Made on behalf of:	**Phillip Evans (Applicant/Proposed Class Representative)**
Name of witness:	**Anthony John Maton**
Number of statements:	**4**
Exhibits:	**AJM14-AJM17**
Date:	**23 April 2021**

IN THE COMPETITION APPEAL TRIBUNAL **Case Number: 1336/7/7/19**

BETWEEN:

PHILLIP EVANS **Applicant/Proposed Class Representative**

and

(1) BARCLAYS BANK PLC
(2) BARCLAYS CAPITAL INC.
(3) BARCLAYS PLC
(4) BARCLAYS EXECUTION SERVICES LIMITED
(5) CITIBANK, N.A.
(6) CITIGROUP INC.
(7) MUFG BANK, LTD
(8) MITSUBISHI UFJ FINANCIAL GROUP, INC.
(9) J.P. MORGAN EUROPE LIMITED
(10) J.P. MORGAN LIMITED
(11) JPMORGAN CHASE BANK, N.A.
(12) JPMORGAN CHASE & CO
(13) NATWEST MARKETS PLC
(14) THE ROYAL BANK OF SCOTLAND GROUP PLC
(15) UBS AG **Proposed Defendants**

FOURTH WITNESS STATEMENT OF ANTHONY JOHN MATON

I, **ANTHONY JOHN MATON,** of Hausfeld & Co. LLP, 12 Gough Square, London, EC4A 3DW, **WILL SAY AS FOLLOWS:**

Introduction

1. I am a solicitor of the Senior Courts of England and Wales and Managing Partner of Hausfeld & Co. LLP in London ("**Hausfeld**"). I have previously provided three witness statements, dated 10 December 2019 (**"Maton 1"**), 17 April 2020 (**"Maton 2"**) and 20 October 2020 ("**Maton 3**"), in support of Phillip Evans' application before the Tribunal for a Collective Proceedings Order ("**CPO**") to pursue collective proceedings on behalf of two classes of persons who entered into certain types of foreign exchange transactions in the European Economic Area between 18 December 2007 and 31 January 2013 (the "**Evans Application**"). Together with David Lawne, I

am the partner at Hausfeld with conduct of the Evans Application. I am duly authorised by Mr Evans to make this witness statement on his behalf.

2. Unless otherwise stated (in which case I give the source of information upon which I rely), the contents of this witness statement are within my own knowledge, and are true to the best of my knowledge, information and belief. Where the facts and matters referred to in this statement are not within my own knowledge, they are based on instructions, documents and information supplied to me in my capacity as a solicitor instructed by Mr Evans and are true to the best of my knowledge and belief. I adopt the defined terms used in my previous witness statements.

3. For the avoidance of doubt, I confirm that nothing in this witness statement constitutes, or is intended to constitute, a waiver of legal professional privilege. Specifically, references to the existence of confidential discussions or communications with, or efforts to engage clients of Hausfeld in this witness statement, are not intended to waive legal professional privilege over the contents of privileged communications.

4. There are now produced and shown to me a paginated exhibit of copy documentation to which I will refer in this witness statement.

Matters addressed in this witness statement

5. In this witness statement, I address the following:

   a. First, I explain why I consider that, contrary to the suggestions made by the Proposed Defendants in their Joint CPO Response dated 26 February 2021 (the "**Joint CPO Response**"), opt-in proceedings would be impracticable based on my experience in this area (paragraphs 6 – 36);

   b. Second, I describe the funding structure for the Proposed Collective Proceedings which provides that payment of unrecovered costs (including funding fees) is to be made out of undistributed damages (paragraphs 37 - 45);

   c. Third, I give a brief update regarding the status of other FX collective actions internationally, specifically those in the United States, Canada and Australia which are referred to in paragraphs 16 – 37 of Maton 1, and an overview of other claims in the UK relating to alleged FX misconduct (paragraphs 38 – 65); and

   d. Fourth, I provide an overview of the additional relevant experience, particularly in the field of collective proceedings, that Mr Evans' legal representatives have obtained since

Maton 1 was filed in December 2019 (paragraphs 66 – 84) since this is a matter that Tribunal may wish to consider in determining which of Mr Evans and Michael O'Higgins FX Class Representative Limited (the "**O'Higgins PCR**") would be the more suitable class representative (paragraphs 73 – 91).

A. Practical difficulties with bringing Mr Evans' proposed proceedings on an opt-in basis

6. In Section A of the Joint CPO Response, the Proposed Defendants contend that it would be practicable for the proposed proceedings in the Evans Application to proceed as opt-in collective proceedings. At paragraph 38 of the Joint CPO Response, they argue that it would be "*relatively straightforward*" for class members to opt-in.

7. I believe that the reality is very different. In this section of my witness statement, I set out why I believe opt-in proceedings in this case would be impracticable and expensive and would result in a low rate of participation by eligible class members. I base that belief on my first-hand experience of trying to encourage multiple claimants to bring claims for damages in respect of FX misconduct. I would note that I am very experienced, over the last 12 years, in successfully collecting groups of clients to bring private enforcement claims in the English Courts.

Practical difficulties with bookbuilding for individual FX claims

Onboarding challenges for a group action

8. I first became aware of potential misconduct in the FX market in or around 2014. Due to the transitional provisions under the Consumer Rights Act 2015, it was not possible to pursue collective proceedings in the Tribunal, which did not become possible until the European Commission's two infringement decisions were made in May 2019. Accordingly, prior to those decisions, Hausfeld's London team sought to pursue other routes to obtain redress on behalf of those who might have been affected, namely by seeking to combine individual claims to bring group proceedings.

9. The other routes for multiparty litigation include the following mechanisms: test case, consolidation of multiple actions, single trial of multiple actions, group litigation order (**"GLO"**), and representative actions:

   a. Test cases involve the selection and trial of an individual claim which gives rise to issues common to other actions, which are stayed to await the test case. The judgment in the test case has precedent value for the stayed cases, but does not determine them. There is express power to stay cases on this basis under CPR 3.1(2)(f).

b. Consolidation under CPR 3.1(2)(g) results in a single case with multiple parties.

c. Single trial of multiple actions is closely related to the previous mechanism, but there is no consolidation – the claims remain separate.

d. GLOs are governed by CPR 19.10-15. The GLO provides more structured case management than was practicable under the pre-existing mechanisms, although it has much in common with them. It includes provisions for a group register, stays of related claims, a managing judge, a lead solicitor, publicity, identification of issues, common disclosure, identification of test claims, and binding judgments. Although cases are centrally managed, the procedure is "opt in" in nature, so that all claimants must be identified and be parties to the proceedings. I am not aware of any GLO having yet been granted in relation to competition law proceedings.

e. Representative actions under CPR 19.6 permit one named claimant or defendant to act on his own behalf and also on behalf of a class of individuals. The represented class are not parties to the action, nor are they automatically subject to disclosure or costs, but they are bound by the judgment. The procedure can only be used, however, in accordance with a number of fairly narrow criteria set out by the Court of Appeal in the *Emerald* case (in which Hausfeld acted usuccessfully for the claimants). I am not aware of any representative actions having been brought let alone approved in relation to competition law proceedings since the Emerald decision.

10. Between 2014 and 2018, several of my Hausfeld colleagues and I embarked on an extensive bookbuilding exercise (i.e. an exercise involving identifying and contacting potential claimants) with a view to being engaged by potential claimants and commencing claims concerning FX misconduct on their behalf. We contemplated bringing claims on behalf of a group of claimants, as Hausfeld has done in many other competition damages claims, but had not committed to any specific plan for a particular type of proceedings (i.e. as described in sub-paragraphs (a) – (e) above) during the bookbuilding stage. Instead, the purpose for this exercise was to identify and enter into initial engagements with as many potential claimaints or class members as possible, to identify the value the of the potential damages claim and to then consider the most appropriate procedural route for bringing an action in based on the number of clients engaged and the value of the claims.

11. During that period, we contacted a diverse range of organisations, ranging from large financial institutions to multinational corporations and UK domestic corporates, all of whom, insofar as

we could ascertain from publicly available information, traded FX in large volumes during the relevant periods.

12. I set out in the table below details of the bookbuilding exercise:

Estimated number of organisations contacted	c.321	
The sectors in which they were operating		
	Pension Fund	134
	Bank	85
	Corporate	68
	Hedge Fund	19
	Asset Management	7
	Unknown	2
	FX Trader	2
	Insurance	1
	Private Equity	1
	Government	1
	Local Government	1
	Total	**321**
Number of initial meetings with prospective clients	c. 50	
Number of clients that signed a retainer	14	

13. The bookbuilding process was time consuming and expensive:

a. First, it was necessary to identify potential claimants, based on information that was in the public domain about organisations that engaged in large FX trading volumes, and through Hausfeld's own clients and referral networks. The overall pool of potential claimants Hausfeld identified included banks, corporate entities, hedge funds, asset managers, insurance companies, pension funds and private equity firms. The corporate entities that we targeted tended to be larger organisations, as we anticipated that larger companies were more likely to have higher value claims and would therefore be more interested in the case and would have claims that it would be possible to fund.

b. Hausfeld identified and contacted approximately 166 potential claimants through existing relationships and referral networks (including Hausfeld's former and existing clients). Hausfeld lawyers arranged to speak to and/or meet with potential claimants, with a view to exploring whether they would be willing to speak to us about the potential claim.

c. In addition, Hausfeld made 'cold' approaches to potential claimants by letter, email and in person (for example, at networking events such as conferences organised by the Pensions and Lifetime Savings Association). In total, we identified and contacted an additional 155 organisations consisting of 114 pension funds, 19 regional banks, 18 hedge funds and four private companies. In practice, this outreach exercise had limited success, and efforts to contact potential clients through existing networks proved to be more successful than 'cold' letters.

d. In total, we met with more than fifty organisations in 13 countries across 5 continents (Austria, Denmark, Germany, Greece, France, Sweden, UK, Switzerland, USA, Brazil, Nigeria, South Africa and South Korea). During these dialogues, it was frequently necessary to obtain and review information provided by the potential claimants to assess their potential claims, including the estimated damages. Further, it was necessary to prepare and discuss with the potential claimants the terms of the proposed legal engagement and any funding arrangements.

14. Thousands of hours over more than four years were spent by lawyers and legal interns at Hausfeld trying to identify and engage with potential clients. The total number of hours spent by fee earners on the bookbuilding exercise, broken down by hourly rates, is set out in the table below:

Role	**Hours**
Partner	1063.7
Partner	387.2
Of Counsel	20.5
Of Counsel	40.5
Associate	20
Associate	10.5
Associate	29.3
Associate	66.5
Associate	29.4
Associate	27.9
Associate	153.1
Associate	652
Associate	7.4
Associate	117.1
Associate	1232.6
Trainee	23.7
Intern	2155
TOTAL	**6036.4**

15. In addition to the investment of time spent by fee earners, Hausfeld also incurred significant costs engaging specialist economists to analyse data for potential clients wishing to understand the value of their potential claims, and instructing Counsel. Details of these disbursements costs are set out below:

Cost Type	**Amount Spent**
Expert/Economist	£593,816.25
Counsel's advice	£146,125.00
Total	**£739,941.25**

16. For the avoidance of doubt, none of the above costs (both Hausfeld fee earners' time and disbursements costs) are included in the recoverable or non-recoverable costs associated with the Proposed Collective Proceedings.

17. The process of identifying potential claimants, discussing their potential claims and collecting and assessing their data for the purposes of preliminary damages assessments and legal analysis required a very significant investment of time and costs:

    a. First, before we were even in a position to approach potential claimants we needed to undertake an extensive research exercise to establish which organisations were most likely to have potential claims and make contact with the appropriate point of contact to speak to about the potential claims.

    b. Second, once we had contacted those organisations, most of those responding wished to understand the value of their potential claims, including the risks and any potential downsides, at a very early stage in the discussions so that they could consider whether the possible return would be worth the time and expense of considering whether to pursue a claim.

    c. Third, in order to answer the questions and queries asked by prospective clients, we usually needed to enter into non-disclosure agreements with them in order to review their transaction records on a confidential basis. It was necessary to evaluate this data, working with specialist economists, in order to provide an initial indication of the potential value of any claim they might seek to bring.

    d. Fourth, much of this work required direct engagement from senior lawyers within Hausfeld and which could not be delegated to junior team members. This is because, in my experience, the decision makers at the organisations we spoke to wished to discuss the potential claims with senior solicitors to answer complex questions or to resolve any

concerns about the risk of engaging in litigation. As a result, several partners within Hausfeld, including myself, had to devote significant time engaging with potential clients.

18. Following this substantial exercise, and after having contacted approximately 321 organisations, Hausfeld were instructed by 14 clients to provide legal and strategic advice in connection with potential claims in respect of FX misconduct. However, after investigation, it transpired that their combined claims were not of sufficient size to bring a viable group claim bearing in mind the costs of litigating complex claims against several major banks. Many of the individual claims were estimated to be in the low (single digit) millions or less. This made it practically impossible to put in place funding, given that the likely budget required to pursue the claims (including the costs of acquiring adverse costs insurance) was likely to be similar to or even exceed the total estimated damages for the group.

Unwillingness of potential claimants to commit to opt-in proceedings

19. As is clear from the above, despite the significant time and effort invested in identifying and approaching potential claimants, only a fraction of those we approached agreed to be retained for the purpose of pursuing claims. Based on my discussions with many of these potential clients, I believe there were four main reasons for their reluctance to participate:

    a. A key concern expressed by many of the organisations we contacted was that they did not want to embark on a legal fight with major banks for what seemed to them to be a modest to small level of potential damages (in most cases single digit millions or less). In particular, many of the organisations maintained ongoing relationships with those banks – including corporates and hedge funds and asset managers who worked in the finance sector – and did not want to take any steps that might cause conflict in those relationships.

    b. Several organisations, including sophisticated financial institutions, expressed a reluctance to invest time navigating their internal approval processes, which would require obtaining approval from senior managers, considering funding proposals and documents, identifying, retrieving and reviewing the relevant documents and determining whether the potential benefits of a possible damages payment outweighed the downside of allocating their internal resources for this purpose. I was also informed in many of these discussions that committing to litigation could also trigger reporting considerations within many organisations, and many of them were reluctant to draw attention to this issue internally.

c. Many potential claimants expressed concern that participating in litigation would require them to share confidential business information with the other claimants, the defendant banks and/or more widely. Although it is possible to obtain protective court orders, such as a confidentiality ring, to protect against wider disclosure of confidential information, I was not able to give potential claimants a watertight guarantee that these measures would be put in place, because this would ultimately be a matter for the court to decide.

d. The process of engaging a client itself often proved to be a practical deterrent for potential clients. Many of the 321 organisations and individuals we spoke to told us that gathering historic FX transaction records, along with any other relevant evidence to support their claim, would require a significant amount of internal resource. Several told us that they no longer retained the relevant records or only had partial records. For many, this was an unattractive prospect in circumstances where, at that stage, the outcome and quantum of the potential claims were uncertain.

20. The lesson I drew from this experience was that the cost/benefit analysis weighed heavily against pursuing claims for most organisations with potential FX claims. I believe it is for this reason that, to the best of my knowledge, there are only two claims against banks involved in FX misconduct in this jurisdiction:

a. The first is a claim pursued by some of the world's largest financial institutions: Allianz, PIMCO, BlueCrest, Brevan Howard and other funds which are the claimants in Claim No. CL-2018-000840 *Allianz Global Investors GmbH and others v Barclays Bank Plc and others*. (the "**Allianz Claimants**"). Their substantial size means that they are each individually, and particularly as a group, likely to have very substantial claims which are worth the time and effort of pursuing.

b. The second is a series of claims pursued by ECU Group Plc ("**ECU**") against NatWest Markets Plc[1], Citibank N.A. ("**Citibank**")[2], Deutsche Bank AG[3], Goldman Sachs International[4], Barclays Bank[5] and HSBC Bank Plc[6]. The allegations in ECU Group's claims are much broader in scope than the conduct described in the Decisions, and includes allegations of unilaterial misconduct unrelated to cartel activity. As with the Allianz

1 FL-2020-000045 – *The ECU Group PLC v. NatWest Markets PLC.*
2 FL-2020-000046 – The ECU Group PLC v. Citibank N.A. and Ors.
3 FL-2020-000047 – *The ECU Group PLC v. Deutsche Bank AG.*
4 FL-2020-000048 – *The ECU Group PLC v. Goldman Sachs International.*
5 FL-2020-000049 – *The ECU Group PLC v. Barclays Bank.*
6 CL-2017-000315 – *The ECU Group Plc v HSBC Bank Plc & Ors*.

Claimants, ECU is a substantial financial institution which manages multi-currency loan facilities for its clients. By way of example, ECU and Citibank's relationship spanned the period of 2007 to 2010 and comprised approximately USD 5.3 billion worth of trades.[7]

21. The Allianz Claimants and ECU Group have opted out of the US FX class action, with the Allianz Claimants choosing to pursue their own claims in the US and UK courts and ECU pursuing their claims in the UK courts.

22. Based on my experience and in light of the substantial size and resources of the institutions who have commenced individual claims, the cost-benefit analysis of bringing claims was a very different prospect for the Allianz Claimants and ECU Group compared with the proposed class members in these proceedings, particularly as their anticipated loss and vulnerability to misconduct is distinct to most other potential class members. By contrast, I would expect the majority of the class members Mr Evans seeks to represent would face the difficulties I have outlined at paragraphs 17(a)-(d) above.

<u>It would be impracticable for the proposed proceedings in the Evans Application to be brought on an opt-in basis</u>

23. As a result of my experience described above, I consider the Proposed Defendants have completely underestimated (and indeed have no experience of) the time, effort, cost and risk in seeking to bring the proposed proceedings in the Evans Application on an opt-in basis. On the contrary, there is a significant risk that only a limited number of members of the proposed classes may opt in to those proceedings based on the rationale I have explained above. In particular, the following features of opt-in proceedings may dissuade them from participating:

    a. The Proposed Defendants seem to contemplate time-consuming and laborious disclosure being given by class members, as explained in paragraph 54 of the Joint CPO Response. While Mr Evans does not accept that such disclosure would be necessary, appropriate or proportionate for the reasons given in paragraphs 148 – 150 of his reply to the Joint CPO Response, it would nevertheless be necessary to explain to each potential class member the possible disclosure obligations that might arise before they decide whether to participate. Indeed, at the point of opting in, it is unlikely that the extent of any disclosure required would have been agreed, meaning that there would be no certainty about the scope of disclosure (including which class members would be required to give disclosure

[7] Please see paragraph 3 of Cooke, Young & Keidan LLP's letter appended to the claim form in *The ECU Group PLC v Citibank N.A. & Ors* (Case No. FL-2020-000046) at **AJM14**.

and, for those giving disclosure, the scope of such disclosure), which may extend to sensitive confidential business information. Potential class members would therefore need to be made aware of the potential for disclosure to be ordered, and the implications of this, including the uncertain and potentially onerous resource commitment this may entail, and that this may extend to certain sensitive commercial information. Based on my prior experience, I believe that this would be a significant disincentive for many class members.

b. Opting-in would also require class members to agree for their names to be disclosed to the Proposed Defendants. Again, based on my previous experience of organisations' concerns about their ongoing banking relationships, I understand this would weigh heavily on class members' minds when considering whether to opt in – being individually identified as suing a consortium of global banks would be a considerable disincentive to any action.

c. Another point that discourages claimants from opting in arises from the alternative funding structure that would be required for opt-in proceedings, as explained in Adrian Chopin's third witness statement. In particular, those opting-in would need to agree to adhere to funding arrangements obliging them to pay part of their share of any award of damages to cover funding fees and other unrecovered costs. Each opt-in claimant could, for example, have its damages deducted by 10 – 20% or more once unrecovered legal costs, legal success fees, ATE insurance premia, reimbursement of the Funder's outlay and payment of its fee have been deducted.

d. Further, it would be necessary for any opt-in claimant to execute a funding agreement with the Funder and possibly sign agreements confirming payment of other unrecoverable costs (i.e. ATE insurance premia and legal CFAs). Multiplied across a large number of potential opt-in clients, the administration of the funding and engagement agreements would be time consuming and burdensome.

24. Moreover, the smaller a class member's claim, the less likely it will be worth the time, expense and effort in joining a collective action for damages. In the present case, Mr. Ramirez's expert opinion is that many of the class members are likely to have an average claim value of approximately £11,000. In my experience, smaller organisations, and those with smaller claims,

would not find it worthwhile to commit to the implications of opting in, particularly where many of them might have a net recovery (after payment of costs) of around £10,000.[8]

25. As a result, I would expect participation of smaller businesses in an opt-in collective action to be extremely limited. This would be a highly undesirable outcome, and I consider it would be contrary to one of the key purposes of the collective proceedings regime, namely to enable those with smaller claims to obtain redress for harm suffered as a result of serious infringements of competition law. By way of contrast, in the FX opt-out class action in the United States District Court, Southern District of New York, thousands of small claims were submitted and paid out (including several thousand payments of $150 or less), which indicates that a potentially low settlement return did not deter class members with smaller claims from applying for settlement payments. I refer to this in more detail in Section C below.

26. By contrast, none of the above disincentives arise in the opt-out proceedings that Mr Evans proposes to bring. On the contrary, an opt-out procedure would remove the significant obstacle of encouraging a sufficient number of persons to sign up to a claim where its value to each claimant may be relatively low.

27. At paragraph 61(a) of the Joint CPO Response, the Proposed Defendants argue that if it is anticipated that class members would provide FX trading records at the distribution stage then there is no reason why they should not provide them earlier. Again, based on my earlier experiences I believe that potential class members would view this very differently. Whilst they would be slow to commit to the prospect of giving extensive disclosure during contested litigation, I do not believe they would have the same hesitations about retrieving trading records at the conclusion of proceedings that have been finally determined and where there has been an award of damages which is available for definite recovery.

28. Further, I would note for completeness that it is not necessarily the case that each class member would be required to provide trading records at the distribution stage. As noted in paragraph 145 of Mr Evans' Litigation Plan, he is keen to minimise the burden on class members and his current intention is to give class members the option to ascertain damages by reference to the Proposed Defendants' data, rather than providing their own data. This is similar to the distribution plan adopted in the US FX class action settlement, where class members have the option to choose whether to rely on their data or data provided by the defendant banks in those proceedings.[9] As noted in section C below, the vast majority of claims covered by the initial

[8] See section 3.1.2 of Ramirez 2.

[9] http://www.fxantitrustsettlement.com/docs/PlanofDistribution.pdf

distribution of the settlement are based on data provided by the defendant banks rather than the class members themselves. Based on this precedent, and based on my previous experience discussing the difficulties of retrieving transaction records with potential clients when we were contemplating group proceedings, I believe it is reasonable to assume that the majority of class members in the proposed proceedings would select this option as well. Accordingly, they would not be required to provide their own trading records at any stage of the proceedings.

Additional costs of opt-in proceedings

29. In addition to the practical barriers that arise for potential class members, I believe that opt-in proceedings would be considerably more expensive than opt-out proceedings.

30. Even if it were possible (contrary to my views set out above) to encourage a sufficiently large number of class members to opt in to Mr Evans proposed proceedings, I believe that the proceedings would be much more resource intensive and time consuming than opt-out proceedings.

31. First, I would expect much greater costs implementing an extensive on-boarding process for a substantial number of class members[10] at the outset of the proceedings:

    a. In view of the practical barriers I have discussed above, I would expect potential class members to be cautious about committing to the proceedings. In particular, and in line with our experience summarised in sub-paragraphs 17(b) – (d) above, many of the prospective class members are likely to require discussions with senior members of the Hausfeld team to understand their obligations before deciding whether to opt in.

    b. It would be necessary to assist potential class members with understanding their potential disclosure obligations, including helping them to prepare document preservation notices and assisting with disclosure searches.

    c. I would also expect it to be necessary to discuss the funding structure with many of the potential class members before they agree to commit to it.

    d. As Mr Chopin explains in his third witness statement, the Funder would seek to include in the funding terms the right to cease funding the claim if the aggregate claim value of the claims of class members that have signed up is not equal to a stipulated threshold level. This would increase the onboarding costs, because it would be necessary to

[10] Especially bearing in mind that the preliminary estimate of the size of the Proposed Classes is 42,015. See Mr Evans' collective proceedings claim form at paragraph 13.

process transaction data for class members at the point of opting in so that their share of any aggregate damages could be estimated, or at least to undertake preliminary analysis for this purpose.

32. Second, I believe that there would be greater ongoing costs throughout the proceedings in managing the claims for the opt-in class, as it would be necessary to budget for additional time engaging with individual class members at various stages, including on complex issues such as disclosure.

33. Third, it is unlikely that there would be any costs savings at the distribution stage. It is much more likely, in my view, that there would be additional costs at this stage to account for the greater level of engagement with class members throughout the proceedings.

Non-UK domiciled class members

34. At paragraph 40 of the Joint CPO Response, the Proposed Defendants argue that non-UK domiciled class members would "*in practice*" account for the majority of the class in terms of both class membership and volume of commerce. In support of this argument, they cite various statistics indicating that a large proportion of FX trading during the relevant period involved entities domiciled outside the UK.

35. Again, this does not reflect the reality of these proposed proceedings. The funding structure agreed with the Funder was premised on the aggregate damages attributable to the UK domiciled class members, as explained in Mr Chopin's third witness statement. Although Mr Evans and I hope that overseas domiciled class members will participate and we have and will continue to publicise the claim to them extensively (as explained in Mr Evans' second witness statement at paragraphs 68 - 75, for the reasons given above I believe it is inherently less likely that a substantial proportion of the class members in the proceedings will be overseas domiciled class members opting in, for the simple reason that any class member required to opt-in is less likely to participate).

<u>More appropriate cases for opt-in proceedings</u>

36. Although I do not believe that opt-in collective proceedings would be practicable in this case, I believe it would be appropriate for other types of cases. The example I would offer based on my personal experience is the marine hose cartel (in which Hausfeld acted for a large group of claimants) and I do so with reference to paragraph 6.39 the Competition Appeal Tribunal Guide to Proceedings 2015 (the "**Guide**"). According to the Guide, indicators that an opt-in approach could be both workable and in the interests of justice might include that:

a. The class is small. The potential class membership in the marine hose cartel case would have been relatively small (low hundreds) because it related to a specialist product which is produced on demand in relation to specific, large-scale infrastructure projects. Further, it would have been relatively homogenous, because only a limited range of organisations purchase marine hoses (mostly petroleum companies, the port industry, the oil industry and governments). This is to be contrasted with the proposed proceedings in the Evans Application, where the estimated size of the Proposed Classes numbers in the tens of thousands and comprises a variety of different types of funds and financial institutions, multinationals and other corporates, and high net worth individuals.

b. The loss suffered by each class member is high. The potential class membership in the marine hose cartel case would have had average individual claims of a high value (millions of pounds) because the cartel related to an expensive, specialised product, produced on demand according to the specific needs of customers. This is to be contrasted with the proposed proceedings in the Evans Application where the average claim value for financial institutions has been estimated to be £133,802 per class member and the average claim value for non-financial customers has been estimated to be £10,811 per class member.[11]

c. It is straightforward to identify and contact the class members. Owing to the contrasting size and scope of the potential class membership in the marine hose cartel case and the Proposed Classes in the proposed proceedings in the Evans Application, it is a much less straightforward process to identify and contact class members in these proceedings. I would add that the fact that the losses and, in turn, potential damages on offer for each class member in these proceedings is much lower than in the marine hose cartel case, meaning that it would be much harder to persuade them to opt in.

B. Funding structure for the Proposed Proceedings

37. I have read paragraphs 11 - 14 of Chopin 3 and paragraphs 82 - 92 of Evans 2 regarding the funding arrangements in place and agree, to the extent that they relate to matters within my knowledge, with those paragraphs.

38. I have also considered, and agree with, paragraphs 28 - 29 of Chopin 3 and paragraphs 93 - 98 of Evans 2 regarding maximising the amount and distribution of damages. I have worked with Mr Chopin on this and other cases for approximately 6 years, and his statement in paragraph 29 of Chopin 3 that his preferred approach is to leave management of the litigation to the client

[11] Section 3.1.2 of Ramirez 2.

and to the legal team is entirely consistent with my experience of working with him. In relation to the Proposed Collective Proceedings, whilst we will be updating the funder about litigation and this will include updates regarding settlement discussions, I would expect, as is my experience, both with Mr Chopin and more generally, the Funder to play a very limited role, if any, in settlement discussions.

39. In relation to undistributed damages, in conjunction with the Funder and Mr Evans, Hausfeld has prepared a document which sets out the possible sums that may be sought by Mr Evans out of undistributed damages in respect of his unrecovered costs **AJM16**. The scenarios consider various potential aggregate damages awards following judgment or settlement (calculated as different percentages of the estimated aggregate damages as stated at paragraph 274 of Mr Evans' Claim Form), together with various assumptions which are explained in more detail in the document. As has been stated in the document, these recovery scenarios are not reflective of my or Mr Evans' expectations as to the outcome of the litigation. Rather, they simply provide a range of possible outcomes to demonstrate the potential treatment of undistributed damages in different scenarios.

40. We have also chosen a range of scenarios in terms of the level of distribution of damages to class members by value of commerce, with separate worksheets assuming rates of distribution at 35%, 42.5% and 50%. This is within the range of potential 'take up' rates which the Funder has assumed for these proceedings (paragraph 12 of Chopin 3, with 35% distribution rate being equivalent to the estimated rate of distribution by value of commerce in the US FX class action (see paragraph 51 below).

41. There are three categories of costs which Mr Evans would seek to recover from undistributed damages: the Funder's fee and recovery of its capital outlay, deferred and contingent insurance premiums and legal success fees. I explain these further below:

    a. The Funder's fee is calculated in accordance with clause 9.3.2 of the LFA. In summary, the fee (which includes reimbursement of the Funder's outlay) is 2x the Funder's outlay plus an amount equal to the greater of the Funder's outlay or:

        i. 20% of aggregate damages up to £500,000,000; plus

        ii. 15% of aggregate damages thereafter up to £1,000,000,000; plus

        iii. 10% of aggregate damages thereafter up to £1,500,000,000; plus

        iv. 5% of aggregate damages thereafter up to £2,000,000,000.

b. The insurance premiums, as set out in the relevant worksheet of the document, are deferred and contingent and only payable out of undistributed damages.

c. Hausfeld is acting on a partial CFA whereby 50% of its fees are payable upfront and the remaining 50% deferred and contingent on success in the action, together with a 100% success fee in respect of the deferred and contingent portion of its base fees. The Counsel team are also acting on similar partial CFAs at varying rates, as set out in the relevant sheet of the document.

42. A deduction to these costs is applied under each scenarios to take account of costs recovered from the Proposed Defendants (it is assumed that 75% of recoverable costs are in fact recovered).

43. Under the judgment scenarios, it is assumed that the entire litigation budget is deployed; whereas under the settlement scenarios it is assumed that 50% of the budget is used.

44. The range of scenarios include the lowest level of aggregate damages recovery at which Mr Evans would seek to recover a sum that matches, or comes close to, the level of undistributed damages. By way of example, where it is assumed that 35% of damages are distributed to class members, this figure has been calculated to stand at less than 5% of the estimated aggregate damages on judgment and less than 3% in a settlement scenario. This demonstrates that Mr Evans' funding package only operates to cap the level of costs he would seek to recover from undistributed damages where the aggregate damages recovery is a very small share of the estimated value of the claims.

45. Finally, it can be noted that under many of the scenarios, there is a large residue of undistributed damages, even after payment of Mr Evans' costs, which in accordance with section 47C of the Competition Act 1998 would be available to be paid to a designated charity.

C. Update on similar FX actions in other jurisdictions

46. In Maton 1, at paragraphs 16 – 32, I identified and provided an overview of three other FX collective actions in the United States, Canada and Australia. I provide an update below on the current status of each of these proceedings.

US FX class action

47. In paragraphs 18-26 of Maton 1 I explained that Hausfeld's associate US firm, Hausfeld LLP, is co-lead Counsel in the ongoing US class action in respect of FX manipulation filed in the US District Court, Southern District of New York and provided summary information about that

action. Since that statement was prepared, my US colleagues have continued to update me about key public developments in those proceedings and notify me of all publicly available documents filed with the US court as soon as they become available (note that we have no access to confidential documents or information in the US litigation, only that which comes into the public domain).

48. As I explained in Maton 1, settlements have been reached with several of the defendant banks. I provide further details below of the status of the settlements.

49. Between 2015 and 2017, settlements were reached with all defendants apart from the Credit Suisse defendants. The gross settlement fund for those settlements is $2,310,275,000. In a memorandum of law in support of their motion for final approval of the settlements, Lead Counsel estimated that the total damages for the operative class period (1 December 2007 to 31 December 2013) were $5.4 to $7 billion, meaning that the settlement funds represented a recovery of 33-43% of damages[12]. In another memorandum, Lead Counsel estimated that the settlement class size was more than 200,000[13].

50. On 6 August 2018, the court made orders granting final approval of the settlements and the plan of distribution for the settlement funds[14]. A summary of the plan of distribution is provided at paragraph 138 of Mr Evans' Litigation Plan. By way of further summary:

    a. Each class member is required to submit a claim form so that the claim administrator can ascertain their relevant FX trades.

    b. The plan gave class members two options when submitting their claim forms. Under 'Option 1' (the Estimated Claim Option), class members could elect to have their payments calculated using transaction data provided by the settling defendants. Under Option 2 (the Documented Claim Option), class members' payments would be calculated using transaction data provided by the class member submitting the claim form.

    c. The claim administrator calculates the gross volume of each claimant's relevant FX transactions and makes various deductions to take account of various factors such as the

[12] Class Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Fifteen Settlement Agreements and Plan of Distribution, filed 12 January 2018, at page 27. A copy is available on the FX antitrust settlement website here.

[13] Reply Memorandum of law in support of plaintiffs' motion for final approval of fifteen settlement agreements and plan of distribution, filed 23 April 2018. Available on the FX antitrust settlement website here.

[14] Copies of each of these orders are available on the FX antitrust settlement website here.

type of FX instrument and the type of currency pair traded. This yields the claimant's Eligible Participation Amount, or EPA.

d. The plan specifies three categories of payments for class members submitting claim forms under either Option 1 or Option 2:

   i. class members with compensation of $15 or less are offered a *de minimis* payment of $15;

   ii. class members with compensation of $150 or less (but more than $15) are offered an Automatic Payment of $150; and

   iii. all other class members are offered a *Pro Rata* Share Payment.

e. The Plan of Distribution sets out a formula for calculating payments to class members falling within the *Pro Rata* Share Payment category. This provides that each relevant class member receives a share of the net settlement fund (i.e. the settlement fund less payment of fees and expenses) after the de minimis and automatic payments are deducted. The share is calculated by reference to the claimant's share of the total volume of commerce (as adjusted). This is described as the 'eligible participation amount' or EPA. The formula is as follows:

$$\frac{Claimant's\ EPA}{Total\ EPA}\ (Net\ Settlement\ Fund - De\ Minimis\ Payments - Automatic\ Payments)$$

Where "Total EPA" excludes the EPA of Claimants falling within the De Minimis and Automatic Payment categories.

f. Accordingly, the plan provides that the entire settlement fund (after deduction of fees and expenses) is distributed amongst each of the class members that submit eligible claims and is divided among them based on their share of the total volume of commerce. This means that class members with eligible claims might be paid a sum out of the settlement fund that is greater than their estimated damages, depending on the ratio of other eligible claims.

51. The deadline for class members to file Claim Forms in respect of the settlement funds was 16 May 2018. In a letter to the Court dated 11 July 2018, Lead Counsel reported that approximately 60,000 class members had submitted claims forms before the deadline and estimated that, based on available data from claims received, the participation rate of class members, measured by claim volume, was between 32%-35% **AJM17**.

52. On 1 March 2019, Lead Counsel filed a motion for an order approving an initial distribution of the settlement fund to class members. In a declaration filed in support of the motion, Shannon Casey of Epiq (Director of Client Services, Epiq Class Action and Claims Solutions, Inc, the claim administrators) confirmed that 88,261 Claim Forms had been submitted and estimated that, of these, there would be approximately 53,576 authorised claims that might receive a payment[15]. This represents approximately 27% of the estimated total class size of 200,000.

53. The Court made an order approving an initial distribution of the settlement fund on 8 March 2019. The total amount paid under the initial distribution was $54,006,248.60. In her Declaration, Ms Casey provided details of the initial distribution:

a. The initial distribution related to 26,937 claim forms, which represent approximately 50% of the total number of claim forms that Epiq expected to be authorised (53,576).

b. Of the claims covered by the initial distribution, 23,019 were submitted under Option 1 (the Estimated Claim Option) and 3,918 were submitted under Option 2 (the Documented Claim Option). The breakdown of payments, according to the three categories of payment, is as follows:

	Option 1	**Option 2**	**Total**
de minimis	9,300	2,309	**11,609**
Automatic Payment	6,519	1,609	**8,128**
Pro rata	7,200	-	**7,200**
Total	**23,019**	**3,918**	**26,937**

c. Accordingly, the sum of the de minimis payments was $174,135 and the sum of the Automatic Payments was $1,219,200.

d. The sum of the payments to the 7,200 pro rata claimants was $52,612,913.60. This represents 65% of the payment attributed to these claimants, as the payments to pro rata claimants were subject to a 35% holdback in order to create a reserve for potential fluctuations in the participation rate by volume and amount of the settlement fund. Whilst the amounts paid to each claimant are confidential, it can be noted that the mean amount per pro rata claimant is $7,307.35. Assuming that this sum is reflective of the amounts received by the majority of the pro rata claimants covered by the initial distribution, and assuming the remaining 35% is paid to these claimants, then each pro rata claimant covered by the initial distribution may be entitled to $11,242.08 on average.

[15] Declaration of Shannon Casey in Support of Motion for Initial Distribution, filed 1 March 2019. Available on the FX antitrust settlement website here.

54. The FX antitrust settlement website does not currently provide a timeline for future distributions of the settlement fund.

55. As noted above, the Credit Suisse defendants have not settled the action and the claims are continuing against them. On 3 September 2019, the court made an order certifying a litigation class with respect to two issues: (1) whether there is a conspiracy to widen spreads in the spot market; and (2) whether the Credit Suisse Defendants participated in the conspiracy. The court subsequently made an order approving the form and manner of the certified litigation class on 19 November 2020[16]. The deadline to opt out of the litigation class was 17 February 2021.

56. In paragraphs 25-26 of Maton 1, I explained that to safeguard confidential documents and information provided by the banks to the plaintiffs in the US FX class action, a formal information barrier was put in place between the Hausfeld US team working on the US FX Action and the Hausfeld team working on potential European claims (which I have described in further detail in Section A of this witness statement), providing that no employees or members of Hausfeld & Co. LLP or Hausfeld LLP other than the members of the Hausfeld US team working on the US FX Action had access to or sight of the US confidential materials.

57. During the first CMC in these proceedings (which took place on 13 February 2020), the Tribunal made orders providing for a confidentiality ring to be established and for the exchange of documents between these proceedings and those of the O'Higgins PCR. In advance of the disclosure of any documents or information pursuant to these orders, we decided to update the information barrier to provide that no member of the Hausfeld UK team working on these proceedings is permitted to use any confidential materials received either pursuant to the confidentiality ring or subject to Rule 102 of the Tribunal's Rules for any purpose other than the proceedings and shall not share or discuss the UK confidential materials with the Hausfeld US team.

Indirect US FX class action

58. I am aware that there was a recent settlement of a separate FX class action in November 2020, which was filed in the United States District Court, Southern District of New York in 2017 (No. 17-cv-3139-LGS). Various documents relating to the action (including copies of the plaintiffs' Second Consolidated Complaint, approvals of settlements and the plan of allocation) are

[16] Order approving the form and manner of notice of the certified litigation class, filed 19 November 2020. Available on the FX antitrust settlement website here.

publicly available on a dedicated website for the action, www.fxindirectantitrustsettlement.com.

59. The action was brought on behalf of indirect FX market participants against various banking entities, including the Proposed Defendants in the Evans Application together with Bank of America, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, Morgan Stanley, Société Générale and Standard Chartered. The action alleged that the defendants conspired to fix FX instrument prices between 2007 and 2013s and that the effect of these communications was that retail foreign exchange dealers ("**RFEDs**") would have been overcharged when purchasing FX instruments from the Defendants for resale to their retail FX customers[17] and passed on the full amount of the Defendants' collusive spread increase to their retail customers, in the form of increased retail bid-ask spreads[18].

60. The proposed class definitions (which were divided by state) were parasitic on the settlement classes in the direct FX class action, as they were limited to relevant transactions with members of those settlement classes where the settlement class member entered into a relevant transaction with one of the defendants or co-conspirator. For example, the proposed class definition for class members domiciled in New York was as follows:

"All persons and entities who, between December 1, 2007 and December 31, 2013 (inclusive) (the "Class Period"), indirectly purchased an FX Instrument from a Defendant or co-conspirator in New York and/or while domiciled in New York, by entering into an FX Instrument with a member of the Direct Settlement Class, where the Direct Settlement Class member entered into the FX Instrument directly with a Defendant or co-conspirator."[19]

61. On 19 November 2020, the Court granted preliminary approval of settlements totalling $23,630,000[20]. I understand from a declaration by Brian T. Fitzpatrick (an academic instructed to assess the reasonableness of the attorneys' requested legal fees) that the settlement sum represented approximately 3-13% of the total amount claimed, which Mr Fitzpatrick stated was "*admittedly modest" but "looks much better in light of the risks of this litigation*[21]". The website for the action states that the deadline to claim in respect of settlement funds was Friday, 19

[17] Second Consolidated Class Complaint, paragraph 3. A copy of this document can be accessed here.
[18] Declaration of Janet S. Netz, PH.D. A copy of this document can be accessed here.
[19] Second Consolidated Class Complaint, paragraph 40. A copy of this document can be accessed here.
[20] Final Judgment, Order of Dismissal with Prejudice, and Order Granting Motion for Final Approval of Class Settlements. A copy of this document can be accessed here.
[21] Declaration of Brian T. Fitzpatrick, paragraph 25. A copy of this document can be accessed here.

March 2021. As of the date of this witness statement, it does not provide any information as to the status or timing of payments to settlement class members.

Canadian FX Class Action

62. At paragraphs 27-29 of Maton 1, I summarised the ongoing Canadian FX class action and reported that settlements had been reached with several of the defendant banks. Following those settlements:

    a. The claims proceeded against the four remaining defendant banks, Bank of Montreal (**BMO**), Credit Suisse, Deutsche Bank, Royal Bank of Canada and Toronto Dominion Bank. After a contested certification hearing, the Court granted the plaintiffs' certification motion on 14 April 2020.

    b. Subequently, the plaintiffs settled with one of the remaining defendants, BMO. Pursuant to the settlement, BMO agreed to pay a settlement amount of $250,000, to be held for the benefit of the settlement class members. The settlement was approved by the Court on 16 July 2020.

63. To date, settlements totalling $110,102,206 (CAD) have been approved in the Canadian action. The dealine for class members to file claims relating to the settlements was 15 January 2020.

64. A summary of the Canadian distribution protocol for the settlement funds is provided at paragraph 140 of Mr Evans' Litigation Plan. By way of update, on 20 November 2020 the plaintiffs filed a motion for amendments to the distribution protocol, which was approved by the Court in December 2020. The amendments to the distribution protocol were explained in affidavits by David Sterns of Sotos LLP (one of four firms acting together as class counsel) and Amanda Sternberg (of Epiq Class Action & Claims Solucions, Inc., the claim administrators) and were as follows:

    a. The settlement proceeds are allocated into two pools: direct claimants (class members who entered into FX transactions directly) and indirect claimants (who entered into FX transactions via purchases of various funds that entered into FX transactions)[22]. The distribution protocol allocates 20% of the settlement fund net proceeds to indirect claimants. In her affidavit, Ms Steinberg noted that there were approximately 600 indirect claimants and that, based on the total anticipated payouts to indirect claimants,

[22] Affidavit of David Sterns, paragraph 7.

the majority of the funds allocated to indirect claimants would not be claimed[23]. Accordingly, the distribution protocol has been amended so that, following distribution to indirect claimants the balance of the indirect claims fund will be transferred to the direct claims fund.

b. Mr Sterns explained that the distribution protocol required detailed documentation to be gathered and submitted by direct claimants in support of their claims. Due to large transactional volumes submitted by many direct claimants, including large public sector pension funds, some direct claimants' pro rata share was expected to be less than $1,000. Given the time and effort required by direct claimants to prepare valid claims, including gathering and submitting detailed documentation, the minimum payment to direct claimants was increased to $1,000[24].

c. The distribution protocol was amended to remove the claim administrator's requirement to consider compensation received by class members in the US FX class action prior to determining payments to claimants.

65. Ms Sternberg noted that, in addition to the approximately 600 indirect claimants, Epiq had received 2,779 potential direct claims as of 11 November 2020. Ms Sternberg also noted that the largest direct claims by volume included a number of public sector pension funds, and also received claims from Canadian corporations and private sector pension funds[25].

66. The dedicated website for the action (www.canadianfxnationalclassaction.ca) does not currently provide a timeline for distributions of the settlement fund. However, in a decision dated 26 November 2020 granting a motion for counsel fee approval, it was stated that "*[t]he process for distribution of the settlement funds to Canadian Class Members is approaching completion*[26]." Further, in Ms Sternberg's affidavit she stated that Epiq estimated that distribution would occur around August 2021[27].

67. As with the US FX Class Action, Hausfeld will continue to monitor develoments in the Canadian FX class action. We are assisted in this regard through our relationship with Siskinds LLP, which is one of the four Class Counsel firms in the Canadian action. Through our contacts at Siskinds, we are kept informed about key public developments in the Canadian action.

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[23] Affidavit of Amanda Sternberg, paragraph 31.
[24] Affidavit of David Sterns, paragraphs 16-18.
[25] Affidavit of Amanda Sternberg, paragraphs 31-21.
[26] The judgment of the Ontario Superior Court of Justice dated 26 November 2020 is available here.
[27] Affidavit of Amanda Sternberg, paragraph 48.

Australian FX class action

68. Since the filing of Maton 1, the applicant sought leave to file and serve an amended originating application and an amended statement of claim, which was opposed by all of the respondents. Per Beach J's Order of 1 April 2020, the following filing dates were directed: (a) the applicant to file and serve its application for leave by 30 April 2020; (b) the respondents to file and serve any outlines of submissions and evidence on which they intend to rely by 4 June 2020; and (c) the applicant to file and serve any outlines of submissions and evidence on which they intend to rely by 26 June 2020[28].

69. Following an interlocutory hearing on 8 and 9 October 2020 and an administrative hearing on 28 January 2021, Beach J handed down judgment on 29 January 2021 refusing the application for leave to file and serve an amended originating application and an amended statement of claim[29]. Beach J agreed with the respondents that, while discovery of the respondents' transaction data and third party material will be sought to perform expert analysis and modelling in due course, the applicant should properly articulate at least the structural elements of its causation and loss and damage case.

70. On 26 February 2021, Beach J ordered the applicant to serve any proposed amended originating application and any proposed amended statement of claim by 30 April 2021[30]. A further case management conference has been listed for 17 May 2021.[31]

Allianz Global Investors GmbH and others v Barclays Bank Plc and others

71. In the Joint Response, the Proposed Defendants refer to the Allianz proceedings several times (paragraphs 35, 49, 73 and footnote 252), including in support of their arguments that there are good reasons to believe that class members claims would be brought as individual claims. The Joint Response also refers to the recent judgment of Teare J on pass-on arguments raised in those proceedings in connection with arguments made about '*possible pass-on routes*' in the proposed proceedings[32].

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28 Order of Justice Beach made 1 April 2020, available here.
29 *J Wisbey & Associates Pty Ltd v UBS AG* [2021] FCA 36, available here.
30 Order of Justice Beach made 26 February 2021, available here.
31 Order of Justice Beach made 26 February 2021, available here.
32 Proposed Defendants' Joint Response, paragraph 72.

72. I am aware that the Allianz Claimants sought leave to appeal Teare J's judgment, which was refused[33], and that they have filed an application for permission to appeal with the Court of Appeal.

D. Relevant experience of Mr Evans' legal advisers

73. As I noted in paragraph 38 of Maton 1, paragraph 6.32 of the Guide indicates that where there is more than one applicant seeking approval to act as class representative in respect of the same or overlapping claims, the Tribunal's assessment as to who would be the most suitable class representative is likely to include a consideration of the experience of the lawyers of the competing class representatives.

74. To further assist the Tribunal in this regard, I exhibit an updated Hausfeld firm profile setting out the firm's relevant experience **AJM15**. I also summarise below some of the key collective and group actions that Hausfeld's London team has been involved with since the Evans Application was filed.

75. By way of summary, Hausfeld's London team is involved in the following collective and group actions:

    a. Six collective actions in the UK, including three cases in the Tribunal (Gutmann, Qualcomm and FX) and three representative actions in the High Court (Marriott, YouTube, Facebook).

    b. Several group actions in the English courts, including Trucks, claims arising from the Mercedes emissions scandal and claims against British Gymnastics.

    c. Two group proceedings in the Spanish Courts (Spanish milk and Spanish deposits).

76. Hausfeld's London office has one of the largest teams of lawyers in the UK working on collective and group actions. Its 30 lawyer team working in this area comprises 12 partners, 3 counsel and 17 associates.

<u>Collective actions (Competition Act 1998, s.47B)</u>

Qualcomm

77. Hausfeld was instructed by the Consumers' Association (known as Which?) and filed an opt-out collective claim against Qualcomm, Inc. for over £480 million, on behalf of a class of around 29 million UK consumers.

[33] Per Teare J's Order of 18 March 2021.

78. Which? is alleging that Qualcomm abuses its dominance in the markets for smartphone chipsets and standard essential patents, the result of which is that Qualcomm is able to overcharge smartphone manufacturers like Apple and Samsung for its technology. Which? says that those extra costs, which are calculated as a percentage of the price of phone handsets, have been passed on to UK purchasers of Apple and Samsung smartphones. Which?'s claim will automatically include claims for compensation for consumers that purchased particular models of Apple or Samsung smartphones, either direct from the manufacturer, from a network operator or smartphone retailer, since 1 October 2015.

79. Hausfeld has pioneered the first claim utilising the opt-out regime introduced by the Consumer Rights Act 2015.

Merricks Intervention

80. Hausfeld was also involved in the landmark Merricks v Mastercard Supreme Court Case. Hausfeld represented Which? and intervened in support of the Court of Appeal's interpretation of the test to be applied at the certification stage of proceedings and to provide wider context on the importance of the decision in ensuring that the new regime is able to operate effectively. The Supreme Court agreed with Hausfeld's interpretation in its judgement in December 2020. Hausfeld has been involved in the development of the collective regime since its inception.

<u>Representative actions (CPR 19.6)</u>

Facebook

81. On 31 December 2020, Hausfeld (acting for Peter Jukes as representative claimant), filed a claim in the High Court against Facebook Inc and Facebook Ireland Limited on behalf of a class of individuals in England and Wales who suffered a loss of control over their personal data when it was accessed, without their knowledge or consent, by a third party application operating on the Facebook platform called 'This Is Your Digital Life' in the period November 2013 to May 2015 (and, as the UK Information Commissioner's Office found, placed at serious risk of being used in connection with political campaigning).

82. The claim is brought pursuant to CPR rule 19.6 as a representative action on behalf of around a million or more affected Facebook 'friends' of users of the 'This Is Your Digital Life' application in England and Wales. The case has been widely reported in the global press including by the BBC, The Times, The Irish Times, Daily Mail, The Sun, Telegraph and Thomson Reuters.

YouTube

83. In January 2020, Hausfeld, acting for Duncan McCann, issued filed a multi-billion-pound claim in the High Court on behalf of up to 5 million British children aged under 13 and their parents, alleging that YouTube's methods of targeting underage audiences constitute major violations

of the UK Data Protection Act and the EU's General Data Protection Regulation (GDPR). The claim was served on the defendant, Google Ireland Limited, on 29 July 2020.

84. Mr McCann has agreed with the defendant to wait until a judgment from the Supreme Court in a different representative claim also concerning data protection and privacy law, *Lloyd v Google*, is handed down before this claim progresses. The *Lloyd v Google* judgment is expected to clarify how representative claims of this kind should be brought in England and Wales. We expect the *Lloyd v Google* judgment will be published in mid-2021 and following that judgment Mr McCann's claim will proceed.

Marriott

85. On 18 August 2020, Hausfeld (acting for Martin Bryant as representative claimant), filed a claim in the High Court against Marriott International Inc (and five other Marriott International group entity defendants) on behalf of a class of individuals in England and Wales affected by a major data breach involving the Starwood Hotel Group's guest reservation database. Marriott revealed in September 2018 that personal data including credit card details, passport numbers and the dates of birth of more than 300 million people had been stolen in a hack of the guest reservation database.

86. The claim is brought pursuant to CPR rule 19.6 as a representative action on behalf of several million affected guests based in England and Wales. The case has been widely reported in the global press including The Times, The New York Times, The Financial Times, The Guardian, Daily Mail, Bloomberg and Thomson Reuters.

Other group actions

Mercedes Emissions scandal

87. Hausfeld acts for consumers and businesses in claims against Mercedes arising from findings by the German Transport Authority that the carmaker had installed devices in certain diesel vehicles that cheat emissions tests. Mercedes' parent company, Daimler, was fined €870 million by German prosecutors in 2019 relating to the emissions scandal.

88. There is a dedicated website for the action (https://www.mercedesemissionsclaim.co.uk) and it is expected that the claims will be pursued under a GLO.

British Gymnastics

89. Hausfeld represents 31 former British gymnasts, including 3 Olympians, and have sent a letter of claim to British Gymnastics, the sport's governing body, outlining allegations of systemic physical and psychological abuse, perpetrated by coaches upon children as young as six.

Spanish Milk

90. Hausfeld has been working alongside Spanish law firms following a decision by the National Commission on Markets and Competition (CNMC) in Spain which fined ten of the largest Spanish and international dairy companies and associations, including Danone and Nestlé, €80 million for their involvement in this long-running cartel. The CNMC recognised that the cartelists manipulated milk prices by approximately 10%-12%. Hausfeld has been engaged to assist with these proceedings in light of its expertise in the field of competition damages claims, a discipline still in its relative infancy in Spain.

Spanish Deposits

91. Hausfeld acts for a group of British and Irish consumers who lost deposits paid on Spanish holiday homes as a result of the Spanish property crash in 2008. More than 130,000 British residents lost the deposits for their off-plan holiday apartments, at an estimated average loss of €40,000 per family. In 2015, a Spanish Supreme Court decision ruled that developers' banks and insurance companies must repay any lost deposits they had not properly safeguarded. Hausfeld is working with a Spanish law firm which is pursuing claims in the Spanish courts for these consumers.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

Date: **23 April 2021**