of day, but charged CalPERS a higher or lower exchange rate (depending on CalPERS’s position in the trade);

WHEREAS, Relator alleges that HSBC profited in the amount of the difference between the actual exchange rate and what HSBC charged CalPERS;

WHEREAS, the Attorney General, as head of the California Department of Justice, conducted an investigation pursuant to the powers conferred by Article 2 of Chapter 2 of Division 3 of Title 2 of the Government Code of California (Cal. Gov. Code § 11180 et seq.);

WHEREAS, this Settlement Agreement is neither an admission of liability by HSBC, nor a concession by the Attorney General that these claims are not well founded;

WHEREAS, the Parties have reached a mutually satisfactory resolution of these and other claims; and

WHEREAS, without conceding the merit or lack of merit of any claim or defense or the existence or absence of any liability or damages whatsoever, the Parties seek to avoid the delay and cost associated with the litigation of this Action,

NOW THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth in this Agreement, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. **Payment.** As discussed herein, the Payment to the State of California, together with payment to Relator, will be an exchange of value in full and final satisfaction of all claims alleged against HSBC in the Complaint and with respect to the Covered Conduct (defined in Paragraph 2), and shall be full and adequate consideration for the Releases (defined in Paragraphs 4-7). The full amount of the Payment shall constitute restitution, and no portion of the Payment shall be considered a fine or a penalty.

a. **Payment to Attorney General.** HSBC agrees to pay a total sum of \$7,000,000 in settlement of all potential claims to be released by the Attorney General under this Agreement. Payment shall be made to the State of California by electronic funds transfer within thirty (30) days of receiving written payment processing instructions from the State of California, Office of the Attorney General.

b. **Payment to Relator.**

i. **Relator's Attorneys' Fees/Costs.** In addition to paying the Settlement Amount, HSBC agrees to pay Relator's counsel reasonable attorneys' fees and costs in connection with the Action, in

full satisfaction of Relator's claim under California Government Code Section 12652(g)(8). The amount of Relator's counsel's fees and costs and the timing of its payment has been/resolved by separate agreement.

- ii. **Relator's Share.** The State of California will, within 30 days of receipt of payment pursuant to Paragraph (1)(a), pay Relator sixteen (16) percent of that amount ("Relator's Share"). Such payment shall be made by check or wire transfer to a trust account for Relator pursuant to written instructions provided by his counsel.

2. **Covered Conduct.** "Covered Conduct" as used herein is defined as any conduct, representations, disclosures, or omissions, whatsoever, prior to December 4, 2014, the date the Action was filed, relating to any foreign exchange currency transactions executed between HSBC Released Persons (defined in Paragraph 4(a)) and the California Public Employees Retirement System ("CalPERS") through its employees.

3. **Compromise of Disputed Claims.** The parties acknowledge and agree that this Agreement is not, and shall not in any way be construed as, a presumption, concession, or admission by any of the parties of any fault, liability, wrongdoing, damages, or any unlawful or wrongful conduct as to any facts or claims that have been or might have been alleged in the Action or any other actions or proceedings whatsoever. The parties acknowledge and agree that this Agreement is the compromise of strongly disputed claims and has been entered into to avoid the time, burden, expense, distraction, uncertainty, and inconvenience of litigation. The provisions of this Settlement Agreement shall not be invoked, offered, or received in evidence, or otherwise used by any person in any action or proceeding of any kind except in connection with a proceeding to enforce the terms of this Agreement.

4. **Release by the Attorney General of HSBC.**

- a. **Release.** Subject to the exceptions in Paragraph 4(c) (Claims Excluded from Release), and conditioned solely upon HSBC's full payment of \$7,000,000 to the Office of the Attorney General, in accordance with written payment instructions from the Attorney General, the Attorney General fully and finally releases HSBC and its current and former partners, subsidiaries, parent companies, joint ventures, predecessors, successors in interests, assigns, affiliates, and each of their respective officers, directors, representatives, owners, managers, shareholders, servants, and current and former employees, agents, insurers and attorneys, each and every as to or in their individual and corporate capacities (together the "HSBC Released Persons") from any and all claims, demands, and/or causes of action, known or unknown, suspected or unsuspected, relating to, concerning, or arising from the Covered Conduct or any other claim that arose or could have arisen based on the facts alleged in the Complaint that the Attorney General has against the HSBC Released Persons, including but not limited to: California Government Code §§ 12650-12656, California Corporations Code §29536, California Business and Professions Code § 17200, and all statutory and common law theories of negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud and aiding and abetting any of the foregoing. The Attorney General executes this release in his official capacity and releases only claims that the Attorney General has the authority to release. The Attorney General agrees that no portion of the funds is received as a civil

penalty or fine, including, but not limited, to any civil penalty or fine imposed under California Government Code § 12651.

- b. **Waiver of California Civil Code § 1542.** The Attorney General expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code, and does so understanding and acknowledging the significance and consequences of such specific waivers. Section 1542 of the California Civil Code states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

- c. **Claims Excluded from Release.** The following claims are specifically reserved and not released by the Attorney General in this Agreement: (i) any liability based upon obligations created by this Agreement; (ii) any liability of any person or entity other than the HSBC Released Persons; and (iii) any liability to any other department or agency of the State of California that the Attorney General does not have the authority to release, including but not limited to for the Claims released above; and (iv) any liability to the State of California (or its departments or agencies) for any Claims not released above.

5. **Releases by HSBC of Attorney General and California.**

- a. HSBC fully and finally releases the Attorney General and the State of California, and their political subdivisions, departments, agencies, and all their directors, officers, employees, servants, and agents from any claims, including attorney's fees, costs, and expenses of every kind and however denominated, that HSBC has asserted, could have asserted, or may assert in the future against them related to the Attorney General's investigation of the Covered Conduct or to the release of the Covered Conduct provided in this Agreement. This Agreement does not resolve or in any manner affect any claims by the HSBC Released Persons for breach of or to enforce this Agreement.
- b. **Waiver of California Civil Code § 1542.** HSBC expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code, and does so understanding and acknowledging the significance and consequences of such specific waivers. Section 1542 of the California Civil Code states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

6. **Release by Relator of HSBC.**

- a. **Release.** Relator, for himself and Relator's heirs, personal representatives, successors, agents, and assigns (each in their individual and corporate capacities) ("Relator Parties"), hereby covenants not to sue and releases HSBC and the HSBC Released Persons from any and all claims, rights, demands, and/or causes of action that: (i) have been asserted in the Action; or (ii) could have been asserted by Relator or the California Department of Justice, Office of the Attorney General arising out of or related to the facts alleged in the Complaint.
- b. **Waiver of California Civil Code § 1542.** Relator, for himself and the Relator Parties, expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code, and does so understanding and acknowledging the significance and consequences of such specific waivers. Section 1542 of the California Civil Code states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Notwithstanding the provisions of Section 1542, and for the purposes of implementing a full and complete release and discharge, Relator, for himself and the Relator Parties, acknowledges that this Agreement includes in its effect, without limitation, all claims covered by the releases in this Agreement which

Relator or the Relator Parties do not know or suspect to exist at the time of execution hereof, and that this Agreement contemplates extinguishment of any and all such claims.

7. **Release by Relator of the State of California.**

- a. **Release.** Relator, and each of his heirs, personal representatives, legal representatives, attorneys, agents, and assigns, will not object to this Agreement and agrees and confirms that this Agreement is fair, adequate and reasonable under all the circumstances pursuant to California Government Code §§ 12650-12656. Upon full receipt of the Relator's Share, Relator, for himself individually and for his heirs, personal representatives, legal representatives, successors, attorneys, agents, and assigns, fully and finally releases, waives and forever discharges the State of California and its agencies, divisions, subdivisions, entities, officials, officers, agents, representatives, and employees from any and all rights, claims, remedies, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature that Relator has asserted, could have asserted, or may assert in the future against the State of California arising out of the filing of the Complaint, or from any other claim for a share of the settlement proceeds or recovery of his fees, expenses or costs. Relator accepts such payment of the Relator's Share from the State of California in full and final settlement of any claims he has or may have under California's False Claims Act. This Agreement does not resolve or in any manner affect any claims: (i) the State of California and/or the Attorney General may have against Relator arising under California's tax laws; and/or (ii)

of the State of California, the Attorney General, or Relator for breach of or to enforce this Agreement.

- b. **Waiver of California Civil Code § 1542.** The Relator expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the California Civil Code, and does so understanding and acknowledging the significance and consequences of such specific waivers. Section 1542 of the California Civil Code states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

8. **Dismissal of the Action.** The Attorney General and Relator shall execute a Stipulation Of Dismissal With Prejudice as to the Action, pursuant to California Code of Civil Procedure § 581(b) and (c), within five (5) business days of the date of the later of the payment by: (i) HSBC to the Attorney General (pursuant to Paragraph 1(a)); and (ii) payment by HSBC to Relator's counsel (pursuant to Paragraph 1(b)).

9. **Effects of Agreement.** This Agreement is intended to be for the benefit of the parties only. This Agreement is not intended for use by any other third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by the Released Persons in this or any other proceeding. Nothing contained herein shall be construed so as to create any other third-party rights or private rights of action or to deprive any person of any private right under the law.

10. **Understanding of Terms.** The terms of this Agreement were negotiated in good faith by the parties, and reflect a settlement that was reached voluntarily after full investigation, consultation with experienced legal counsel, and arms-length negotiation.

11. **No Adjudication on the Merits.** This Agreement is made without any trial or adjudication or court finding on any issue of fact or law, and is not a final order of any court or governmental authority.

12. **Authority.** Each signatory to this Agreement represents that he or she is fully authorized by the party he or she represents to enter into this Agreement to execute it on behalf of the party represented and to legally bind that party.

13. **Modification.** This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties.

14. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original. Said counterparts shall constitute but one and the same document.

15. **Waiver.** No term or condition of this Agreement shall be deemed to have been waived, nor shall there be an estoppel against the enforcement of any provision of this Agreement, except by written instrument signed by the party charged with the waiver or estoppel. No written waiver shall be deemed a continuing waiver unless specifically stated therein, and the written waiver of a term or condition as to a specific act or occurrence shall not operate as a waiver of any other term or condition or for any other or future act or occurrence.

16. **Interpretation.** This Agreement shall be deemed to have been drafted equally by the parties and any rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Agreement.

17. **Severability.** If any provision of this Agreement shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in effect and be interpreted so as best reasonably to effect the parties' intent.

18. **Notices.** All notices, reports, requests, and other communications to any party pursuant to this Agreement shall be in writing and shall be directed as follows:

If to HSBC, to:

Jennifer Kennedy Park
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006

If to the Attorney General, to:

Sylvia W. Keller
Deputy Attorney General
Department of Justice
Office of the Attorney General
State of California
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

If to Relator, to:

Lexi J. Hazam
Lief Cabraser Heimann & Bernstein, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339

19. **California Law.** This Agreement shall be governed by the laws of the State of California without regard to any conflict of laws principles.


21. **Integration.** This Agreement constitutes the entire agreement between the Parties, and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Agreement.

22. **Non-Disqualification.** This Agreement is not intended to disqualify HSBC from any business that it is otherwise qualified, licensed, or permitted to perform under the laws or regulations of California.

23. **Effective Date.** This Agreement shall become effective and binding upon execution by the parties hereto.


Dated: August 4, 2020

HSBC Bank U.S.A., N.A.


By: _____
Mark A. Steffensen
Senior Executive Vice President and
General Counsel

Dated: 8/4, 2020

PEOPLE OF THE STATE OF CALIFORNIA
by and through the Attorney General


By: _____
Sylvia W. Keller
Deputy Attorney General

Dated: _____, 2020

JAMES "JIM" CONNOLLY

By: _____
James "Jim" Connolly
Relator

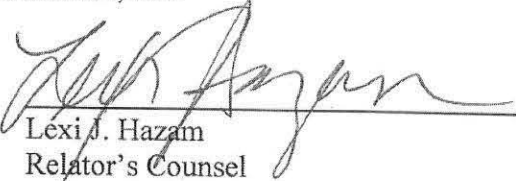
Dated: _____, 2020

JAMES "JIM" CONNOLLY

By: _____
James "Jim" Connolly
Relator

Dated: 9/3, 2020

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

By: 
Lexi J. Hazam
Relator's Counsel


Dated: _____, 2020

KOHN, KOHN & COLAPINTO, LLP

By: _____
Michael D. Kohn
Relator's Counsel

Dated: 9/4, 2020

JAMES "JIM" CONNOLLY

By: 
James "Jim" Connolly
Relator

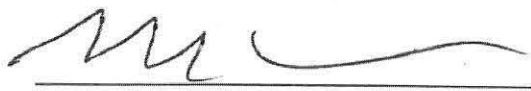
Dated: _____, 2020

LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP

By: _____
Lexi J. Hazam
Relator's Counsel

Dated: 9/4, 2020

KOHN, KOHN & COLAPINTO, LLP

By: 
Michael D. Kohn
Relator's Counsel