

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

GREGORY BOUTCHARD and SYNOVA  
ASSET MANAGEMENT, LLC, individually  
and on behalf of all others similarly situated,

Plaintiffs,

v.

KAMALDEEP GANDHI, YUCHUN MAO  
a/k/a BRUCE MAO, KRISHNA MOHAN,  
TOWER RESEARCH CAPITAL LLC, and  
JOHN DOE Nos. 1 – 5,

Defendants.

Case No. 1:18-cv-07041

Hon. John J. Tharp, Jr.

**DECLARATION OF VINCENT BRIGANTI, ESQ. IN SUPPORT OF CLASS  
PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT WITH TOWER RESEARCH CAPITAL LLC**

I, Vincent Briganti, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am Chairman and a shareholder of the law firm Lowey Dannenberg, P.C. (“Lowey” or “Lead Counsel”). I submit this Declaration in connection with Class Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement Tower Research Capital LLC (“Tower”).

2. Attached as Exhibit 1 is a true and correct copy of the Stipulation and Agreement of Settlement with Tower dated January 22, 2021 (“Settlement Agreement”). Unless otherwise noted, capitalized terms not defined herein have the same meaning as defined in Settlement Agreement.

3. Attached as Exhibit 2 is a true and correct copy of the Affidavit of Linda Young, dated January 29, 2021.

4. Attached hereto as Exhibit 3 is a true and correct copy of the proposed mailed notice.

5. Attached hereto as Exhibit 4 is a true and correct copy of the proposed publication notice.

6. Attached hereto as Exhibit 5 is a true and correct copy of the Proof of Claim and Release form.

7. Attached hereto as Exhibit 6 is a true and correct copy of the proposed Distribution Plan.

8. Attached hereto as Exhibit 7 is a true and correct copy of Lowey Dannenberg’s firm resume.

9. **Procedural History.** Plaintiff Gregory Boutchard (“Bouchard”) filed the initial complaint against Defendants on October 19, 2018 alleging that Defendants violated the Commodity Exchange Act, 7 U.S.C. §§ 1 et. seq. (“CEA”), and common law by intentionally manipulating the prices of E-Mini Index Futures and Options on E-Mini Index Futures. ECF

No. 1.<sup>1</sup> Boutchard filed the First Amended Complaint on December 21, 2018, and the Second Amended Complaint on March 8, 2019. ECF Nos. 26, 45.

10. On April 8, 2019, Defendants Krishna Mohan (“Mohan”) and Tower each moved to compel arbitration and to dismiss the Second Amended Complaint. ECF Nos. 51-52, 56-57. Defendant Kamaldeep Gandhi (“Gandhi”) joined Mohan’s motion on April 12, 2019. ECF Nos. 63-64, 66.

11. On May 14, 2019, Plaintiffs filed an unopposed motion to modify the briefing schedule, which the Court granted on May 15, 2019. ECF Nos. 76, 80.

12. Plaintiffs filed a third amended class action complaint (“TAC”) on June 3, 2019, adding Synova Asset Management, LLC as a plaintiff. ECF No. 82.

13. On July 1, 2019, Mohan and Tower again each moved to compel arbitration and to dismiss the TAC. ECF Nos. 86-88. Gandhi once again joined Mohan’s motion. ECF Nos. 89, 91. On August 1, 2019, Class Plaintiffs filed their opposition to Defendants’ motions to compel arbitration and to dismiss the Third Amended Complaint. ECF No. 92. On August 16, 2019, Tower and Mohan filed their replies in response to Class Plaintiffs’ opposition to their motions. ECF No. 93-94. Gandhi joined in Mohan’s reply. ECF No. 95-96.

14. On November 6, 2019 Tower entered into a Deferred Prosecution Agreement with the U.S. Department of Justice (“DOJ”) to resolve charges of Commodities Fraud, and agreed to pay, among other fines, \$32 million into a fund administered by the DOJ constituting the Victims’ Compensation Amount (“VCA”). *See* Deferred Prosecution Agreement, *U.S.A. v. Tower Research Capital LLC*, No. 19-cr-819 (S.D. Tex. Nov. 6, 2019) [“DPA”]; *see also* Criminal Information, *U.S.A. v. Tower Research Capital LLC*, No. 19-cr-819 (S.D. Tex. Nov. 6, 2019).

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<sup>1</sup> Unless otherwise noted, all docket citations are to the docket in this Action.

15. After obtaining leave from the Court, Class Plaintiffs filed a sur-reply to the motion to dismiss on November 26, 2019, and Tower responded on December 17, 2019. ECF Nos. 97-101. Defendants' motion to dismiss remains pending.

16. **Settlement Negotiations.** On November 19, 2019 Class Plaintiffs and Tower began discussing the possibility of settlement. On November 22, 2019, the Parties agreed to engage Jed Melnick of JAMS as a mediator to assist with reaching a resolution.

17. On January 6, 2020, the Parties exchanged mediation statements. On January 13, 2020, the Parties participated in a day-long mediation session with Mr. Melnick that included robust presentations of the Parties' respective litigations risks – including the existence of the government settlements – and presentations of each Party's damages analysis, followed by questions and critiques from the opposing Party. After more than 10 hours, the in-person mediation session concluded with the Parties unable to reach a settlement.

18. Mr. Melnick continued mediating with the Parties following the in-person mediation session over the course of the next three months. On April 14, Mr. Melnick presented the Parties with a mediator's proposal for a \$15,000,000 settlement with confirmatory discovery overseen by him. Each Party accepted the proposal.

19. On April 20, 2020, Class Plaintiffs and Tower reported to the Court that they had reached an agreement in principle to resolve this Action and requested that the Court stay the case for 90 days, which the Court granted. ECF No. 107. After weeks of additional negotiations, on July 27, 2020, Class Plaintiffs and Tower executed a binding settlement term sheet. As part of the term sheet, Tower agreed to provide confirmatory discovery on or before August 26, 2020 to allow Class Plaintiffs to confirm that the proposed settlement amount was reasonably supported. On August 14, 2020, the Parties filed a joint status report to the Court in which they asked the Court to stay all proceedings in this action for 75 days or until October 28, 2020 to allow Class Plaintiffs to perform

confirmatory discovery. ECF No. 112. The Parties later jointly sought, and the Court granted extensions of the stay until January 29, 2021 to provide the Parties time to finalize a formal Settlement Agreement and prepare this motion for preliminary approval of the Settlement under FED. R. CIV. P. 23. ECF Nos. 114-21. The Parties executed the Settlement Agreement on January 22, 2021.

20. Negotiations leading to the Settlement were entirely non-collusive and strictly arm's length.

21. *Well-Informed.* Before reaching the Settlement, Class Plaintiffs and Lowey were well-informed regarding the strengths and weaknesses of Class Plaintiffs' claims. Lowey had the benefit of information from its investigations and analysis, regulatory investigations and settlements involving Defendants, and Lowey's previous experience litigating similar alleged financial market manipulations in other cases.

22. After reaching a settlement in principle, Lowey negotiated an opportunity to seek confirmatory discovery and retained Class Plaintiffs' ability to terminate the Settlement if Lowey's analysis of the confirmatory discovery materials uncovered any material misrepresentation. When the Settlement was executed on January 22, 2021, Lead Counsel and Class Plaintiffs had access to sufficient information to allow them to conclude that the proposed Settlement was fair, reasonable, and adequate.

23. Specifically, the confirmatory discovery allowed Lowey access to over 150,000 documents produced by Tower, including over 100,000 chat and email messages and trading data for the entirety of the relevant time period. Lowey used the emails and chats to evaluate Tower's disclosures regarding the events revealed in the government settlements and the scope of the alleged misconduct.

24. Additionally, the produced trade data allowed Lowey to work with economic experts to examine the number and impact of the alleged manipulative events on the relevant markets.

25. *Arm's-Length Negotiations by Experienced Counsel.* At all times while negotiating and executing the proposed Settlement with Tower, my firm and I were experienced in prosecuting federal class action claims under the Commodity Exchange Act, 7 U.S.C. §§ 1 *et seq.* among other laws. *See* Exhibit 7.

26. Tower was also well-represented by one of the leading law firms in the United States. The attorneys negotiating on Tower's behalf have years of experience and are some of the leading defense practitioners in commercial, Commodity Exchange Act, and class action litigation cases.

27. The Settlement was not the product of collusion. Before any financial numbers were discussed in the settlement negotiations with Tower and before any demand or counter-offer was ever made, I was well informed about the legal risks, factual uncertainties, potential damages, and other aspects of the strengths and weaknesses of the Class Plaintiffs' claims against each Defendant.

28. The Settlement involves a structure and terms that are common in class action settlements, including a confidential supplemental agreement that provides Tower with a qualified right to terminate the Settlement in the event that the volume of E-Mini Index Futures or Options on E-Mini Index Futures transacted by Class Members who timely exercise their right to request exclusion from the Settlement Class exceeds a certain percentage.

29. The consideration that Tower has agreed to pay is within the range of that which may be found to be fair, reasonable, and adequate at final approval. The Settlement may also serve to enhance the recovery for Class Members to the extent they are also eligible to receive proceeds from the VCA administered by the DOJ.

30. Lowey has strong reason to believe that there are at least hundreds of geographically dispersed persons and entities that fall within the Settlement Class definition. This belief is based on trading volume data and expert analysis.

31. **Distribution Plan.** Lowey consulted with industry and economic consultants to develop the proposed Distribution Plan. The Net Settlement Fund will be allocated on a *pro rata* basis according to an estimate of the impact of Defendants' spoofing on market transactions. *See* Exhibit 6. The Distribution Plan calculates an "Instrument Amount" for each futures and option transaction. The Instrument Amount is determined by multiplying together three metrics: the "Volume Multiplier;" "Product Multiplier;" and "Futures Contract Specification Multiplier."

32. The Volume Multiplier reflects the notional value of each transaction, which is the product of the number of contracts purchased or sold, the futures contract price denominated in index points, and the "Notional Dollar Value per Index Point," or the dollar value for each index point. The Product Multiplier assigns a multiplier value depending on whether the transaction involves a futures contract, call option, or put option. Finally, the Futures Contract Specification Multiplier accounts for the impact of Defendants' spoofing on E-Mini Index Futures contracts.

33. The Instrument Amounts for each transaction will be added together and represent the claimant's Transaction Claim Amount. Under the Distribution Plan, the Net Settlement Fund will be allocated *pro rata* based on the Transaction Claim Amount.

34. **Notice Plan.** The proposed settlement administrator, A.B. Data, Ltd., developed the proposed Notice Plan in coordination with Lead Counsel. *See* Exhibits 2-5. A.B. Data has extensive experience in class action administration and designed notice plans that have been approved in numerous complex class actions, including most recently *In re GSE Bonds Antitrust Litig.*, No. 19-1704 (JSR) (S.D.N.Y.); *Laydon v. Mizuho Bank, Ltd., et al.*, No. 12-cv-3419 (GBD) (S.D.N.Y.) and

