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IRA A. SCHOCHET and JAVIER BLEICHMAR, declare as follows pursuant to 28 U.S.C. §1746:

1. We, Ira A. Schochet, of the law firm of Labaton Sucharow LLP (“Labaton Sucharow”) and Javier Bleichmar of the law firm of Bleichmar Fonti Tountas & Auld LLP (“BFTA” and together with Labaton Sucharow, “Class Counsel”) submit this joint declaration in support of (a) Class Representatives’ Motion for Approval of Class Action Settlement and Plan of Allocation, and (b) Class Counsel’s Motion for an Award of Attorneys’ Fees and Payment of Expenses (“Joint Declaration”).<sup>1</sup> We are partners in our respective law firms, are familiar with the intricacies of the proceedings in this Action, and have personal knowledge of the matters set forth herein based upon our close supervision and active participation in the Action. If called as witnesses, we would testify competently thereto.

2. The purpose of this declaration is to set forth the background of the Action, its procedural history, and the negotiations that led to the proposed Settlement with Weatherford International Ltd. (“Weatherford” or the “Company”) (n/k/a Weatherford International plc) and Andrew P. Becnel and Bernard J. Duroc-Danner (collectively, the “Individual Defendants” and, together, with Weatherford, “Defendants”). This declaration thus provides the bases for the Court’s consideration of whether the (i) Settlement, (ii) Plan of Allocation, and (iii) application for attorneys’ fees and expenses, including reimbursement of Class Representatives’ costs pursuant to the PSLRA, are fair, reasonable, and adequate.

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<sup>1</sup> All capitalized terms not otherwise defined herein have the same meaning as set forth in the Stipulation and Agreement of Settlement, dated June 30, 2015 (the “Stipulation”) (ECF No. 191-1).

Citations to “Ex. \_\_\_” herein refer to exhibits to this declaration. For clarity, exhibits that themselves have attached exhibits will be referenced as “Ex. \_\_-\_\_.” The first numerical reference refers to the designation of the entire exhibit attached hereto and the second reference refers to the exhibit designation within the exhibit itself.

## I. PRELIMINARY STATEMENT

3. After more than three years of vigorously contested litigation, Class Representatives and Class Counsel have obtained an outstanding Settlement for the Class of \$120,000,000 in cash. The Settlement recovers a significant portion of estimated damages, which, based on expert analysis, ranged from approximately \$850 million (under the Class Representatives' best-case scenario in which a jury credited all of the claims) to \$210 million (under a less favorable scenario in which a jury reached a verdict in favor of the Class Representatives but credited only the narrowest component of the Class Representatives' claims). Accordingly, the Settlement of \$120 million represents an excellent recovery of approximately 14.1% to 57% of the Class's estimated damages, respectively. *See* Section VI.A.1., *infra*.

4. This first-rate recovery is a result of the tenacity and litigation skills of the Class Representatives and Class Counsel, who faced numerous obstacles that could have resulted in the dismissal of the claims at various stages of the case. The Parties reached settlement only after the Class Representatives: (a) overcame Defendants' motion to dismiss; (b) secured class certification; (c) issued class notice; (d) completed fact discovery, which required Class Counsel to (i) conduct 22 depositions, including of both Individual Defendants and all of the key witnesses who we expected would be called at trial, and (ii) review and analyze more than eight million pages of documents produced by Defendants and numerous third-parties, including Weatherford's auditors and lenders; and (f) engaged in extensive expert discovery including, among other things, submitting four expert reports, analyzing five expert reports submitted by Defendants, and supervising the drafting of three expert rebuttal reports, which were due on the day the Parties reached a settlement. The Settlement occurred just one month before the Parties were required to submit their pretrial order and file their motions for summary judgment.

5. We respectfully submit that the risks faced by the Class in this instance should not be minimized and, in fact, exceeded those presented in typical securities class actions. For instance, two key issues that were critical to the viability of the Class's claims were resolved by the U.S. Supreme Court during the pendency of fact discovery. First, after the Class defeated Defendants' motion to dismiss, it faced a potential existential threat when the Supreme Court issued its writ of *certiorari* in *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S.Ct. 636 (2013) (granting *certiorari* to review the fraud-on-the-market presumption recognized in *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988)) ("*Halliburton I*"). Second, in March 2015, the Supreme Court issued its decision in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S.Ct. 1318 (2015), holding that for statements of opinion, plaintiffs must establish that the speaker did not truly hold the opinion or that the statement did not rest on a meaningful inquiry.

6. Despite the uncertainty of *Halliburton II*, including the significant possibility that the viability of the class action mechanism for securities cases would evaporate, the Class Representatives and Class Counsel continued to forge ahead. Between November 2013 (when the Supreme Court granted *certiorari*) and June 2014 (when it affirmed the fraud-on-the-market presumption), Class Counsel tenaciously pursued discovery and devoted substantial time and resources to the claims. During this period, the Class Representatives sat for depositions, briefed class certification, submitted an expert report on market efficiency (which served as the basis for certification after *Halliburton II*), issued third-party subpoenas, and reviewed and analyzed more than 2 million of the 8 million pages of documents produced by Defendants and various third parties. Ultimately, the Class Representatives' and Class Counsel's willingness to press ahead, despite the looming decision in *Halliburton II*, enabled Class Counsel to be ready to hit the

ground running after the ruling was handed down and to prosecute this Action vigorously until the Settlement was reached. This stands in stark contrast to the many securities class actions that settled prematurely for a significant discount because of *Halliburton II*.

7. The Class Representatives also faced other serious litigation risks. Indeed, Defendants asserted myriad defenses to liability that, if successful, would have resulted in no recovery. In particular, Defendants vigorously contested scienter and loss causation, both to some extent based on the conceded complexity of the corporate accounting issues that were central to this lawsuit. Thus, in fending off Defendants' factual and legal challenges, the Class Representatives would need to present numerous complicated tax issues to the trier of fact in a clear and compelling way.

8. Moreover, for reasons also related to the complexity of the accounting issues, the Class Representatives faced a substantial risk in proving falsity at summary judgment and trial under *Omnicare*, 135 S.Ct. at 1325-28, 1332. Here, based on that ruling, Defendants would have contended that the critical tax and accounting issues (*e.g.*, uncertain tax positions, valuation allowances, etc.) require judgment and thus constitute statements of opinion, not facts. According to Defendants, the Class Representatives would have had to satisfy *Omnicare* and prove that Defendants truly did not believe that the financial statements were true, or show that Defendants had not conducted an adequate inquiry. Defendants would have sought to extend this argument to each of the hundreds of tax positions underlying those statements that were later found to be in error. Thus, as this Court recently wrote, "*Omnicare* makes just as clear that it is substantially more difficult for a securities plaintiff to allege adequately (or, ultimately, to prove) that such a statement is false than it is to allege adequately (or prove) that a statement of pure

fact is false.” *City of Westland Police and Fire Ret. Sys. v. MetLife, Inc.* No. 12-cv-0256, ECF No. 90, at 28-29 (Sept. 11, 2015).

9. While the Class Representatives were prepared to refute these arguments (discussed in detail in Section III.B., *infra*), there was significant risk that some, if not all, of the alleged false statements would be dismissed at trial or, even before then, at the summary judgment stage. Moreover, given that the premises of Defendants’ attacks on falsity are also basic to many of their scienter and loss causation challenges, those elements were also at risk for similar reasons. And even if the Class Representatives had been successful in establishing liability at trial, they still faced the possibility of lengthy post-trial motion practice and appeals, as well as years of potential delay in distributing any cash to the Class.

10. Like the litigation, the negotiations leading to the Settlement were protracted, difficult, and required careful analysis of complex factual and legal issues. The Honorable Layn R. Phillips (Ret.) of the United States District Court for the Western District of Oklahoma served as mediator. The Parties participated in the first mediation session in October 2014 but reached an impasse that they overcame only after additional development of the full record, completion of twenty-two (22) fact depositions (including those of the Individual Defendants), the exchange of nine (9) expert reports, another mediation session on May 20, 2015, and further negotiations among Class Counsel, the mediator, and Defendants’ counsel. On June 2, 2015, the Parties agreed to settle for \$120 million cash based on a mediator’s recommendation, and executed a confidential Term Sheet on June 5, 2015. The Stipulation was executed on June 30, 2015.

11. The Settlement has the full support of the Class Representatives, as set forth in the Declaration of Anchorage Police & Fire Retirement System in Support of Approval of Proposed Class Action Settlement and Requests for Attorneys’ Fees and Expenses (attached hereto as Ex.

1) and the Declaration of Sacramento City Employees' Retirement System in Support of Approval of Proposed Class Action Settlement and Requests for Attorneys' Fees (attached hereto as Ex. 19).

12. The Class Representatives also seek approval of the proposed Plan of Allocation for the proceeds of the Settlement as fair, reasonable and adequate. Class Counsel consulted with the Class' expert in the areas of economics and damages in formulating the Plan and designed it to achieve an equitable and rational distribution of the Settlement proceeds consistent with Class Representatives' damages theory during the prosecution of the Action.

13. Class Counsel are also applying for an award of attorneys' fees of \$27,930,550 million (reflecting a lodestar multiplier of 1.5), payment of litigation expenses in the amount of \$4,675,424.65, and reimbursement for the Class Representatives in the total amount of \$11,880 (the "Fee and Expense Application"). Class Counsel are making the fee request on the basis of the lodestar multiplier and not a percentage of recovery in view of this Court's prior decisions and history in approving fee applications. The fee in terms of percentage of recovery is 23.3%.

14. As set forth in detail below, Class Counsel made a concerted effort to ensure the efficient prosecution of the Action and the avoidance of duplication of effort. Saliently, a core team of partners and senior associates who prosecuted the case from beginning to end incurred more than half of the lodestar. Junior attorneys reviewing documents account for less than a third of the time submitted. Accordingly, this is not a case in which Class Counsel simply went through the motions, performed *pro forma* work, and obtained a premature or sub-par result. To the contrary, we respectfully submit that this application is reasonably justified because of Class Counsel's tenacity, hard work, high quality representation, and extraordinary result.

15. In sum, for all of the reasons set forth herein, and in the supporting memoranda of law submitted herewith, including the excellent recovery obtained and the challenges overcome, we respectfully submit that the Settlement and Plan of Allocation are “fair, reasonable and adequate” in all respects, and should be approved by the Court pursuant to Federal Rule of Civil Procedure Rule 23(e). For similar reasons, and for the additional reasons set forth in Sections VI. through IX. below, we respectfully submit that Class Counsel’s request for attorneys’ fees and payment of expenses, are also fair and reasonable and should be approved pursuant to Federal Rule of Civil Procedure Rule 23(h).

## **II. PROSECUTION OF THE ACTION**

### **A. Initial Complaints And Appointment Of The Class Representatives And Class Counsel**

16. On March 22, 2012, plaintiff Glenn Freedman commenced this Action by filing a class action complaint (ECF No. 1) against Defendants in the United States District Court for the Southern District of New York (the “Court”). Freedman asserted claims for violation of the federal securities laws on behalf of a class of investors who had purchased or otherwise acquired Weatherford common stock between March 2, 2011 and February 21, 2012.

17. On May 22, 2012, Anchorage Police & Fire Retirement System (“Anchorage Police & Fire”) and Sacramento City Employees’ Retirement System (“SCERS”) filed their joint motion for appointment as lead plaintiffs and approval of their selection of Labaton Sucharow as lead counsel, pursuant to the PSLRA (ECF No. 14). Four other plaintiffs filed motions for appointment as lead plaintiff.

18. On July 10, 2012, the Court entered an Order appointing Anchorage Police & Fire and SCERS as Lead Plaintiffs, and denying the other motions for appointment (ECF No. 31). The Court also approved the selection by Anchorage Police & Fire and SCERS of Labaton

Sucharow as Lead Counsel for the proposed class. On September 29, 2014, the Court ordered that BFTA be added as Co-Lead Counsel. (ECF No. 119).

**B. The Related *Dobina* Action**

19. This Action is closely related to the pre-existing securities class action filed against Weatherford on March 9, 2011, *In re Weatherford Securities Litigation*, No.11-1646 (S.D.N.Y.) (LAK). For clarity, the Parties and the Court have referred to that case as “*Dobina*” in reference to the plaintiff in the first filed complaint. The class period in *Dobina* commenced on April 25, 2007 and concluded on March 1, 2011, the last trading day before a restatement was announced (the “First Restatement”) and the day before the beginning of the Class Period here. The Class Period in this Action begins on March 2, 2011 and ends on July 24, 2012.

20. The facts of both cases are closely inter-related, although the instant Action was broader in scope and more complex. In *Dobina*, only the First Restatement on March 1, 2011 was relevant. The facts here subsumed those in *Dobina* concerning the First Restatement but also included the subsequent restatements announced on February 21, 2012 (the “Second Restatement”) and July 24, 2012 (the “Third Restatement”) (the First Restatement, Second Restatement and Third Restatement, collectively referred to as the “Restatements”).<sup>2</sup>

21. More specifically, the First Restatement of approximately \$500 million was principally the result of \$460 million in underreported taxes relating to intercompany dividend and interest payments. These errors served as the predicate and background to the Second and Third Restatement, which resulted mainly from uncertain and deferred tax positions, but not intercompany dividend and interest payments. Accordingly, while *Dobina* concerned one type

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<sup>2</sup> The plaintiffs in *Dobina* alleged that the First Restatement was a corrective disclosure of prior alleged misrepresentations. By contrast, while agnostic as to the claims in *Dobina*, the Class Representatives here allege that the First Restatement was the first of a series of misrepresentations that were later corrected by the Second and Third Restatements.

of alleged tax manipulation, this Action concerned multiple alleged manipulative techniques that exponentially compounded the complexity of the merits.

**C. The Complaint And Motion To Dismiss**

**1. The Complaint**

22. On September 14, 2012, the Class Representatives filed the Consolidated Amended Class Action Complaint (the “Complaint”) extending the end of the class period from February 21, 2012 to July 24, 2012 to include the Third Restatement. (ECF No. 36). The Complaint asserted claims arising from violations of (i) Sections 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder by the U.S. Securities and Exchange Commission (“SEC”), 17 C.F.R. §240.10b-5, against all Defendants, and (ii) Section 20(a) of the Exchange Act against the Individual Defendants.

23. The Complaint was the result of a thorough and rigorous investigation, which included, *inter alia*: (i) reviewing and analyzing publicly available information, including documents publicly filed by Weatherford with the SEC, press releases, news articles, and other public statements issued by or concerning Defendants; (ii) research reports issued by financial analysts concerning Weatherford; (iii) transcripts of investor conference calls; (iv) interviewing 34 former Weatherford employees and other persons with relevant knowledge; and (v) consulting with experts in the areas of accounting, loss causation, market efficiency, securities regulation, and corporate financial liquidity.

24. As alleged in the Complaint, the allegations focused on the admittedly false financial statements issued by Weatherford starting in 2007. Between 2007 and the end of the Class Period on July 24, 2012, every single quarterly and annual financial report the Company issued, all 21 of them, inflated earnings by more than \$900 million in violation of Generally

Accepted Accounting Principles (“GAAP”). The Complaint alleged that Weatherford did this by consistently underreporting taxes, specifically by improperly calculating (i) the tax effect of inter-company transfers, (ii) reserves for unrecognized tax benefits, (iii) withholding taxes, (iv) valuation allowances on deferred tax assets, and (v) “other adjustments” to current and deferred tax accounts. (Complaint ¶1).

25. As a result of the alleged magnitude and scope of the falsely reported tax liabilities, the Complaint also alleges that Weatherford was forced to restate its financial results, thereby admitting that there had not been a change in circumstances but rather that its financial statements had been false at the time of issuance. Of significance to the Class’ claims is the fact that Weatherford did not restate only once, but three separate times over the course of the eighteen-month Class Period. The First Restatement marks the beginning of the Class Period, and was announced on March 1, 2011, after the close of trading, and issued on March 8, 2011. (Complaint ¶3).

26. On March 1, 2011, in a Form 8-K filed with the SEC, Defendants also disclosed the existence of a material weakness in internal controls, which, according to the Complaint, Defendants used to deflect the significance of the First Restatement and refute any suggestion of knowing conduct. (Complaint ¶4). Specifically, Weatherford described the material weakness as follows:

The Company’s processes, procedures and controls related to financial reporting were not effective to ensure that amounts related to current taxes payable, certain deferred tax assets and liabilities, reserves for uncertain tax positions, the current and deferred income tax expense and related footnote disclosures were accurate. (*Id.* ¶39).

27. In subsequent conference calls with Wall Street analysts, Defendants further claimed that the tax reporting “process” was flawed and riddled with procedural and

administrative defects. Nevertheless, Weatherford issued the First Restatement and the then-current financial statements on March 8, just a few days after discovering the problems, representing that it had undertaken enhanced procedures to ensure the accuracy of those statements. (*Id.* ¶4.). However, the Complaint alleges that the material weakness Weatherford identified was far broader in scope than the improper intercompany payments to which it attributed the bulk of the restated amounts. Class Representatives intended to argue at trial, based on the record they adduced, that whatever additional procedures were undertaken, they were clearly not sufficient to account for those broader weaknesses.

28. Throughout 2011, Weatherford continued to timely report earnings and file its financial statements. In doing so, it provided assurances that its financial statements were true, accurate, and in compliance with GAAP, despite the fact that it had admittedly not resolved the material weakness in internal controls. For example, the Company's Form 10-Q for the quarterly period ended September 30, 2011, said:

In light of th[e] material weakness in preparing our condensed consolidated financial statements included in this Quarterly Report on Form 10-Q, **we performed additional reconciliations and other post-closing procedures to ensure our condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles.** (emphasis supplied) (Complaint ¶6).

29. The Complaint further alleges that the import of this statement to the Class and investors at large was unequivocal. (Complaint ¶7). That is, plaintiffs claim that Weatherford sought to induce Class Members to rely on its financial statements by creating the impression that Weatherford was able to address and cure the outstanding and unresolved material weakness in internal controls, so that the Company's financials would be accurate and prepared in accordance with GAAP going forward. *Id.* But just as Weatherford's financial results of 2007 through 2010 were allegedly a mirage, so, too, were those reported in 2011. *Id.* ¶8.

30. On February 21, 2012, the Company announced the Second Restatement, which it formally issued on March 15, 2012. The Second Restatement not only restated 2011 financial results, but also re-restated Weatherford's 2007 through 2010 financial statements. In other words, the Second Restatement restated the First Restatement, thereby admitting that the First Restatement had been materially false. (Complaint ¶8).

31. The Second Restatement, like the First, was also massive, totaling approximately \$375 million. It reduced earnings by "roughly \$225 million to \$250 million of aggregate net adjustments to previously reported financial results for the years 2010 and prior." (Complaint ¶9). In addition, it eliminated about \$120 million of 2011 earnings – or approximately 50%. (*Id.*) The Second Restatement again related to the Company's accounting for incomes taxes and to virtually the same material weakness identified previously in the First Restatement, impacting Weatherford's calculation of "current taxes payable, certain deferred tax assets and liabilities, reserves for uncertain tax positions, and current and deferred income tax expense." (*Id.*)

32. Like the First Restatement, the Company quickly issued the Second Restatement on March 15, 2012, less than a month after the announcement on February 21, 2012, instead of delaying issuing financial statements while the material weakness was investigated and resolved. CEO Duroc-Danner characterized the Second Restatement as "nothing more than the second of the last chapter of the dismal event of last February [2011]." (Complaint ¶68). The Complaint also details Defendants' further assurances to the investing public that this time they had properly ensured Weatherford's restated financial statements were in compliance with GAAP. A week later, on March 23, 2012, Weatherford announced that its CFO, Defendant Becnel, and the Company's Vice President of Tax, James Hudgins, were leaving the Company. (*Id.* ¶78).

33. Within three weeks of issuing the Second Restatement, on April 4, 2012, Weatherford issued \$1.3 billion in Senior Notes. The Complaint alleges that this public offering would have been all but impossible had the Company not issued the Second Restatement and filed its financial statements with the SEC on March 15, 2012. The issuance of \$1.3 billion in debt came on the heels of further indebtedness incurred by the Company. In 2011, Weatherford had issued \$1.1 billion in new debt, mostly in the form of short term commercial paper. The proceeds from the long-term Senior Notes were largely used to pay down short-term debt and fund the Company's negative cash flow. (Complaint ¶11).

34. Shortly after this \$1.3 billion public offering, on July 24, 2012, Weatherford once again announced that it would need to issue another restatement (the "Third Restatement"), marking the end of the Class Period. The Complaint alleges that Defendants had managed to perfectly shoehorn the debt offering in the one quarter between the Second Restatement and the announcement of the Third. In making this announcement, Weatherford admitted that the Second Restatement had been false and misleading and that \$92 million in reported earnings, and possibly another \$15 million, for a total of about \$107 million, were illusory. (Complaint ¶12). Once again, Weatherford attributed the restatement to the same recurring tax-related accounting problems that Weatherford had earlier represented had been identified before the First Restatement – current taxes payable, certain deferred tax assets and liabilities, reserves for uncertain tax positions, and current and deferred income tax expense. (*Id.* ¶82). This time, however, Weatherford did not issue the Third Restatement promptly after the July 24 disclosure, and for the first time did not file its restated financials with the SEC until months later.

35. Weatherford ultimately filed its Third Restatement on Form 10-K/A on December 17, 2012, increasing the amount of previously underreported taxes to \$186 million. As a result,

over \$1 billion in previously reported profits had been wiped out by the Restatements. In addition, the Complaint alleges that the Company's core financial strategy—which had been announced with much fanfare in 2007, and was supposedly successful—had proven to be disastrous. The strategy had aimed to achieve profitability by means of an ambitious plan to reduce taxes. It had appeared to be working, as Weatherford reportedly lowered its tax rate from 26% in 2006 to 6.5% in 2009. However, as a result of the Restatements, Weatherford's tax rate had actually been north of 30%. (Complaint ¶13).

36. The effect of the Second and Third Restatements on the Company's stock price was severe. Weatherford's common stock traded at a Class Period high of approximately \$23.50 per share in March 2011 and the Company's market capitalization reached \$17.5 billion. At the end of the Class Period, its stock traded at about \$12.40 per share and Weatherford's market capitalization had dropped to approximately \$9.5 billion.

## **2. Defendants' Motion To Dismiss**

37. Defendants filed a motion to dismiss the Complaint on October 29, 2012. (ECF No. 38). Defendants argued that the Complaint failed to (i) raise a strong inference of scienter, or (ii) plead falsity with respect to certain statements concerning Weatherford's need to restate and plans for remediation. Defendants stated the following:

- (a) the Complaint did not allege a cognizable motive to commit fraud;
- (b) the absence of any suspicious stock sales undermined the motive allegations;
- (c) the alleged motive to issue bonds, comply with debt covenants, and complete acquisitions are too common;
- (d) the alleged motive to maximize compensation is insufficient to raise a strong inference of scienter;
- (e) the Complaint failed to allege that Defendants knew of the falsely reported tax accounting prior to the Restatements;

- (f) the continued disclosure or internal control deficiencies weakened any inference of scienter;
- (g) the magnitude of the restatements is insufficient to raise an inference of scienter;
- (h) Defendant Becnel's departure from Weatherford during the Class Period does not raise an inference of scienter;
- (i) the allegations did not rise to the level of "core operations;" and
- (j) the allegations about Weatherford's statements concerning additional procedures to ensure that the financial statements were accurate despite the material weakness lacked particularity.

38. On December 21, 2012, the Class Representatives filed their opposition to Defendants' motion to dismiss (ECF No. 42), arguing, among other things, that:

- (a) the Complaint met the pleading standard to allege motive and opportunity as well as circumstantial evidence of recklessness;
- (b) The Individual Defendants' personal participation in the tax strategy raised a strong inference of recklessness;
- (c) Defendants' knowledge of a material weakness in internal controls raised a strong inference of recklessness;
- (d) The quickness and timing of the First and Second Restatements raised a strong inference of recklessness;
- (e) Weatherford implicitly admitted that it had not properly investigated the effect of the identified material weakness on its financial statements prior to issuing the First Restatement;
- (f) Defendant Becnel's resignation raised a strong inference of recklessness;
- (g) the Individual Defendants had "concrete and personal" financial motives, including a then-new incentive compensation plan and absence of a "dismissal for cause" clause in Defendant Becnel's employment contract; and
- (h) Weatherford's liquidity strains reinforced the Individual Defendants "concrete and personal" motives.

39. On January 17, 2013, Defendants filed a reply brief in further support of their motions to dismiss. (ECF No. 44).

40. On September 20, 2013, the Court issued a Memorandum Opinion and entered an Order (ECF No. 45) denying Defendants' motion to dismiss in its entirety. The Court primarily based its decision sustaining the scienter claims based on the allegations that Defendants knew about the serious tax accounting problems before they issued the First Restatement, stated that they had taken steps, which were ongoing, to rectify the issues, but nevertheless had to issue two more restatements:

In light of the presumably intense, high-level focus on tax accounting following the first restatement and the reconciliations that purportedly occurred to ensure accuracy notwithstanding the weak controls, the magnitude of the error is supportive of defendants' scienter with respect to their prior statements. (ECF No. 45 at 13).

41. The Court also rejected Defendants' argument that, because Weatherford admitted that it had not remediated the material weakness during the Class Period, the Class had sufficient notice of potential subsequent restatements. Siding with the Class Representatives who had argued that the admission of a continuing material weakness was not a free pass to issue additional restatements (ECF No. 42 at 24), the Court stated: "Defendants point here to their disclosure that they may identify further errors requiring future restatement so long as the material weakness remains unremediated. But such a disclosure cannot insulate defendants from liability for their statements of confidence in the financial results that it did set forth." (ECF No. 45 at 14 n.53).

42. Having been denied a dismissal, on October 30, 2013, Defendants filed their answer to the Complaint. (ECF No. 49).

**D. The Class Representatives' Discovery Efforts**

43. Following the Court's decision denying Defendants' motion to dismiss on September 20, 2013, the Class Representatives promptly launched discovery, serving the first document request on October 8, 2013. The Parties filed an initial Joint Rule 26(f) Report and

Discovery Plan on October 21, 2013 (ECF No. 48) (the “Initial Report”) and exchanged initial disclosures on October 30, 2013. Class Counsel ultimately: (a) reviewed and analyzed 1.3 million documents, totaling approximately eight million pages; (b) took 22 depositions of fact witnesses, including the Individual Defendants and all of the key witnesses who were expected to testify at trial; (c) defended two depositions of the Class Representatives and one expert deposition; (d) negotiated and resolved various significant discovery disputes with Defendants (with the aid of the Court when necessary); (e) exchanged nine voluminous expert reports; and (f) prepared three rebuttal expert reports, which were scheduled to be exchanged on the same day that Judge Phillips advised the Parties that both sides assented to the Settlement.

44. The Class Representatives’ first document request sought, *inter alia*, documents that Defendants had previously produced to governmental entities, including the SEC; documents produced in *Dobina*; and documents relating to the Restatements, the material weakness in internal controls, Defendant Becnel’s resignation, and any internal or external investigations relating to the Restatements.

45. Defendants’ objections, responses, and answers to the discovery requests prompted numerous meet and confer sessions with Defendants as to the scope and format of their document production. Through this effort and protracted letter-writing on various discovery matters, the Parties successfully came to agreement on many issues. While continuing to meet and confer on the scope of document production, on or about November 7, 2013, Defendants began their rolling production of documents.

46. One significant area of initial disagreement pertained to Defendants’ insistence that Class Representatives accept, in large measure, *just* the discovery produced in *Dobina*. Defendants had produced approximately 2.3 million pages of documents in that case based on

search terms and custodians agreed upon with plaintiffs in *Dobina* prior to the commencement of this Action. Defendants contended that very few additional procedures needed to be conducted and that the search terms were essentially equally applicable.

47. Another important disagreement concerned the overlap between the SEC investigation and the instant Action and whether Defendants would be required to produce all documents that they had previously provided to the Government. Defendants contended that the SEC investigation was much broader than the claims in this Action, and that they had no obligation to turn over to Class Representatives the productions to the SEC. To the extent documents produced to the SEC were responsive to Class Representatives' document requests, Defendants argued, those documents would be produced independently based on the searches conducted in this Action.

48. Class Counsel strongly disagreed with both of these positions, but agreed, as an initial matter, to review the *Dobina* production before requesting the Court's intervention. After completing that review, Class Counsel concluded it was inadequate. Indeed, Class Counsel determined that there appeared to be significant gaps in the responsive documents, particularly because *Dobina* did not cover the Second and Third Restatements. Ultimately, Class Counsel succeeded in expanding the scope of Defendants' document production to properly capture the full scope of this Action rather than the one in *Dobina*. As a result, Class Counsel received more than 8 million pages of responsive documents compared to 2.3 million pages in *Dobina*.<sup>3</sup>

49. This proved to be only the first skirmishes with Defendants. Over the course of discovery, as the pace of litigation accelerated, Class Counsel continuously pressured Defendants with an aggressive discovery posture. Ultimately, the Class Representatives served a

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<sup>3</sup> Class Representatives did not receive the benefit of any evidence prepared or identified by the SEC itself or any findings of fact in that proceeding.

49-category document request, three sets of interrogatories, contention interrogatories, requests for admissions, and over twenty (20) third-party subpoenas.

**1. Class Counsel Obtained Extensive Document Discovery**

50. As discussed in Section VI.B.1. below, the Class Representatives conducted an extremely efficient review of the documents produced by Defendants, which exceeded more than 8 million pages (consisting of, *inter alia*, memoranda, accounting work papers, tax opinions, emails and spreadsheets in a multitude of formats and languages).

51. The Class Representatives also extracted extensive document discovery from third-parties that had played key roles in the underlying facts. All of the “Big Four” accounting firms were involved here. Ernst & Young LLP (“EY”) served as Weatherford’s statutory auditors during the Class Period, issuing opinions on the Company’s financial statements and internal controls. The work papers, emails, and spreadsheets prepared by EY were critical to the case as EY’s findings and conclusions were integral to the decisions to restate. EY’s team throughout the years relevant to the case (2007 – 2012) consisted of at least a dozen professionals, of which the audit partner and the lead tax partner were deposed.

52. In addition to EY, Weatherford had retained Deloitte & Touche LLP (“Deloitte”) and PricewaterhouseCoopers LLP (“PwC”) to conduct massive amounts of consulting work as part of the remediation process during the Class Period. Weatherford also replaced its statutory auditor EY with KPMG LLP (“KPMG”) soon after the Class Period, which generated substantial hand-off documentation relevant to plaintiffs’ claims.

53. The number of independent and different tax issues raised by the Restatements was so vast, and the issues so complex, that Weatherford had to engage the assistance of the largest and most qualified auditing firms. Together, the Big Four accounting firms produced 928,311 pages of documents.

54. Obtaining these documents was time consuming and difficult. Accounting firms are notoriously reluctant to produce their work papers and internal documents, particularly when they are not parties to the case. Class Counsel engaged in countless meet and confer discussions over the course of many months. Class Counsel's combination of patience but relentless pursuit of these documents ultimately succeeded in obtaining highly relevant documents, while at the same time avoiding motion practice.

55. The Class Representatives also subpoenaed documents and testimony from Davis Polk & Wardwell LLP ("Davis Polk"), which conducted an investigation focused on the First Restatement on behalf of the Audit Committee. While typically these investigations are subject to the attorney-client privilege, in this instance, Davis Polk made presentations and provided documents to the SEC, making the documents and discussions with the SEC discoverable.

56. Finally, the Class Representatives subpoenaed documents from a number of financial institutions that had provided financial services to Weatherford, either in connection with the revolving credit facility or as underwriters of the Company's debt offering during the Class Period. Class Representatives thus obtained documents from (i) J.P. Morgan Chase Bank, N.A., (ii) J.P. Morgan Securities LLC, (iii) Citigroup Capital Markets, Inc., (iv) Deutsche Bank Securities, Inc., and (v) Morgan Stanley & Co. LLC.

## **2. Class Counsel's Use Of Focused Motion Practice And Targeted Interrogatories Successfully Strengthened Plaintiffs' Case**

57. Class Counsel strategically combined the use of limited motion practice and interrogatories to successfully strengthen the case. On May 28, 2014, (while *Halliburton II* was pending) the Class Representatives moved to compel the production of certain documents that Defendants had argued were protected by the attorney client privilege. (ECF No. 67). The

documents concerned an internal investigation conducted by Latham & Watkins LLP (the “Latham Investigation”) in February 2012 in response to a whistleblower complaint. EY relied on the results of that investigation to issue a clean audit opinion on the December 31, 2011 financial statements, which were ultimately restated in the Third Restatement. Class Counsel argued that Defendants’ purported good faith reliance on EY’s clean audit opinion was predicated on the Latham Investigation, and thereby placed the investigation and the advice of counsel “at issue,” implicitly waiving the privilege.

58. Judge Francis issued an Order on July 25, 2014 (ECF No. 83) denying the Class Representatives’ motion because there was insufficient evidence to warrant waiver at the time, but recognized that waiver would be appropriate should the Defendants specifically rely on the advice of EY as part of their good faith defense.

59. The Class Representatives subsequently served two sets of interrogatories on Defendants on October 15, 2014 and November 24, 2014. One interrogatory asked whether Defendants intended to rely on EY for their defense. The Individual Defendants responded that they “may assert this defense.” On April 3, 2015, the Class Representatives then moved to compel on the basis that they had established sufficient evidence to establish waiver pursuant to Judge Francis’ July 25 Order. (ECF No. 136). The Individual Defendants opposed the motion, however, saying that the Class Representatives had misconstrued the interrogatory responses and that the Individual Defendants had not affirmatively asserted they would rely on EY. Judge Francis ordered Defendants to respond unequivocally to the interrogatories, yes or no. (ECF No. 171). Defendants ultimately responded to the interrogatory by declining to assert reliance on EY. Class Counsel believes that this was a significant victory that hamstrung Defendants’ ability to assert one of its key defenses.

### 3. Class Counsel Conducted Twenty-Two Depositions

60. Building upon the knowledge learned through the document discovery process, Class Counsel conducted 22 fact-witness depositions, including of the Individual Defendants, current and former employees, and related third parties. We believe that this universe of witnesses included all of the key story-tellers who would testify at trial, thereby enabling Class Counsel to meaningfully assess the probative value of their expected testimony.

61. Class Counsel, however, was measured in their approach to the number of depositions sought, progressively requesting additional deponents based on the development of evidence and testimony obtained, rather than proposing an excessive number at the outset. Specifically, after requesting justifications for each contemplated deponent from the plaintiffs, the Parties agreed to 20 depositions with the understanding that if the Class Representatives needed additional depositions, Defendants would not unjustifiably oppose the request. This allowed the Parties to agree to 22 depositions with minimal Court intervention.

62. Throughout this process the Parties worked cooperatively to schedule the depositions at a time and place that sought to minimize the burden on the deponent. Rather than waste time and resources on deposing junior employees or “background” witnesses, Class Counsel focused their examinations on a targeted group of key witnesses. Specifically, Class Counsel deposed high-level Weatherford executives, including: (i) Bernard Duroc-Danner (CEO); (ii) Andrew Becnel (former CFO); (iii) Robert Rayne (Chairman of the Audit Committee during the Class Period); (iv) James Hudgins (Vice President and Head of Tax); (v) John Briscoe (former CFO); (vi) Douglas Mills (former Chief Accounting Officer); and (vii) James Parent (Vice President and Head of Tax after the Class Period).

63. Class Counsel also deposed several key members of the tax group, including: (i) Jose Galindo (former tax manager for Latin America); (ii) Darryl Kitay (Director of Tax

Compliance); (iii) Phillip Valenzuela (Senior Tax Manager); and (iv) Michael Nuckles (Director of Tax Remediation). Additional Weatherford employees deposed by Class Counsel included several key individuals who were familiar with the Company's reporting and disclosure practices: (i) Jennifer Presnall (Head of Internal Audit); (ii) Charles Geer (Director of External Reporting); (iii) Linda Rosenbaum (Director of Financial Reporting of Income Taxes); and (iv) a Rule 30(b)(6) deposition of the Company at which Douglas Mills testified.

64. Finally, Class Counsel deposed Sarah Adams (former EY Tax partner) pursuant to subpoena and the following third-parties under Rule 30(b)(6): (i) Davis Polk; (ii) EY; (iii) PwC; (iv) Deloitte; (v) KPMG; (vi) JP Morgan Chase.

65. We believe that the information elicited during these depositions supported the Class' claims. However, we recognize that there was also information that a jury could view as supportive of Defendants' positions. Nevertheless, these depositions, and the documents discussed by the witnesses, provided Class Counsel with a solid foundation from which to understand the risks and strengths of the case.

#### **4. Class Counsel Strategically Front Loaded Class Certification And Discovery Of The Class Representatives**

66. Contrary to the securities practitioners' playbook that typically seeks to postpone class certification until late in discovery, Class Counsel pursued an aggressive strategy and sought to frontload the class certification process. Class Counsel sought to take advantage of the fact that the early stages of discovery would be primarily focused on meet and confer discussions concerning the scope and adequacy of Defendants' document production, and would likely include a lull during the timeframe when Class Counsel was reviewing and digesting Defendants' rolling document production. Class Counsel did not take this time for granted, and

instead moved for class certification and conducted class discovery early. This gambit, which also reflected Class Counsel's efficient prosecution of the case, succeeded.

67. The Class Representatives filed a class certification motion on November 19, 2013 (ECF No. 51) and made themselves available for deposition in December 2013, merely two months after the beginning of fact discovery. In support of the motion for class certification, the Class Representatives submitted the expert report of Eugene Agronin, Ph.D., who opined that Weatherford's stock traded in an efficient market. Dr. Agronin is the founder and President of EconNet, LLC.

68. Contemporaneous with the filing of the motion, however, the Supreme Court granted *certiorari* in *Halliburton II*. This development created enormous uncertainty as to the continued validity of the fraud-on-the-market presumption, which was the predicate of Class Representatives' motion. As a result, the Court denied the motion without prejudice (ECF No. 59).

69. After the Supreme Court issued its decision in *Halliburton II* on June 23, 2014, affirming the presumption, the Class Representatives promptly re-filed their motion for class certification. Defendants found no basis to challenge the motion, including the finding that the stock traded in an efficient market, and effectively stipulated to Class Certification (ECF No. 80). The Court certified the Class on September 29, 2014 (ECF No. 120) and Class Representatives disseminated notice of pendency on or about April 30, 2015 pursuant to the Court's approval order dated April 20, 2015 (ECF No. 156).

70. We submit that Defendants' lack of opposition to class certification reflects: (a) the dedication of the Class Representatives who prepared thoroughly and extensively in advance of their depositions; (b) the high quality of Class Counsel's representation in presenting a bullet-

proof case in favor of certification; and (c) the sophistication of Defendants' counsel who understood that opposing class certification was a worthless endeavor that would have wasted the resources of the Court, their clients, and the Class.

71. By the time discovery got back into full swing after the *Halliburton II* decision and Class Counsel was prepared to take depositions, class certification had been completed and was no longer a source of risk and debate. Class Counsel were thus able to focus their efforts on pursuing their affirmative case aggressively with no distractions.

**5. The Class Obtained Very Little Benefit, If Any, From The SEC Investigation**

72. Although an SEC investigation has been ongoing for some time, the Class obtained very little benefit, if any, from that proceeding, despite Class Counsel's zealous efforts. Class Counsel requested the production of all documents that Defendants had produced to the SEC and communications with the agency. Defendants argued that merely because a document was produced to the SEC did not make the document responsive in this Action and took a narrow view as to the scope of our case so as to exclude the bulk of the documents requested. Ultimately, Defendants relented and produced hundreds of thousands of documents. While relevant to the claims, in the end these documents simply were what Defendants should have otherwise produced regardless of the SEC's investigation.

73. Class Counsel's efforts to subpoena SEC deposition transcripts from witnesses the Commission deposed, which could have been a source of the SEC's findings unique to its investigation, were rebuffed by the District Court in Houston. Class Counsel had served subpoenas requesting the SEC transcripts on numerous former and then-current employees, whom we suspected had been deposed by the SEC. The Company paid for counsel to represent the witnesses and they refused to produce the transcripts. Class Counsel then moved to compel

but the District Court for the Southern District of Texas ruled from the bench against the Class on the basis that it was protecting the privacy interest of the witnesses, even though the witnesses had never asserted this argument on their own. (S.D. Tex., No. 14-mc-2996, Jan. 23, 2015, ECF No. 26). Class Counsel appealed the ruling to the Fifth Circuit on February 26, 2015, which was pending at the time of the settlement. (S.D. Tex., No. 14-cv-2996, ECF No. 34).

74. In sum, the SEC also did not help the Class. When the SEC found out that Class Counsel had subpoenaed SEC deposition transcripts, it stopped making them available to other witnesses. There has not been a public announcement concerning the resolution or termination of the investigation, no report of its findings and conclusions have ever been issued, and we do not currently know whether the SEC investigation remains active.

**6. Additional Depositions, Contention Interrogatories, And Requests For Admissions**

75. Prior to the end of fact discovery on May 4, 2015, Class Representatives and Class Counsel continued their vigorous prosecution of the Action. On April 10 and 24, 2015, the Class Representatives subpoenaed two of Weatherford's former general counsels in light of deposition testimony then-recently elicited. Class Counsel was very careful not to overreach given that the testimony of an attorney is bound to raise privilege issues. Accordingly, Class Counsel only sought to depose both witnesses for 2.5 hours and agreed to limit the inquiry to very specific factual areas. Defendants moved to quash the subpoenas on April 29, 2015, prompting Class Counsel to file a vigorous opposition. This Court effectively denied the motion on May 5, 2015 (ECF No. 169), allowing Class Counsel to proceed with the depositions as requested.

76. The Class Representatives also served sixteen contention interrogatories on March 21, 2015, asking Defendants to provide substantial information concerning the basis of

their defenses. The interrogatories consisted of multiple subparts and required that Defendants identify all evidence they would rely upon to dispute falsity, scienter, loss causation and damages. Defendants were further required to identify all witnesses to be called at trial.

77. In addition, the Class Representatives served requests for admissions on April 4, 2015, with 143 separate requests. The subject matters covered by the requests were comprehensive and thorough, and ranged from admissions concerning the falsity and materiality of the financial statements in light of the Restatements to the cause of the drops in the price of Weatherford's stock on the day of the alleged corrective disclosure.

78. In sum, throughout fact discovery, the Class Representatives and Class Counsel sought to maximize their discovery efforts and prepare the record exhaustively for summary judgment and trial, despite Defendants' staunch opposition at every turn.

**7. The Parties Exchanged Eight Expert Reports In Addition To The Expert Report On Market Efficiency Related to Class Certification**

79. The Parties exchanged opening expert reports on May 8, 2015. The Class Representatives proffered the following three experts in support of issues concerning materiality, causation, damages, accounting, internal controls, and Weatherford's liquidity and financial condition:

- (a) Marcia Kramer Mayer, Ph.D. (NERA)  
Damages, Loss Causation, Materiality, Market Efficiency
- (b) Douglas Carmichael, Ph.D.  
Accounting
- (c) James F. Miller  
Weatherford's Liquidity And Financial Condition

80. Dr. Mayer is a Senior Vice President at NERA Economic Consulting, one of the pre-eminent economic consulting firms typically relied upon by defendants in securities class actions. Dr. Mayer has a B.A. in Economics with Great Distinction from Stanford University,

where she was elected to Phi Beta Kappa, and an M.A. and Ph.D. in Economics from Harvard University.

81. Class Counsel retained Dr. Mayer to provide her expert opinion, set forth in her 43-page report, on the: (a) materiality of Defendants' alleged misrepresentations and omissions; (b) degree to which investors' losses were proximately caused by Defendants' alleged violations of the securities laws; and (c) damages suffered by Class members on a per share basis under Section 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. Dr. Mayer prepared and served a 106 page report, attaching 12 exhibits, in which she opined that: (a) the alleged misstatements and omissions in this case were material; (b) declines in the price of Weatherford's common stock were attributable to and substantially caused by identifiable news events relating to the disclosure of the alleged fraud; (c) the corrective disclosures alleged in the Complaint caused a dollar specific abnormal price movement net of market and industry effects (*i.e.*, damages); and (d) adopted Dr. Agronin's previously provided expert opinion that Weatherford's stock traded in an efficient market.

82. As set forth below in discussing the expenses, retaining a NERA expert was relatively more expensive, but important. Based on Class Counsel's past experience, NERA charges higher billable rates than the economics experts that are typically relied upon by the plaintiffs' bar. Class Counsel, in consultation with the Class Representatives, gave the decision long and thoughtful consideration. We determined that NERA and Dr. Mayer's reputation would be critical to proving at trial that the Class was entitled to the maximum amount of damages, particularly considering the highly complex issues surrounding Defendants' anticipated attacks regarding disaggregation. We believe that the cost of retaining NERA and Dr. Mayer paid out in

spades and substantially increased the value of the case, particularly in terms of the credibility NERA has with the defense bar.

83. Class Counsel retained Dr. Carmichael to provide an expert opinion regarding Weatherford's financial statements and their compliance with GAAP. Dr. Carmichael is a Certified Public Accountant with a long career as a professor and member of important accounting regulatory bodies. He has served as a full professor at Baruch College since 1983, holding the Claire and Eli Mason Professorship in Accountancy in the Zicklin School of Business of Baruch College of the City University of New York.

84. Before joining Baruch, from 1969 to 1983, Dr. Carmichael was employed in various positions by the American Institute of Certified Public Accountants ("AICPA"), the national professional organization of CPAs in the United States. Additionally, from 2003 through 2006, Dr. Carmichael took leave from Baruch and served as the first Chief Auditor and Director of Professional Standards of the Public Company Accounting Oversight Board (the "PCAOB"). The PCAOB was created by the Sarbanes-Oxley Act of 2002 and is the regulator of auditors of public companies. In this position, Dr. Carmichael was the primary advisor to the PCAOB on technical matters, including accounting, auditing and internal controls.

85. Dr. Carmichael opined, in his 93-page report, that Defendants did not have a reasonable basis for asserting that the financial statements filed with the SEC during the Class Period, including the First and Second Restatements, were prepared in accordance with GAAP and did not contain material misstatements or omissions.

86. Class Counsel also retained Mr. Miller to provide an expert opinion about Weatherford's financial condition, and particularly its liquidity, during the Class Period. Mr. Miller had a long career in Wall Street. He served as an investment banker at Merrill Lynch

from 1984 to 1991, and from 1991 to 1996 as a senior equity capital markets specialist analyst. Mr. Miller was also head of U.S. Equity Capital Markets at Deutsche Bank Securities from 1996 to 1999. In 1999 he was appointed Co-Head of U.S. Capital Markets at Lehman Brothers. From 2001 to 2003, Mr. Miller was the Global Co-Head of Equity Capital Markets at Dresdner Kleinwort Wasserstein. At Deutsche Bank, Lehman and Dresdner Mr. Miller was a member of each firm's commitment committee for equity offerings – which is the committee that approves the bank's participation in those transactions.

87. Mr. Miller opined, in his 27-page report, that during the Class Period, Weatherford operated with low cash balances and was vulnerable to a liquidity crisis. In addition, Mr. Miller opined that significant delay in the Company's required periodic filings with the SEC would have exposed Weatherford to substantial uncertainty as to whether, in the event Weatherford could not file its financial statements with the SEC, the Company could have obtained waivers to avoid an acceleration of the outstanding debt. If, during the Class Period Weatherford had been unable to obtain such waivers after failing to file financial statements with the SEC, Mr. Miller opined that such a result likely would have driven the Company into insolvency.

88. Defendants served the following five expert reports on May 8, 2015:

- (a) Christopher M. James, Ph.D.  
Damages, Loss Causation, and Weatherford's Liquidity
- (b) Merle Erickson, Ph.D.  
Accounting
- (c) Anthony M. Lendez, CPA, CFE, CFF  
Accounting  
(Retained By Jones Day, Independent Counsel for Defendant Duroc-Danner)
- (d) Roy T. Van Brunt

SEC Disclosure Requirements

- (e) Sandra K. Johnigan, CPA/CFF, CFE  
Accounting

89. Dr. James is the William H. Dial/Sun Bank Eminent Scholar and Professor of Finance and Economics at the University of Florida. He also is a senior advisor to Cornerstone Research (“Cornerstone”) and was assisted by Cornerstone. Cornerstone is an economic consulting firm similar to NERA and also commonly utilized by defendants in securities litigation.

90. Dr. James prepared a 188-page report, including 134 pages of exhibits. Dr. James’ opinion squarely contradicted those offered by the Class Representatives’ loss causation and damages expert Dr. Mayer. Dr. James opined that he saw no evidence to indicate that Weatherford’s stock price decline, as alleged in the Complaint, was due to anything other than realization of known risks or other factors unrelated to the alleged fraud. In particular, Dr. James asserted that following the First and Second Restatements, Weatherford made repeated and conspicuous disclosures that the material weakness was not remediated and, therefore, that there were associated risks of additional financial statement errors. Accordingly, Dr. James concluded that, to the extent that there was a materialization of that risk with the disclosure of the Second and Third Restatements, that risk had already been known by the market and could not have caused losses to Class members. In effect, he testified that loss causation was lacking and that there were zero damages.

91. Dr. James further opined that the vast majority of the Second Restatement and all of the Third Restatement related to matters of judgment precluding any finding of scienter. Based on that analysis, he further opined that any damages analysis required the parsing of the portions of the Restatements that were the result of matters of judgment from those that were not.

As such, Dr. James concluded that even if the Class Representatives could withstand the first challenge of proving the materialization of unknown risks, and survive all of the other merits-related risks, the Class's recoverable damages would still be diminished significantly.

92. Dr. James also opined that Weatherford never faced a liquidity crisis during the Class Period, and had no reason to hurry the filing of its restated financial statements in light of the significant time it had to do so without triggering a default under its outstanding debt covenants. He further opined that, even if such a default had been triggered, Weatherford could easily have obtained the necessary waivers of that default from creditors.

93. Dr. Erickson is a Professor of Accounting in the Booth School of Business at the University of Chicago, specializing in accounting and taxation. Dr. Erickson prepared a 106 page report in which he opined that: (a) tax restatements and material weaknesses in income tax accounting are common; (b) accounting for income taxes under FIN 48 (the GAAP provision concerning uncertain tax provisions) is complex and involves management judgment; (c) prior to the First Restatement, Weatherford's reported effective tax rate was reasonable and in line with expectations; (d) Weatherford had a reasonable basis to issue the First Restatement on March 8, 2011 and the Second Restatement on March 15, 2012; (e) the Third Restatement validated the adjustments made in the First and Second Restatement; and (f) the adjustments in the Second and Third Restatements concerning FIN 48 and valuation allowance were not readily apparent at the time those entries were previously accounted for.

94. Mr. Lendez is a partner in the Litigation & Fraud Investigation Practice of BDO Consulting, a division of BDO USA, LLP. He is a CPA, Certified Financial Examiner ("CFE") and Certified in Financial Forensics ("CFF").

95. Mr. Lendez was asked to opine about: (a) EY's decision in August 2012 to request an investigation pursuant Section 10A of the Exchange Act to determine whether an illegal act had occurred and the results of that investigation by Davis Polk; (b) whether the Davis Polk investigation would have resulted in significantly different results if it had been requested in March 2011; (c) EY's audit opinion for the years ended December 31, 2007 through 2011; and (d) the scope of the remediation plan in response to the material weakness.

96. Mr. Lendez opined that: (a) a Section 10A investigation was not required in March 2011; (b) he had not seen any conclusion or evidence that an illegal act had occurred; (c) the improper tax accounting that prompted the First Restatement was reviewed by and known to EY during the relevant reporting years; (d) if a Section 10A Investigation had been conducted in March 2011, it is unlikely the errors that were the subject of the Second and Third Restatement would have been identified; (e) Weatherford's issuance of its December 31, 2011 restated financial statements on December 17, 2012 was reasonable; (f) despite the presence of a material weakness Weatherford had a reasonable basis to issue the First and Second Restatement; and (g) Weatherford's risk-based scoping approach in connection with its material weakness remediation plan was reasonable and appropriate.

97. Mr. Van Brunt is a former Senior Manager Director at FTI Consulting in the Forensic and Litigation practice. He is an accounting professional with more than 40 years of accounting experience gained at the SEC and in public accounting, auditing and financial management. At the SEC, he worked at the Division of Corporation Finance, which is charged with the review of transactional filings and periodic reports to assure compliance with the securities laws and regulations. He also served as Assistant Chief Accountant at the Office of the Chief Accountant at the SEC.

98. Mr. Van Brunt submitted a 24-page report which opined that, (a) Weatherford's disclosures in its SEC reports filed during the Class Period were appropriate and in compliance with regulatory requirements; (b) the disclosures about the material weakness were at least comparable and more expansive than those made by similarly situated companies; and (c) the SEC does not permit companies to cease making timely filing requirements because they are in the process of remediating a disclosed material weakness.

99. Ms. Johnigan is a former EY partner at the national office in New York where she served as the national office Chair of the Thrift Industry Group and Real Estate Industry Group and Co-Chair of the Financial Services Group. She also is a CPA, CFF and CFE.

100. Ms. Johnigan submitted a 63-page report in which she opined that, (a) Weatherford was required to conduct additional substantive procedures to ensure that its financial statements complied with GAAP in light of the material weakness; and (b) the substantive procedures performed provided Weatherford reasonable assurances that the income taxes reported in its financial statements complied with GAAP.

### **III. THE SETTLEMENT**

101. The proposed Settlement is for \$120,000,000 in cash. As set forth above, the Settlement is the result of more than three years of hard-fought litigation against Weatherford and the Individual Defendants, as well as arm's-length negotiations by informed Class Representatives and Class Counsel. The Settlement provides the members of the Class immediate benefits and eliminates the significant risk (discussed below) that continued litigation would not result in a favorable outcome.

102. The Settlement was not funded by insurance.<sup>4</sup>

103. For the reasons discussed below and in the accompanying Settlement Memorandum, Class Representatives and Class Counsel believe that they have obtained an outstanding result that is more than fair, reasonable and adequate, especially considering the risk of recovering nothing or less than the Settlement after substantial delay.

**A. Negotiation Of The Settlement**

104. The process of achieving the Settlement was long and difficult. At various times during the litigation, counsel for the Parties had preliminary discussions to explore possible settlement. In October 2014, the Parties participated in an in-person mediation session in New York City under the auspices of the Honorable Layn R. Phillips, former federal district judge for the Western District of Oklahoma, and an experienced and highly respected neutral.

105. Judge Phillips is a former Assistant United States Attorney in the Central District of California, who then served as United States Attorney in the Northern District of Oklahoma. He was subsequently appointed and served as a United States District Judge in the Western District of Oklahoma for four years. In 1991, he resigned from the federal bench and joined Irell & Manella LLP. The majority of Judge Phillips' professional time at Irell & Manella was devoted to serving as a mediator and arbitrator in connection with large, complex cases like this one. In 2014, Judge Phillips opened his own mediation firm, Phillips ADR Enterprises. He

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<sup>4</sup> Weatherford's public disclosure of the Settlement in its Form 10-Q for the second quarter of 2015 does not state that it was funded by insurers and explicitly states that the payment was accrued. In contrast, the same filing states that the *Dobina* settlement "was entirely funded by our insurers" and does not state that any portion of that settlement was accrued. (Ex. 3, Form 10-Q at 19-20). To the extent these facts indicate an issue as to whether the Company could rely on insurance proceeds to fund a payment to the Class, it adds to the conclusion that the significant amount recovered not only represents an outstanding result, but provides a testament to Class Counsel's skill and tenacity in obtaining it.

has been nationally recognized as a mediator by the Center for Public Resources Institute for Dispute Resolution (“CPR”), serving on CPR’s National Panel of Distinguished Neutrals.

106. A detailed account of the mediation and settlement process is set forth in the accompanying Declaration of Layn R. Phillips, annexed hereto as Ex. 2. Briefly stated, prior to the October 2014 mediation, the Parties submitted detailed mediation statements. The mediation session ended with both sides at an impasse. The mediator, however, remained in contact with counsel for the Parties and made some additional progress before year-end in narrowing the gap. Nevertheless, the Parties remained far apart, with divergent views of the case and the level at which it could be resolved. Accordingly, the Parties continued to engage in vigorous litigation and depositions got underway in January 2015.

107. After the close of fact discovery and the exchange of expert reports, the Parties again participated in a full-day mediation session in New York on May 20, 2015. This time the Parties made substantial progress but still remained sufficiently apart that they could not reach a settlement. The Class Representatives and Class Counsel rejected an offer by Defendants that, while substantial, in their view did not adequately compensate the Class based on their assessment of the strengths and weaknesses of the claims. Over the subsequent days, through multiple telephonic exchanges with the mediator, the Parties ultimately accepted the mediator’s recommendation and reached an agreement in principle on June 2, 2015 to resolve the Class’s claims in exchange for a cash payment from Weatherford in the amount of \$120,000,000.

**B. Risks Of Continued Litigation**

108. Based on the extensive investigation and discovery conducted by Class Counsel, in which they reviewed and analyzed over eight million pages of documents, took twenty-two depositions, and engaged and relied upon numerous experts to provide advice about damages, loss causation and complex tax accounting matters, Class Counsel believes that the

evidence adduced was instrumental in obtaining this excellent result here for investors. Nevertheless, a settlement was reached because the Class Representatives and Class Counsel also realize that they faced considerable challenges and defenses on critical elements of the claims if the Action were to continue through trial, as well as the inevitable appeals that would follow even if the Class Representatives were able to obtain a favorable verdict against Defendants.

109. In agreeing to settle, the Class Representatives and Class Counsel weighed, among other things, the substantial cash benefit to Class Members under the terms of the Settlement against: (i) the uncertainties associated with trying complex securities cases; (ii) the difficulties and challenges involved in proving (a) falsity, (b) scienter, (c) loss causation, and (d) damages here; (iii) the fact that, even if the Class Representatives prevailed at summary judgment and trial, any monetary recovery could have been less than the Settlement Amount; and (iv) the delays that would follow even a favorable final judgment, including appeals.

110. In weighing these risks, the Class Representatives and Class Counsel also considered that the alleged violations of complex internal controls and tax accounting would have been difficult to present to a jury and were vigorously disputed by Defendants who offered credible alternative explanations and defenses supported by experts and fact witnesses. The claims against Defendants presented significant liability risks simply given the highly fact-intensive and intricate nature of the alleged frauds at issue and the vigorous opposition Defendants were advancing.

#### **1. Risks Concerning Scienter**

111. A plaintiff's burden in proving scienter under Section 10(b) of the Exchange Act is a heavy one. "The element of scienter is often the most difficult and controversial aspect of a securities fraud claim." *Fishoff v. Coty Inc.*, No. 09 Civ. 628 (SAS), 2010 WL 305358, at \*2

(S.D.N.Y. Jan. 25, 2010) *aff'd*, 634 F.3d 647 (2d Cir. 2011). By preponderance of the evidence, the Class Representatives would have to prove that Defendants knew or were reckless in not knowing that Weatherford's financial statements were false when issued—a task that was not impacted by the issuance of the Restatements. *See Novak v. Kasaks*, 216 F.3d 300, 311-12 (2d Cir. 2000); *see also* Approval Mem., Section I.C.4. Despite the Class Representatives' and Class Counsel's strong belief that the evidence procured in discovery was compelling in this regard, there remained many obstacles once the claims got to a jury.

112. To begin with, the tax accounting issues were mind-numbingly complex. Even within the specialized world of tax accounting, which is a particularly dense and difficult discipline, the rules in that field involved in this case were even more so. The Restatements resulted from different types of tax issues, the most important of which included: (i) uncertain tax positions, (ii) deferred tax assets and liabilities, (iii) valuation allowances, and (iv) the tax treatment of intercompany dividends and interest payments. There were multiple iterations and subcategories of each.

113. The difficulty in establishing scienter can be best exemplified within the context of the Company's uncertain tax positions ("UTPs"). Large multi-national corporations like Weatherford, which operates in more than 80 countries, are typically required to file tax returns in each of the local jurisdictions. When Weatherford files a tax return abroad, particularly if it includes taxes on complex and sophisticated transactions, there remains uncertainty as to whether the local tax authorities will disagree with the "position" taken by Weatherford (*i.e.*, the amount of tax paid). (The same uncertainty can occur with transactions in the United States, including but not limited to the position that may be taken by the IRS, but the

uncertainty is higher in foreign jurisdictions with less developed tax codes and more authoritarian regimes).

114. For illustration purposes (and this is not a real transaction), assume that Weatherford's subsidiary in Canada paid \$100 million to another subsidiary in Algeria and the Algerian subsidiary every year paid back \$5 million. Is the \$100 million an equity investment or a loan? Is the \$5 million a dividend or interest payment? While Weatherford may choose to structure the transaction one way (as a loan), the Algerian tax authorities may determine that it was effectively an investment, that the yearly payments are dividends, and that the dividends are profits and not deductible as an interest payment. To account for the uncertainty that the Algerian tax authorities may reject and reverse Weatherford's tax position, GAAP requires that Weatherford assess the uncertainty of its tax position. Based on certain rules, GAAP may require Weatherford to book a reserve in its financial statements. The standard is "more likely than not." In other words, is it "more likely than not" that the Algerian tax authorities will reverse Weatherford's tax position? The decision whether "it is more likely than not" is made by Weatherford's tax group in conjunction with its local tax advisors and audited by EY.

115. This simple illustration highlights a number of difficulties faced by the Class Representatives in proving scienter. First, the complexity is obvious. Indeed, the challenges in explaining to a jury the tax and accounting rules of a wide variety of foreign jurisdictions, showing that Weatherford did not follow those rules, and then proving that Defendants did so with intent to defraud are extremely difficult. Second, the tax issue illustrated is not black and white and does not have a bright line. A vast majority of the amounts restated resulted from tax issues with this level of complexity and nuance. Third, Defendants were likely to argue that determining whether a reserve for an uncertain tax position should be recorded was a matter of

judgment and opinion. Defendants would support this argument by pointing to GAAP, which does not require an uncertain tax reserve if a tax position was “more likely than not” to be upheld upon review by the relevant tax authority. (*See also* ¶¶122-26, *infra*, concerning *Omnicare*.)

116. Further complicating the Class Representatives’ burden of proof, the number of tax positions that were restated was in the hundreds. While large numbers could be placed in similar categories, this was not a case in which the Class Representatives could point to a few tax positions and accounting entries and explain a relatively simple story, like in *Dobina*. Instead, the Class Representatives and their experts would have had to prove that, of a litany of smaller transactions, each was improperly booked, and that Defendants knew or were reckless in not knowing about each one of them.

117. As noted above, the Class Representatives intended to address this challenge by stressing the common inadequacies in Weatherford’s procedures for identifying errors associated with this and other accounting issues, of which Defendants knew were subject to a material weakness. However, Defendants have responded and would continue to respond with a double-barreled assault, challenging both the Class Representatives’ allegations regarding whether Defendants had reason to know of, or recklessly disregarded, any alleged inadequacies in the procedures they deployed, and, *a priori*, whether each of the errors as to each of the hundreds of tax position judgments was not discovered at the time it was made not because of the allegedly known procedural inadequacies, but because of the complexity and subjective nature of the accounting decisions at issue.

118. The variety of transactions with different tax issues was a pervasive characteristic of the Second and Third Restatement. In contrast, the vast majority of the First Restatement was a result of one set of transactions, recurring for multiple years, and leading to

one tax and accounting issue about intercompany payments. The intercompany payment adjustments were resolved after the First Restatement and did not recur subsequently. Defendants would have likely argued that as of the First Restatement they did not have sufficient notice of the problems that came to light in the Second and Third Restatement. The Class Representatives had strong counterarguments showing that the link between the First Restatement and the subsequent two Restatements was much stronger and direct than accepted by Defendants. Nevertheless, the Class Representatives' argument before the jury, again, would have required a detailed and thorough explanation of arcane tax and accounting minutiae. There was enormous risk of losing the jury on this point.

119. In addition to the complexity of the tax accounting issues, Defendants would have likely argued that they did not make the tax and accounting decisions alone. Defendants had a number of tax and accounting consultants, including local tax experts, PwC and Deloitte. Defendants would have likely pointed to all those third-parties for an imprimatur of approval. Indeed, even the Individual Defendants themselves were not making the tax and accounting decisions and relied on the Company's tax group. The Individual Defendants would have likely argued that they relied on their tax employees in good faith and were not, and could not possibly be expected to be, knowledgeable at the level of detail and minutiae of tax experts.

120. The defense theme highlighting the Individual Defendants' supposed good faith also could have gained some traction for additional reasons. Weatherford announced a vast remediation effort after the First Restatement and at the commencement of the Class Period. The Company then created a large team with internal and external resources dedicated to trying to ensure that the financial statements were correct and free of errors. Indeed, Defendants pointed to the fact that they admitted to the market that the Company had a material weakness in internal

controls as just one example demonstrating that they were not trying to hide anything. While the Class Representatives had counter-arguments, it remained unclear whether the jury would be swayed if the Individual Defendants offered what may appear to be heart-felt testimony at trial based upon the effort undertaken to correct the material weakness.

121. Finally, the Class Representatives' case also lacked some of the stronger and more persuasive evidence of scienter. There were no insider sales of stock or any facts suggesting profiteering by the Individual Defendants. Rather, the Class alleged that Defendants had a motive to issue the Restatements in order to remain in compliance with Weatherford's debt covenants and to issue securities for purposes of liquidity. While these are certainly motives and Class Representatives developed them at length in discovery, the jury appeal of these facts is more limited. Moreover, Weatherford witnesses and a representative of its principal banker, J.P. Morgan, testified that Weatherford maintained an investment-grade rating on its debt throughout the Class Period and had other means of available credit. The Class Representatives would have countered with other testimony and/or evidence of contemporaneous statements by the Individual Defendants as to significant concerns they had that any delay in filing the financial statements would have risked default. Nonetheless, because both sides had sufficient evidence on this issue, it was highly uncertain how it would be resolved at trial.

## **2. Risks Concerning *Omnicare***

122. In addition to the challenges of proving scienter, *Omnicare* created substantial risk on the element of falsity at summary judgment and trial. In *Omnicare*, the Supreme Court held that for statements of opinion plaintiffs must plead that the speaker did not truly hold the opinion or that the statement did not rest on a meaningful inquiry. *Id.* at 1325-28, 1332. This Court is very familiar with this area of the law, as set forth in its recent decision in *City of*

*Westland v. MetLife, Inc.*, No. 12-0256, ECF No. 90 (S.D.N.Y. Sept. 11, 2015). In fact, the holding in *Omnicare* originated with this Court. *Id.* fn. 155.

123. Defendants would have likely argued at summary judgment and trial that *Omnicare* applied squarely to the facts of this case. Specifically, Defendants would have contended that the tax and accounting issues here (*e.g.*, uncertain tax positions, valuation allowances, etc.), require judgment and thus constitute statements of opinion, not facts. Whether a tax position is uncertain, and whether a reserve is therefore necessary under the “more likely than not” standard, is not black and white. The decision requires balancing numerous factors and views can vary.

124. Thus, according to Defendants, the Class Representatives would have had to satisfy *Omnicare* and prove that Defendants truly did not believe that the financial statements were true, or show that Defendants had not conducted an adequate inquiry. As this Court recently wrote, “*Omnicare* makes just as clear that it is substantially more difficult for a securities plaintiff to allege adequately (or, ultimately, to prove) that such a statement is false than it is to allege adequately (or prove) that a statement of pure fact is false.” *MetLife*, at 28-29.

125. The Class Representatives and Class Counsel were prepared to submit several compelling counter-arguments. For example, tax and accounting reserves are not just entirely discretionary opinions, such as a statement that “a painting is beautiful.” There are rules, standards, and procedures that must be followed under the tax code and accounting guidelines that establish procedures and parameters circumscribing the range of possible opinions. Here, the Company also had restated its financial statements. From an accounting standpoint, that fact establishes that the financial statements were false as of the time they were issued. In addition,

the Class Representatives would have argued that Defendants did not have a reasonable basis for their opinions because they had not conducted a meaningful inquiry.

126. Despite these arguments, the Class faced a very real risk at summary judgment and trial. This Court's recent decision in *MetLife* would have surely been heavily relied upon by Defendants and Class Counsel would have had to convince this Court that the instant Action was distinguishable. Even if the Class reached trial, the jury could find that based on the evidence presented by Defendants they had actually conducted a meaningful inquiry and simply reached the wrong accounting judgments. This was certainly one of the key themes that Defendants espoused during depositions, mediation, and throughout settlement negotiations.

### **3. Risks Concerning Loss Causation And Damages**

127. The risks the Class faced with respect to scienter and *Omnicare* created inter-related risk related to the elements of loss causation and damages that not only could have led to a complete loss at trial but also at summary judgment. The issue is again predicated on the fact that the Second and Third Restatements consisted of hundreds of transactions raising a multiplicity of tax issues. Defendants would have likely argued that at least for each category (e.g., uncertain tax positions, deferred tax assets and liabilities, withholding tax accrual, etc.), the Class had the burden to disaggregate those issues for loss causation and damages.

128. More specifically, uncertain tax positions were responsible for a majority of the Second Restatement and virtually all of the Third Restatement. If the Class Representatives were unable to prove scienter on the uncertain tax positions, Defendants would have argued that the portion of the Restatements attributable to the uncertain tax positions could not have caused the loss and that the Class had the burden to prove the amount of the drop in the stock price attributable to the other tax positions on which they had proved scienter.

129. If this argument gained traction, it could have been very problematic for the Class. Here, we have just discussed one example the uncertain tax positions. But there were multiple categories on which Defendants would have argued that the jury would have to separately determine scienter and therefore apportion damages with its concomitant disaggregation effect on loss causation. It would have resulted in an extremely complex set of alternative iterative decisions and an extremely confusing jury form.

130. More importantly, the public announcement of the Restatements did not disaggregate the amount per tax issue. Accordingly, Defendants would have likely argued that the Class would not be able to meet the burden of proof and disaggregate damages and loss causation.

131. The Class obviously had counterarguments to this contention, mainly that Defendants should not have issued the Restatements at all until they had a reasonable basis to ensure their accuracy, and that Defendants' efforts to break up the Restatements into smaller tax issues merely obfuscates the Class' argument that the entire tax process at Weatherford was broken. The Class, however, risked that the Court at summary judgment, or the jury at trial, would agree with Defendants.

132. Indeed, the Parties' respective damages experts strongly disagreed with each other's assumptions and their respective methodologies, including the method of disaggregating potentially confounding news from the alleged fraud-related cause of the stock drops -- aside from parsing the Restatements. Accordingly, the risk that the jury would credit Defendants' damages position over that of the Class had considerable consequences in terms of the amount of recovery for the Class, even assuming liability was proven.

133. Finally, Defendants' alternative position was that the Class Representatives could not overcome any portion of their loss causation burden, and therefore could not prove any damages at all. Specifically, as noted above, Defendants were prepared to argue, in part with the aid of expert testimony, that in light of Weatherford's risk disclosures related to a material weakness and related possibility of additional financial statement errors, the Second and Third Restatements were known risks to the market and therefore could not have caused the alleged losses. In response, the Class Representatives would have continued to point to Defendants' repeated assurances that they had performed additional procedures in light of the material weakness that was identified, and were confident that Weatherford's financial statements were accurate and complied with GAAP. Likewise, we intended to rely on this Court's holding that, notwithstanding Weatherford's risk disclosures, "such a disclosure cannot insulate defendants from liability for their statement of confidence in the financial results." *Freedman v. Weatherford Int'l Ltd.*, No. 12 Civ. 2121, 2013 WL 5299137, at \*6 n.53 (S.D.N.Y. Sept. 20, 2013). Nonetheless, Defendants signaled their intent to have the trier of fact decide this issue based on their expert's reliance on academic studies, which purportedly show that, in an efficient market, it is generally known that companies that restate their financial results will often need to restate again shortly thereafter. If this issue proceeded forward, the Class Representatives would have challenged these studies, as well as distinguished their applicability to the facts in this case, but with no guarantee as to how the trier of fact would have resolved these issues.

134. In sum, in light of all of these complex factual and evidentiary issues, and an inevitable battle of the experts, there was substantial uncertainty regarding the resolution of this issue at summary judgment or trial.

**4. Additional Trial Risk**

135. At the time the agreement-in-principle to settle the Action was reached, the Parties were weeks away from submitting summary judgment papers. While the Class Representatives and Class Counsel believe that the claims asserted against Defendants were strong, we also recognize that there are considerable risks to actually trying the case.

136. For example, given the complex nature of the claims, Class Counsel intended to rely heavily on expert opinion concerning accounting, damages, loss causation, and Weatherford's financial conditions. Accordingly, the Class bore the risk that: (i) the experts could be subject to a successful *Daubert* motion prior to trial, permitting little or no expert testimony on these key issues; or (ii) if allowed to testify, the jury would evaluate the "battle of the experts" and decide to credit Defendants' experts over the Class' experts.

137. The Class also faced risks particular to securities class actions in which the production of evidence is extremely asymmetrical. In contrast to a direct action between two parties in which both sides interacted with each other and have documents and witnesses, that was not the case in this Action. Defendants here produced the overwhelming majority of the liability related documents and controlled most witnesses. Because trial requires live witnesses, the Class is disadvantaged because it is forced to present its case mainly through experts or adverse witnesses.

138. Given all these challenges of continuing to pursue the claims against Defendants, versus the immediate recovery the Settlement provides for the Class (*see also* Section VI.A.1., *infra*), Class Counsel and Class Representatives respectfully submit that the Settlement achieved is outstanding and more than satisfies the fair, reasonable, and adequate standard and should be approved.

**IV. CLASS REPRESENTATIVES' COMPLIANCE WITH THE COURT'S NOTICE ORDER AND CLASS REACTION TO DATE**

139. Pursuant to the Notice Order (ECF No. 193), the Court appointed the Garden City Group, LLC ("GCG") as Claims Administrator in the Action and instructed GCG to disseminate copies of the Settlement Notice and Proof of Claim (collectively "Claim Packet") by mail and to publish the Summary Settlement Notice.

140. The Settlement Notice, attached as Ex. A to the Affidavit Regarding (A) Mailing of the Settlement Notice and Proof of Claim Form; (B) Publication of Summary Settlement Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusion and Opt-ins Received to Date, dated September 28, 2015 ("Mailing Declaration" or "Mailing Decl.") (attached as Ex. 4 hereto), provides potential Class Members with information about the terms of the Settlement and, among other things: their right to exclude themselves from the Class; their right to object to any aspect of the Settlement, the Plan of Allocation, or the fee and expense application; and the manner for submitting a Proof of Claim in order to be eligible for a payment from the Net Settlement Fund. The Settlement Notice states that those Class Members who previously sought exclusion in connection with the Class Notice, may "opt-back" into the Class in order to participate in the recovery. The Settlement Notice also informs Class Members of Class Counsel's intention to apply for an award of attorneys' fees of no more than 25% of the Settlement Fund and for payment of litigation expenses in an amount not to exceed \$5,600,000 million. Ex. 4 - A at 2, 7.

141. As detailed in the Mailing Declaration, on August 11, 2015 GCG began mailing Claim Packets to all known potential Class Members as well as banks, brokerage firms, and other third party nominees whose clients may be Class Members. Ex. 4 ¶¶3-6. In total, to date, GCG has mailed 370,248 Claim Packets to potential nominees and Class Members by first-

class mail, postage prepaid. *Id.* ¶7. To disseminate the Settlement Notice, GCG obtained the names and addresses of potential Class Members from listings provided by Weatherford and its transfer agent and from banks, brokers and other nominees in connection with the mailing of the Class Notice, as well as to additional potential members of the Class whose names and addresses were provided by individuals or nominees or for whom nominees requested additional Claim Packets. *Id.* ¶¶4-6.

142. On August 21, 2015, GCG caused the Settlement Summary Notice to be published in *The Wall Street Journal* and to be transmitted over *PR Newswire*. *Id.* ¶8 and Exhibits B and C thereto.

143. GCG also maintains and posts information regarding the Settlement on a dedicated website established for the Action, [www.Weatherford2012SecuritiesLitigation.com](http://www.Weatherford2012SecuritiesLitigation.com), to provide Class Members with information concerning the Settlement, as well as downloadable copies of the Claim Packet and the Stipulation. *Id.* ¶9.

144. Pursuant to the terms of the Notice Order, the deadline for Class Members to submit objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, to request exclusion from the Class, or to opt-back into the Class is October 13, 2015. To date, Class Counsel have not received any objections to any aspect of the Settlement and the Claims Administrator has received five requests for exclusion from the Class, of which only two are valid (representing 1,700 shares) in connection with the Settlement Notice. *Id.* ¶12. Should any objections or additional requests for exclusion be received, Class Representatives will address them in their reply papers, which are due October 27, 2015.

## **V. PLAN OF ALLOCATION**

145. Pursuant to the Notice Order, and as set forth in the Settlement Notice, all Class Members who wish to participate in the distribution of the proceeds from the Settlement

must submit a valid Proof of Claim and all required information postmarked no later than December 9, 2015. As provided in the Settlement Notice, after deduction of Court-awarded attorneys' fees and expenses, notice and administration costs, and applicable Taxes, the balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the plan of allocation approved by the Court (the "Plan of Allocation").

146. The Plan of Allocation proposed by the Class Representatives, which is set forth in full in the Settlement Notice (Ex. 4 – A at 9-12), is designed to achieve an equitable and rational distribution of the Net Settlement Fund to eligible claimants, consistent with the Class Representatives' damages theory during the prosecution of the Action. Class Counsel developed the Plan of Allocation in close consultation with a damages expert and believe that the plan provides a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants.

147. The Plan of Allocation provides for distribution of the Net Settlement Fund among Authorized Claimants on a *pro rata* basis based on "Recognized Loss" formulas tied to liability and damages. In developing the Plan of Allocation, the Class' damages expert considered the amount of artificial inflation present in Weatherford's common stock throughout the Class Period that was purportedly caused by the alleged fraud. This analysis entailed studying the price declines associated with Weatherford's allegedly corrective disclosures, adjusted to eliminate the effects attributable to general market or industry conditions. In this respect, an inflation table was created as part of the Settlement Notice. The table will be utilized in calculating Recognized Loss Amounts for Authorized Claimants.

148. GCG, as the Court-approved Claims Administrator, will determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized

Claimant's total Recognized Loss compared to the aggregate Recognized Losses of all Authorized Claimants, as calculated in accordance with the Plan of Allocation. The calculation will depend upon several factors, including when the Authorized Claimant's common stock was purchased and whether the stock was sold during the Class Period and, if so, when.

149. To date, there have been no objections to the Plan of Allocation and Class Representatives and Class Counsel respectfully submit that the Plan of Allocation is fair and reasonable, and should be approved.

#### **VI. CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES**

150. In addition to seeking approval of the Settlement and the Plan of Allocation, Class Counsel respectfully request a fee award of 1.5 times lodestar or \$27,930,550. Class Counsel also respectfully request payment of expenses reasonably incurred in connection with the prosecution of the Action from the Settlement Fund in the amount of \$4,675,424.65, plus accrued interest at the same rate as earned by the Settlement Fund. The fee and expense requests are both below the maximum amounts that the Settlement Notice advised could be requested.

151. Class Counsel have studied and analyzed this Court's previous fee decisions in securities class actions and seek to address below the various concerns expressed recently and over the years. Class Counsel are also aware that the fee requested, reflecting a 1.5 times lodestar multiplier, is relatively high compared to this Court's past practices, but respectfully submit that this case warrants it. The result here is not only outstanding but, in addition, Class Counsel took extraordinary pains to litigate in an extremely efficient and streamlined fashion, minimizing cost and expense. More importantly, this case also presents the rare instance where Class Counsel not only successfully navigated numerous fatal risks throughout the litigation, including the uncertainties and implications of *Halliburton II* and *Omnicare*, but did so during the pendency and subsequent resolution of *Dobina*. Thus, the Court has the benefit of assessing

the quality of Class Counsel's work in view of traditional factors, such as litigation risks, but also has the unique ability to compare the result achieved (and related efficiencies and quality of litigation) against the record in *Dobina*, which involved similar facts and legal issues relating to the same corporation.

152. Accordingly, and as set forth in the accompanying Fee Memorandum, Class Counsel respectfully submit that the fee requested is more than justified and should be approved based on the result achieved for the Class, the extent and quality of work performed, the risks of the litigation, and the contingent nature of the representation.

**A. The Requested Fee Is Fair And Reasonable**

153. The work undertaken by Class Counsel in prosecuting this case and obtaining this outstanding Settlement has been challenging and subject to an unprecedented heightened risk of obtaining no recovery at all. This was the case not only at the motion to dismiss stage, but also during discovery in light of *Halliburton II*, which, depending on how the case was decided, had the clear potential, as recognized by all Parties and the Court, to render it impossible for the Class Representatives to litigate their claims as a class action. It was not until after Class Counsel survived these obstacles, completed fact discovery, exchanged expert reports, and was less than a month away from filing a pre-trial order, that the Parties were able to reach agreement to resolve the Action.

**1. The Settlement Amount Is Excellent Compared To Typical Recoveries And Compared To What Was Obtained In *Dobina***

154. As an initial matter, the Settlement of \$120 million is excellent as a percentage of damages, particularly compared to that achieved in *Dobina*. The Settlement recovers a significant portion of estimated damages, which, based on expert analysis, ranged from approximately \$850 million (under a best-case scenario in which the jury credited all of the Class

Representatives' claims) to \$210 million (under a less favorable scenario in which a jury reached a verdict in favor of the Class Representatives but credited only the narrowest component of the Class Representatives' claims). Accordingly, the Settlement of \$120 million represents an excellent recovery of approximately 14.1% to 57% of damages, respectively.

155. Typical securities class action recoveries as a percentage of damages hover around the range of 5% to 6%. *See, e.g., In re Merrill Lynch & Co. Research Reports Sec. Litig.*, No. 02-MDL-1484, 2007 WL 313474, at \*10 (S.D.N.Y. Fed. 1, 2007) (“The Settlement Fund is approximately \$40.3 million. The settlement thus represents a recovery of approximately 6.25% of estimated damages. This is at the higher end of the range of reasonableness of recovery in class actions securities litigations.”). *See also* Approval Mem., Section I.C.8.

156. *Dobina* settled for \$52.5 million with an estimate of aggregate damages of approximately \$500 million, or 10.5% of damages. (*Dobina*, ECF No. 254 at ¶87). Assuming that the percentages of recovered damages in this Action (14.1%) and *Dobina* (10.5%) compared apples to apples, the result here is significantly better. To put the difference in perspective, if *Dobina* had recovered 14.1% of damages as the Class did here, the *Dobina* settlement would have been \$70.5 million (\$500 million x 14.1%), or nearly \$20 million more. Conversely, if this Action had settled for 10.5% of damages as *Dobina* did, the dollar recovery in this instance would have been \$89.25 million (\$850 million x 10.5%), over \$30 million less than the \$120 million recovered.

157. In relative terms, Class Counsel achieved a 34% premium over *Dobina* (14.1%/10.5%).

158. This result is even more compelling in light of the fact that the Settlement was entirely funded by the Company and not by insurers, as was the case in *Dobina* (*see supra*

¶ 102). It is obviously a much more difficult task to force the Company to pay out of its own coffers than merely to make a demand within policy limits and ask the insurers to disburse the funds. Indeed, the absence of insurance proceeds reflects the difficulty and challenges faced by Class Counsel in securing a settlement that maximized the recovery of every last dollar.

**2. The Class Representatives And Class Counsel Prosecuted The Action More Aggressively Than Had Been The Case In *Dobina* And It Was Litigated More Efficiently**

159. Class Counsel here litigated with enormous tenacity, completed fact discovery, exchanged expert reports with Defendants, and were about to exchange rebuttal expert reports on the day the settlement was reached, only one month prior to the submission of the pre-trial order. Class Counsel therefore had collected all the evidence and had full visibility and a complete understanding of the facts. After three-and-a-half years of litigation, and two-full day mediation sessions in October 2014 and May 2015, Class Counsel also had a very thorough and nuanced understanding of Defendants' potential defenses. While the Parties strongly disagreed about how the facts and arguments would be viewed and ruled on at summary judgment and trial, Class Counsel and the Class Representatives had all the information necessary to assess the risks.

160. As part of discovery, Class Counsel took 22 depositions, including those of the critical and most senior executives of the Company necessary to establish scienter. This included Defendants Duroc-Danner (CEO) and Becnel (CFO), as well as the two top executives in the tax department, James Hudgins (Head of Tax) and Darryl Kitay (second in command of tax during the relevant period).

161. In contrast, plaintiffs in *Dobina* did not depose any of these critical witnesses and took only 10 depositions, even though fact discovery was about to conclude. The parties in *Dobina* reached an agreement in January 2014 on the eve of the close of fact discovery on January 24, 2014 and had 10 pending depositions at the time. (*Dobina*, ECF No. 254 at 25-26).

162. Class Counsel in this Action reviewed and analyzed approximately 8 million pages of documents, compared to 2.3 million in *Dobina*. (*Dobina*, ECF No. 254 at 17). We recognize that the volume of documents does not provide a linear correlation to the complexity of the case or value of the work. Nevertheless, we respectfully submit that the order of magnitude of nearly four times the number of documents relating to two additional restatements and hundreds of thousands of intricate accounting documents reflects the broader scope and complexity of this Action compared to *Dobina*.

163. Furthermore, as explained above, the First Restatement in *Dobina* was primarily the result of one improper tax issue relating to intercompany payments that recurred in very similar fashion between 2007 and 2011. In contrast, this Action concerned substantially more complex tax issues relating to uncertain tax positions, deferred tax assets and liabilities, and withholding taxes. As a result, there were hundreds of different entries that had to be adjusted in the Second and Third Restatements compared to a comparatively small number in the First Restatement.

164. Similarly, the number of foreign tax jurisdictions involved expanded exponentially from a handful in Europe and the Caribbean in *Dobina*, to over two dozen here, reaching Latin America, Northern Africa, China, and the Middle East.

165. Accordingly, it is respectfully submitted that this litigation was materially more challenging and “larger” than *Dobina*. Nevertheless, despite the fact that this Action required more work to digest and ultimately prepare for depositions and trial compared to *Dobina*, the number of hours expended did not grow linearly and was lower proportionally. As set forth in Exhibit 8 (summary table of Class Counsel’s lodestars and expenses), Class Counsel expended a

total of 37,484 hours in prosecuting this Action.<sup>5</sup> This compares favorably with *Dobina* in which plaintiffs' counsel expended 30,325 hours. (ECF No 254 at 43). That is, Class Counsel here only worked approximately 7,000 more hours, or 24% more than counsel in *Dobina*, a smaller increase than one would expect, and a testament to the efficiency of Class Counsel's prosecution. This efficiency is particularly notable given that the lodestar of attorneys who were tasked with reviewing documents in *Dobina* accounted for 45% of class counsel's total lodestar, compared to 32% in the instant Action. See Section VI.B.1.; *Dobina*, No. 11 Civ. 1646 (LAK), 2015 WL 127847, at \*1.

166. Additionally, Class Counsel: (i) conducted 22 depositions, including of both Individual Defendants; in contrast, counsel in *Dobina* conducted only 10 and had agreed to stay the balance of the deposition schedule, including all of the individual defendants, at the time of settlement; (ii) reviewed and analyzed about 8 million pages of documents compared to approximately 2.3 million pages in *Dobina*; and (iii) exchanged nine expert reports compared to the submission of only one expert report on market efficiency in *Dobina* (ECF No. 254 at 30).

167. In sum, despite the fact that Class Counsel conducted more work than class counsel in *Dobina*, this did not result in an outsized increase in the number of hours and cost to the Class.

**B. Class Counsel Took Care To Avoid Duplication And Inefficiencies, Including After The Appointment Of BFTA**

**1. Class Counsel Conducted An Extremely Efficient Document Review**

168. From the outset, Class Counsel went through great pains to avoid inefficiencies, duplication, and excessive reliance on junior attorneys to review documents. In

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<sup>5</sup> See Declaration of Ira A. Schochet Filed on Behalf of Labaton Sucharow LLP in Support of Application for Award of Attorneys' Fees and Expenses (attached as Ex. 6 hereto), Declaration of Javier Bleichmar Filed on Behalf of Bleichmar, Fonti, Tountas & Auld LLP in Support of Application for Award of Attorneys' Fees and Expenses (attached as Ex. 7 hereto).

contrast to many securities class actions in which the majority of the lodestar is based on document review time, Class Counsel flipped that paradigm on its head. Staff attorneys that reviewed documents only totaled about 30% of the lodestar. *See* Ex. 6 - A, 7 - A, 8.

169. Class Counsel's ability to keep document review time to a minimum was accomplished in the face of a document production by Defendants and various third parties that exceeded 8 million pages of documents. Further still, this production consisted of a plethora of different types of documents (memoranda, accounting workpapers, tax opinions, emails, spreadsheets), in multiple formats (outlook, word, excel, PowerPoint), and in multiple languages (principally English, Spanish, and French). Class Counsel responded to the task of reviewing, analyzing and making the best use of this massive and complex production by utilizing a number of procedures and techniques to maximize efficiency and minimize costs.

170. For example, to review Defendants' sizeable production, Class Counsel relied upon a small team of attorneys who focused on reviewing documents for the purpose of preparing for depositions, and ultimately trial, with many of them assisting in additional stages of deposition preparation. The size of the team ranged from 2 to 8 attorneys at any one time – a very compact, but focused group given the number of documents, and one that maximized and concentrated the knowledge and understanding of the case.

171. The review was structured to limit overall cost, with the bulk of the initial review being conducted by attorneys experienced in electronic document discovery, and deposition and trial preparation. These attorneys were employed by Class Counsel. Seven of them had at least 12 years of legal experience and two had at least 25 years of experience. *See* Ex. 8.

172. All aspects of the attorney review were carefully supervised to eliminate inefficiencies and to ensure a high quality work-product. This supervision included multiple training sessions, the preparation of a set of relevant materials and information, presentations regarding the key legal and factual issues in the case, and in-person instruction from more senior attorneys. There were also frequent team meetings to discuss important documents, discovery preparation efforts, and case strategy.

173. In order to further reduce cost, time, and effort, all of the documents were placed in an electronic database that was created by and maintained at Precision Discovery, an external technology and litigation support vendor. The database, called Relativity, not only allowed Class Counsel to materially reduce the number of documents that needed to be reviewed by using Boolean-type searches, as well as by multiple categories, such as by author and/or recipients, type of document (e.g., emails, memoranda, SEC filings), date, Bates number, etc. More importantly, however, Relativity had sophisticated artificial intelligence capabilities, including the following:

(a) Clustering: This tool grouped documents together thematically, putting documents about the same topic together. Clustering prioritized documents for review and deprioritized less relevant document groups.

(b) Textual Near-Duplicate Detection: Using the produced text of the documents, the Textual Near-Duplicate tool identified documents with very similar text creating the following efficiencies and advantages:

(i) Searches were expanded to include Textual Near Duplicates, finding previous versions of documents and documents that may have incorporated other documents;

- (ii) Production prioritization found truly new documents by identifying documents in each production that did not have Textual Near Duplicates; and
- (iii) Productions could be compared across producing parties to further reduce the amount of document review necessary.

(c) Conceptually Similar Document Detection: This tool finds documents about the same topic that may not be Textual Near Duplicates. Conceptual similarity looks at the concepts in documents that arise from the language, rather than the language itself. As a result, the case team was able to search for documents about relevant issues with the limitation of key word searching or text-based comparisons.

(d) Email Threading: This tool allowed teams to review fewer documents by grouping email threads together and allowing review teams to focus on only the most “inclusive” emails. An email is inclusive if (i) it is the latest email in time that would generally contain all of the previous emails in a given thread, or (ii) it is a lesser included thread but it has an attachment, or (iii) it is the latest email in time of a conversation that branched off from the original email thread.

174. All these capabilities were extremely powerful and were used extensively to search the production on an exceedingly efficient and expedited basis. Rather than simply review each document in the linear order in which they were produced (*i.e.*, by bates number), Class Counsel maximized the benefit of the technology by searching the document production for information concerning key witnesses and case-related concepts. This approach is forensic in nature and heavily relies on the document “metadata” (the embedded bibliographic information in the documents) to identify the key witnesses, document custodians, and highly relevant documents in short order.

175. These procedures enabled Class Counsel to commence depositions in January 2015 even though Defendants continued to produce 1.6 million pages of documents in late 2014, including more than 700,000 pages of new documents that pertained to critical witnesses whose depositions were already calendared and scheduled to proceed shortly thereafter.

176. These technological tools further enabled Class Counsel to assemble witness-specific exhibits for each deposition in the most efficient manner possible. For instance, if a document pertained to one witness, the document database was programmed to link it to the exhibits being identified for other related depositions. By implementing and utilizing these technological tools, Class Counsel was able to effectively prepare for and take a total of 22 depositions, throughout the country and abroad, including in Houston, Austin, Chicago, Washington, D.C., London, and New York.

177. The forensic value provided by Relativity was also central to Class Counsel's ability to timely identify key memos, emails, charts and reports, each containing evidence strongly supporting the Class Representatives' claims, with which Class Counsel were able to confront the witnesses Defendants produced for deposition. As a result, the depositions were far more productive than they would otherwise have been and, we believe, strongly contributed to our bargaining position at mediation, and ultimately the excellent recovery obtained. Indeed, even to the extent that Defendants' witnesses were able to parry questions about these documents, Defendants were made aware that Class Counsel had identified key evidence, found within a mountain of documents that was potentially troublesome for them at trial.

178. In sum, the ability of Relativity to quickly and efficiently identify important relevant documents, and to categorize those documents by deponent, enabled Class Counsel to maintain a lean staff of reviewers. The net result, when comparing the cost of the technology to

the significantly greater time that would have had to be billed by a much larger staff of attorneys, represents a huge cost savings for the Class.

**2. Class Counsel Prosecuted The Action With A Small Team Of Partners And Associates, And Focused Document Review**

179. The majority of the work on this case was done by a small number of attorneys who performed a wide range of tasks in the prosecution of the lawsuit. First, five lawyers who maintained their roles throughout the case (as recounted in detail below), through a transition between law firms, constituted approximately \$8.419 million or 45% of the lodestar.<sup>6</sup> When Defendants produced about four million pages of documents after depositions were supposed to be underway in the fall of 2014, three attorneys from Labaton Sucharow joined the team: Ira Schochet (partner), Barry Okun (Of Counsel), and Katherine Ryan (Senior Associate), who collectively contributed approximately an additional \$1.70 million in lodestar. *See* Ex. 6 - A. This core team of eight lawyers thus amounted to \$10 million or about 54% of the total lodestar.

180. Consistent with this lean and efficient staffing, four attorneys were responsible for conducting all twenty-two depositions: Bleichmar, Fonti, Schochet, and Meeks. Class Counsel thus maximized their repository of knowledge on a small group of lawyers and eliminated duplication of effort that could have arisen from multiple individuals having to re-learn and digest the same information for subsequent depositions. This represents a high concentration of work and is very rare in securities class actions of this magnitude. It reflects Class Counsel's effort to maintain an efficient balance of work-flow within the litigation team.

**3. Class Counsel Added Lawyers Gradually And Only When Warranted**

181. In addition to the core group of attorneys, additional lawyers were added only very gradually as the case progressed, documents were produced, depositions commenced, and

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<sup>6</sup> Namely, attorneys Javier Bleichmar, Joseph Fonti, Bill Meeks, Claiborne Hane, William Geraci. *See* Exs. 6 - A, 7 - A, 8.

trial preparation began. Initially, the case was primarily prosecuted by Javier Bleichmar (partner), Bill Meeks (senior associate), and Danielle Stampley (associate). They principally conducted the initial investigation and drafted the amended complaint in the summer of 2012, and then briefed the opposition to the motion to dismiss in the fall of 2012.

182. Once the Court denied the motion to dismiss in September 2013, the same attorneys remained in the case with the exception of Stampley, who had departed from Labaton Sucharow. She was replaced by Clay Hane, also an associate. In addition, Joseph Fonti (partner) and Cynthia Hanawalt (associate and now partner of BFTA) joined the team and focused on class certification together with Bleichmar. Bleichmar and Hanawalt traveled to Anchorage and Sacramento in November 2013 and prepared the client representatives for their depositions and collected the Class Representatives' documents for production. They then defended the clients' depositions in New York in December 2013. Fonti and Hanawalt defended the deposition of the Class' market-efficiency expert in connection with the motion for class certification.

183. Simultaneously, Bleichmar, Meeks, and Hane served document requests on the Company and subpoenas on third parties. By February 2014, Class Counsel had more than 2 million pages to review. Accordingly, Class Counsel added a small team of staff attorneys to focus on reviewing documents, which initially only included Sheena Jenkins and Jennifer Hirsch. They were supervised by Bill Geraci (associate).

184. Throughout the winter and spring of 2014 Class Counsel continued to prosecute the case despite the fact that *Halliburton II* loomed over them and many other securities class actions settled. Indeed, as Defense Counsel represented to this Court in connection with the *Dobina* settlement, Defendants sought to resolve or stay the case at bar pending the *Halliburton II* decision. See Transcript of Proceedings at 4-5 (Feb. 19, 2014),

*Dobina v. Weatherford Int'l Ltd.*, No. 11-CV-1646 (ECF No. 276), Ex. 9. However, the Class Representatives rejected Defendants' proposal and continued to press forward despite the risk of a complete loss. Nevertheless, to avoid Court intervention and reach an agreement with Defendants, the Class Representatives agreed to stay depositions pending the resolution of *Halliburton II*.

185. Class Counsel then served additional document requests and third party subpoenas and received more documents from the Company and third parties. The team of Bleichmar, Meeks, Hane, Jenkins, Hirsch and Geraci met regularly to discuss the documents and exchange ideas and theories of the case. Class Counsel also retained accounting experts to consult and understand the complex tax and accounting issues, holding numerous in-person training sessions as well as regular telephonic conference with the experts.

186. In the spring of 2014, Class Counsel also considered whether to bring claims against EY and entered into a tolling agreement with the auditing firm. Ultimately, Class Counsel concluded that there were no viable claims against EY and that pursuing such claims would be detrimental to the case. In fact, Class Counsel believes that not suing EY substantially increased the value of the Settlement, in large part because the testimony provided by the EY audit and tax partners proved invaluable and would have been much more confrontational if EY had been a party.

187. On June 24, 2014, the Supreme Court issued its decision in *Halliburton II*. By then, Defendants already had produced about 4 million pages of documents. Class Counsel renewed the motion for class certification on July 22, 2014 (ECF No. 80) and began to prepare for depositions.

**4. The Appointment Of BFTA As Co-Class Counsel Had No Negative Impact On The Prosecution Of The Case And Did Not Cause Any Duplication Of Effort**

188. The founding partners of BFTA left Labaton Sucharow on August 1, 2014 and were soon followed by the rest of the attorneys in the original litigation team. While BFTA and Labaton Sucharow worked through their differences in August and early September, both firms placed the interests of the case, the Class, and Class Representatives above anything else. BFTA attorneys, in the absence of an order appointing BFTA to serve as co-class counsel, continued to work and collaborate with Labaton Sucharow with the approval of the Class Representatives.

189. For instance, on August 8, 2014, before resolution of whether BFTA would serve as co-class counsel, the Class Representatives filed a motion for reconsideration (ECF. No. 86) of the denial by Judge Francis (ECF. No. 83) of three previously filed discovery motions (ECF. Nos. 65, 66 and 67). Because the relevant BFTA attorneys had the most familiarity with the case and related motions, they carried the laboring oar on preparing the opening papers and the reply brief filed on September 4, 2014 (ECF No. 103 and 104), aided by the comments and ideas of two Labaton Sucharow attorneys. Also throughout this period, BFTA and Labaton Sucharow continued to push forward, reviewing documents, preparing for depositions, and pursuing third party discovery.

190. Roughly contemporaneously with these events, Defendants approached Class Counsel to discuss a potential mediation, which was subsequently scheduled for October 7, 2014. BFTA and Labaton Sucharow again collaborated in preparing for the mediation, engaging a damages expert, and drafting the mediation statements prior to the appointment of BFTA as Co-Class Counsel on September 29, 2014.

**5. Through Depositions And The End of Fact Discovery Class Counsel Faced An Army Of Lawyers On The Defense Side**

191. After the October 7 mediation failed, in the words of the mediator Judge Phillips (Ret.) at the time, the Parties descended into litigation hell. Defendants produced 1.6 million pages of documents in a three week period, and ultimately Class Counsel obtained another 2.4 million pages prior to the end of fact discovery. In effect, Defendants and the third parties doubled the production of documents from four million to eight million at the time Class Counsel began depositions.

192. As noted above, to go toe-to-toe with Latham & Watkins and the army of additional defense lawyers, Class Counsel gradually added attorneys to the litigation team as the case got deeper into litigation. At the time of Settlement, when the parties were preparing for summary judgment and trial, the core team consisted of three partners (Bleichmar, Fonti, and Schochet), one Of Counsel (Okun) and four associates (Meeks, Ryan, Hane and Geraci).

193. Class Counsel believes that the staffing on the plaintiffs' side paled in comparison with the army of lawyers and consultants representing Defendants and third parties, which included the following:

- (a) Latham & Watkins represented the Company, Duroc-Danner, and Becnel;
- (b) Jones Day also represented Duroc-Danner;
- (c) Williams & Connolly also represented Becnel;
- (d) Current Weatherford employees at the time of the deposition also had separate counsel, which included Skadden Arps, O'Melveny & Myers, and Goodwin Proctor;
- (e) EY was represented by Mayer Brown;
- (f) PwC was represented by Curtis, Mallet-Prevost, Colt & Mosle;
- (g) Deloitte was represented by Baker Botts;

- (h) JP Morgan was represented by itself and Stagg, Terenzi, Confusione & Wabnik; and
- (i) Davis Polk represented itself.

194. Class Counsel was typically outnumbered 2:1 at the depositions, sometimes by a wider margin. In the deposition of EY's tax partner, Sarah Adams, the ratio was 8:1, where only the attorney for Class Counsel taking the deposition attended. Opposing counsel had seven attorneys and one consultant present: Kevin Metz (Latham & Watkins); Scott Fletcher and Elizabeth Myers (Jones Day); Stanley Parzen (Mayer Brown); Josh McMorrow (Weatherford Associate General Counsel); Michael Crane and Paul Thompson (EY Associate General Counsel); and Alison Forman (Cornerstone Research consultant).

195. Typically, however, Class Counsel had a partner and an associate while opposing counsel had two partners and two associates. For example, at the deposition of Jim Parent (Head of Tax at Weatherford at the time of the deposition) Bleichmar and Meeks attended for Class Counsel. The witness was defended by Eric Schwartz and Colin Ram (Skadden) and Kevin Metz and Tim McCarten (Latham & Watkins).

196. Class Counsel estimates that counsel and consultants for defendants and third parties billed almost twice as much time as Class Counsel. This estimate is based on an analysis of attendance at the depositions. Class Counsel analyzed the number of lawyers and consultants present at each deposition, counted the total duration of the deposition, including breaks, and approximated the billable rates of defense counsel based on the 2015 Billing Survey published by the National Law Journal ("2015 NLJ Survey"). *See* Exhibit 10 (excerpt compiled by Class Counsel).

197. The results can be summarized as follows:

(a) Class Counsel dedicated almost 400 man hours (precisely 399 hours and 42 minutes) and the lodestar totaled nearly \$275,000.

(b) Opposing-outside counsel at depositions (including third-party counsel) dedicated almost 670 man hours (667 hours and 40 minutes) and the lodestar is estimated to be about \$510,000.

(c) Opposing-outside counsel at depositions, plus (i) inside counsel for Weatherford and EY, and (ii) consultants, dedicated almost 830 man hours (827 hours and 41 minutes) and approximately \$570,000.

198. Class Counsel chose this methodology because it is the only window we have into the resources allocated by the opposing side, for the same task, and the same amount of time. While the higher lodestar by defense counsel reflects considerably more hours, it also reflects higher billing rates. For example, we calculated the billable rate for Peter Wald (the senior partner representing Defendants for Latham & Watkins) and Kevin Metz (Latham & Watkins partner who handled the day-to-day litigation) at a rate of \$1,100 per hour (highest Latham partner billable rate) and \$990 (average partner billable rate) per hour respectively, based on the 2015 NLJ Survey. Both of those rates exceed the rates billed by Class Counsel. *Compare* Ex. 10 with Ex. 6 - A, 7 - A.

199. The rates used for Wald and Metz are appropriate in light of their vast experience and distinguished resumes. Wald has been practicing for nearly 40 years and was Global Chair of Latham's Litigation Department from 2004-2011. Similarly, Metz has been practicing law for nearly two decades.

200. In sum, it is clear that counsel for Defendants and third parties dedicated substantially more resources in terms of lawyers and number of billable hours than Class

Counsel. This serves to put Class Counsel's time and hours in perspective and to ground the analysis of whether Class Counsel dedicated more resources than necessary, or duplicated or wasted efforts. The clear answer based on this analysis is a resounding "no." Class Counsel did not waste efforts or incur unnecessary time and expense. The time and effort dedicated by Class Counsel are more than justified and were necessary in light of the enormous resources deployed by Defendants.

**C. The Overall Time And Labor Devoted To The Action**

201. Attached hereto as Exhibits 6 - 7 are declarations from Labaton Sucharow and BFTA to support Class Counsel's request for an award of attorneys' fees and payment of litigation expenses.

202. Included with these declarations are schedules (Exhibits A and B to each declaration) that summarize the number of hours worked by each attorney and each professional support staff employed by the firms and the value of that time at current billing rates, *i.e.* the lodestar of the respective firms, as well as the expenses incurred by category.<sup>7</sup> As set forth in each declaration, these schedules were prepared from contemporaneous daily time records regularly prepared and maintained by the respective firms, which are available at the request of the Court.

203. The hourly billing rates of Class Counsel here range from \$775 to \$925<sup>8</sup> for partners, \$510 to \$800 for of-counsel and special counsel, \$390 to \$565<sup>9</sup> for associates, and \$360 to \$440 for staff attorneys. *See* Exs. 6 - A and 7 - A. The average hourly rate based on total lodestar of \$18,620,366.75 and total hours of 37,484.70 is \$496.75. *Id.*

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<sup>7</sup> *See also* Ex. 5 (summary table of lodestars and expenses).

<sup>8</sup> Except for one senior partner with over 40 years of experience with lodestar of \$194,220 whose rate is \$975.

<sup>9</sup> Except for one senior associate with \$104,903 in lodestar whose rate is \$700.

204. It is respectfully submitted that the hourly rates for attorneys and professional support staff included in these schedules are reasonable and customary, as can be seen by comparing them to the rates for defense firms in this case compiled by Class Counsel from the 2015 NLJ Survey. *See* Ex. 10. The analysis shows that across all types of attorneys, plaintiffs' counsel's rates here are generally lower than those billed by Defendants' Counsel.

205. Using contemporaneous time records for Class Counsel's 37,484 hours, Class Counsel's lodestar is presented below by certain phases in the litigation with a summary description of the tasks performed in each phase:

**Phase 1: The commencement of the action, investigation, filing of the Complaint, and opposition to the motion to dismiss.** From commencement of the Action through the completion of briefing the motion to dismiss in January 2013, Class Counsel's total lodestar was approximately \$800,000.

**Phase 2: Initial discovery consisting of drafting and serving document requests, filing the initial Rule 26(f) report, serving document subpoenas on third-parties, meeting and conferring with respect to document productions and class certification.** From the denial of the motion to dismiss in September 2013 through the completion of class certification briefing and discovery in January 2014, Class Counsel's total lodestar was approximately \$1,900,000.

**Phase 3: Document review, serving additional third party subpoenas, filing motions to compel, working with consulting experts, meeting and conferring with respect to document productions.** From February 2014 through the issuance of the Supreme Court's decision in *Halliburton II* in June 2014, Class Counsel's total lodestar was approximately \$2,900,000.

**Phase 4: Document review, serving additional third-party subpoenas, motion practice, deposition preparation, mediation.** From July 2014 through the commencement of depositions in January 2015, Class Counsel's total lodestar was approximately \$5,100,000.

**Phase 5: Depositions, expert reports, motion practice, mediation, and executing settlement.** From January 2015 through the execution of the term-sheet agreeing to the settlement on June 2, 2015, Class Counsel's total lodestar was approximately \$7,900,000.

206. Accordingly, it is respectfully submitted that Class Counsel's time and labor devoted to the Action were both significant and reasonable.

**D. The Risks And Unique Complexities Of The Action**

**1. Most Securities Class Actions Are Dismissed**

207. Prosecuting securities class actions on a contingent basis is akin to navigating a minefield of procedural hurdles. The PSLRA substantially changed the landscape by staying discovery pending the motion to dismiss and raising the pleading standard to require a strong inference of scienter. The pleading standard on scienter is therefore a bigger obstacle than the standard at summary judgment, which merely requires that plaintiffs show that there is a triable issue of fact. The statistics show that most securities class actions are dismissed, specifically 54% of cases filed between January 2000 and December 2014 were dismissed in full. *See* Ex. 11 (Fig. 15 at 18).

208. While cases arising out of restatements have been typically considered stronger, *Dobina* is an example where that rule of thumb did not apply. The Court dismissed the claims alleging that the financial statements were false on scienter grounds and only sustained the allegations concerning internal controls with respect to two defendants, Weatherford and Becnel. (*Dobina*, 11-1646, ECF No. 103 at 23, 30).

**2. There Was A Significant Risk Of Zero Recovery Because Of *Halliburton II***

209. In addition to the risk of dismissal, this Action faced the unprecedented risk that the fraud-on-the-market presumption would be reversed in *Halliburton II*. The Supreme Court granted *certiorari* in that case in November 2013 raising the very realistic prospect that the class would become uncertifiable. The effect on securities class actions was direct and immediate. Many cases were stayed.<sup>10</sup> There was a marked reduction in the active prosecution

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<sup>10</sup> *See, e.g.*, Order Temporarily Staying Case, *Dow 30SM Enhanced Premium & Income Fund, et al. v. American International Group, Inc., et al.*, No. 1:14-cv-01652 (LTS) (S.D.N.Y. Apr. 7, 2014), (ECF No. 45); Order Temporarily Staying Proceedings, *GIC Private Limited v.*

of securities class actions that was documented by Cornerstone Research. See Laarni Bulan, Ellen Ryan, Laura Simmons, *Securities Class Action Settlements: 2014 Review and Analysis*, at 19 (Cornerstone 2015) (Ex. 12).<sup>11</sup> And, *Dobina* subsequently settled for \$52.5 million in January 2014.

210. *Dobina* was not alone. The value of securities class action settlements declined significantly as defendants took advantage of plaintiffs' fears of *Halliburton II*. Total settlement dollars in 2014 declined 78% compared to 2013, and were 84% below the average for the prior nine years. *Id.* at 1. The average settlement size dropped to \$17.0 million from \$73.5 million in 2013, which "was 64% lower than the average for all prior post-PSLRA years. *Id.* at 1 & 6. All but one of the 63 cases (98%) settled in 2014 settled for less than \$100 million. *Id.* at 5.

211. In fact, this Court recognized the enormous risk presented by *Halliburton II* at the approval hearing in *In re Lehman Bros.* No. 09 MD 2017, on April 16, 2014, while the Supreme Court decision was pending:

In *Halliburton*, the odds, from my own personal judgment – though I have no inside information, of course – is that if I were to reject this settlement, we would go back to square zero, but what the class would get here would be zero. I think the Supreme Court is likely to rule adversely to the plaintiffs' bar and to the

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*American Int'l Group, Inc.*, No. 1:13-cv-06565 (LTS) (ECF No. 14) (S.D.N.Y. Mar. 20, 2014); Order Temporarily Staying Proceedings, *Stichting Pensioenfond Metalektro et al v. ING Inv. Mgmt. Belgium NV/SA et al.*, No. 1:13-cv-06502 (LTS) (ECF No. 26) (S.D.N.Y. Mar. 20, 2014); Order Temporarily Staying Proceedings, *Teachers Ret. Sys. of the State of Illinois v. Am. Int'l Group, Inc. et al.*, No. 1:13-cv-03377 (LTS) (ECF No. 33) (S.D.N.Y. Mar. 20, 2014); Order Granting Limited Motion to Stay Proceedings, *Stanford v. Genovese et al.*, No. 9:13-cv-80923 (KLR) (ECF No. 82) (S.D. Fla. June 12, 2014); and Order Denying Without Prejudice Motion for Class Certification, *Carney v. Walter Energy Inc. et al.*, No. 2:12-cv-00829 (VAH) (ECF No. 68) (N.D. Ala. Mar. 18, 2014).

<sup>11</sup> "In 2014, the average number of docket entries (both in absolute figures and scaled by the time from filing to settlement) was among the lowest in 10 years. In other words, even controlling for the length of time that cases were outstanding prior to settlement, the number of docket entries dropped, **indicating reduced activity for cases prior to settlement.**" *Securities Class Action Settlements: 2014 Review and Analysis*, at 19 (Ex. 12) (emphasis added).

plaintiffs' securities world in Halliburton, and if they do that – and that seems to be the early morning line anyway – this case would be dead in the water.

*In Re Lehman* Transcript, at 32:2-10 (Apr. 16, 2014), Ex. 13.

212. Defendants tried to take advantage of this significant uncertainty of recovery and newfound weakness for plaintiffs. In a hearing before the Court in connection with the *Dobina* settlement, Defense counsel expressed its expectation of staying and resolving this Action. Defense counsel also referred to the “economics” of settlement in light of *Halliburton II*, alluding to a very low settlement:

Mr. Wald [Defenses Counsel]: We are moving forward in the Freedman case and are in discussion with the plaintiffs' counsel in that case, among other things, regarding a stay of proceedings pending the Supreme Court's decision in Halliburton....the proposal to the other side is that we now stay things and see what is going to happen in Halliburton II, which could affect the action greatly and certainly the **economics** driving it, and if they're amenable to that, we would hope to present a stipulation to the court delaying those proceedings until whatever the Supreme Court rules and take another look.

The Court: Are you in active settlement discussions in Freedman now?

Mr. Wald: No, we are not....I believe that the class plaintiffs had told us that they need to get through those documents and understand the merits of their claims and then would be in a position to have at least a preliminary discussion with us before we move forward, but in the meantime, obviously **Halliburton II is going to come down and could affect the economics of the entire situation.**

*Dobina* Transcript at 4:16-6:7, Feb. 19, 2014 (emphasis supplied), Ex. 9.

213. The Class Representatives and Class Counsel rejected Defendants' Counsel's overtures to settle the case based on the overhang of foreboding uncertainty related to *Halliburton II*.<sup>12</sup> Instead, Class Counsel persevered and pushed discovery even more

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<sup>12</sup> Class Counsel reluctantly agreed to delay fact depositions until *Halliburton II* was decided. Class Counsel believed that Defendants would seek Court intervention if we proceeded with depositions and that in that case there was a high risk that the Court would stay the entire case. By compromising, Class Counsel preserved the ability to seek document discovery and the

tenaciously, investing more time and money in discovery and consulting experts in the winter and spring of 2014. In fact, Class Counsel unleashed an unrelenting campaign on Defendants and third parties to ensure a complete and expeditious production of documents. Between December 2013 and June 2014 (when fear and uncertainty about *Halliburton II* reigned in the plaintiffs' bar), Class Counsel sent and received 199 pieces of correspondence to and from Defendants' and third-party counsel, reflecting the day-to-day continued prosecution of the Action.

214. A large amount of correspondence concerned document productions by third parties. In February and March 2014, Class Counsel had served document subpoenas on five banks in connection with Weatherford's lending facility and securities offering during the class period: (i) Citigroup Global Markets, Inc.; (ii) Deutsche Bank Securities, Inc.; (iii) J.P. Morgan Securities LLC; (iv) JP Morgan Chase Bank, N.A., and (v) Morgan Stanley & Co. LLC. Class Counsel had also served subpoenas on Weatherford's auditors (EY) and tax consultants (PwC, KPMG, and Deloitte) in October and November 2013.

215. Pending the *Halliburton II* decision, Class Counsel also filed three discovery motions. On May 28, 2014, Class Counsel moved to compel: (i) Defendants to produce the results of electronic document searches; (ii) the production of documents concerning the Audit Committee Investigation; and (iii) the production of documents concerning the Latham Investigation. (ECF Nos. 65- 67). The motion concerning the Latham Investigation ultimately served as the basis for forcing Defendants to forego reliance on EY, as discussed above.

216. In sum, the Class Representatives and Class Counsel did not run for the hills in fear of *Halliburton II*, as many others did. This willingness to press full-steam ahead reflected

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Court's intervention to resolve disputes. *See* Amended Joint Rule 26(f) Report and Discovery Plan (ECF No. 62).

true grit and ultimately served the Class well. Importantly, the risk presented by *Halliburton II* of a complete loss for the Class and for Class Counsel thus distinguishes this Action from nearly all existing precedents. Only the few securities class actions that were active in discovery and did not settle between November 2013 and June 2014 faced similar circumstances.

### 3. Securities Class Actions Have Been Lost Even After Successful Trial

217. Even after surviving the motion to dismiss and *Halliburton II*, and assuming that Class Representatives would have prevailed at summary judgment, the risk of a complete loss at trial or on appeal is very real in securities class actions. For example, Labaton Sucharow suffered a complete loss even after prevailing after a four-week trial in *In re BankAtlantic Bancorp, Inc.* (S.D. Fla. 2010), where the jury rendered a verdict in plaintiffs' favor on liability. The District Court, however, granted defendants' motion for judgment as a matter of law, nullifying the jury verdict, and entered judgment on all claims for defendants. The Eleventh Circuit affirmed the District Court's ruling on the basis that plaintiffs had not presented sufficient evidence on loss causation. *In re BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012).

218. *In re Vivendi, S.A. Securities Litigation* (S.D.N.Y. 2010) is another prime example. There, again, plaintiffs won at trial with the jury finding Vivendi liable. Within months of the jury verdict the Supreme Court ruled in *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010), holding that the Exchange Act does not apply extraterritorially. Because Vivendi securities had been largely traded abroad and not in the United States, this destroyed the vast majority of plaintiffs' damages claims. *See also, Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *Ward v. Succession of Freeman*, 854 F.2d 780 (5th Cir. 1998) (reversing plaintiffs' jury verdict for securities fraud); *Robbins v. Koger Props., Inc.*, 116 F.3d 1441 (11th Cir. 1997) (reversing \$81 million jury verdict and dismissing case with prejudice in securities action); *In re Apollo*

*Grp., Inc. Sec. Litig.*, Case No. CV-04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008), *rev'd*, No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010) (trial court overturned unanimous verdict for plaintiffs, verdict later reinstated by the Ninth Circuit Court of Appeals, and judgment finally re-entered after denial of *certiorari* by the United States Supreme Court).

219. In light of these risks, it is not surprising that a large percentage of securities class actions settle. But that is not an infirmity of securities class actions. Rather, the large percentage of settlements is emblematic of our judicial system that heavily favors such outcomes. Indeed, the percentage of federal civil actions (class and individual) that go to trial has been steadily declining for the past 50 years. In 1962, 11.5% of federal civil cases went to trial, compared with 6.1% in 1982, 1.8% in 2002, and 1.2% in 2009.<sup>13</sup> This out-of-court resolution serves the important public policy of minimizing the burden on the judiciary. Accordingly, the fact that securities class actions settle is not surprising or demonstrative of any failure to prosecute.

220. Respectfully, we submit that the critical question when evaluating a fee application is whether the amount requested is reasonably warranted by the quality of the representation and the result obtained, in light of both the risk of no fee if the case is not settled, as well as diminished recoveries for the Class if counsel took the easier route by accepting a sub-par settlement without significant expenditure of time or talent. This inquiry is highly contextual. But in making this evaluation here, this case provides a unique opportunity to do so

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<sup>13</sup> Ashby Jones, *Why Have Federal Civil Jury Trials Basically Disappeared?*, Wall St. J. L. Blog (Sept. 21, 2010) (Ex. 14). *See also*, Judge Morton Denlow (Ret.), "Magistrate Judges' Important Role in Settling Cases," *The Federal Lawyer* (May/June 2014) ("It has been well documented that few federal civil cases go to trial. In 2012, less than 2 percent of federal civil cases went to trial. This small percentage of trials reflects the general trend toward settlement and motions for summary judgment as the primary way most civil cases are concluded") (Ex. 15).

in light of the risk presented by *Halliburton II* and *Omnicare*, coupled with the presence of *Dobina*, presenting one of the rare instances when the Court has a direct “comp” with which to compare counsel’s work dealing with similar factual and legal issues, and the recoveries they obtained.

**E. The Class Representatives Support The Fee And Expense Application**

221. The Class Representatives are two sophisticated institutional investors that manage hundreds of millions of pension fund assets on behalf of thousands of beneficiaries. Anchorage Police & Fire is a public pension fund that provides benefits for policemen and firemen and certain other employees of the municipality of Anchorage, Alaska. *See* Ex. 1. SCERS is an institutional investor that provides retirement benefits for public employees of the municipality of Sacramento, California. *See* Ex. 19.

222. The Class Representatives have taken their fiduciary duties in this representative Action extremely seriously and understand that they need to ensure that Class Counsel’s fee request is fair in light of the work performed and result achieved for the Class. To that end, well before any of the mediation sessions, the Class Representatives had entered into an *ex ante* fee agreement with counsel, authorizing a fee of 25% of a future recovery. Thus, one of the factors the Class Representatives considered---though by no means the only one---is that the fee request of \$27,930,550 is therefore below that amount.

223. The Class Representatives have determined that the fee and expense request is fair, reasonable, and warrants approval by the Court. *See* Exs. 1 and 19. In coming to this conclusion, the Class Representatives also considered the work conducted, the size of the recovery obtained, and the considerable risks of litigation. *See id.* Further, the Class Representatives reached their conclusions based on more than just the extensive communications with their counsel and their review of documents provided to them. Rather, the Class

Representatives were also extensively involved and full participants in the mediation efforts that were undertaken throughout this case, including attending mediation sessions, and participating in one-on-one telephonic discussions with the mediator.

**F. The Quality Of Class Counsel's Representation And Their Standing And Expertise**

224. Class Counsel are highly experienced in prosecuting securities class actions and worked diligently and efficiently in prosecuting the Action. Labaton Sucharow, as demonstrated by its firm resume, is among the most experienced and skilled firms in the securities litigation field, and has a long and successful track record in such cases. *See* Ex. 6 - C. Labaton Sucharow has served as Class Counsel in a number of high profile matters, for example: *In re Am. Int'l Grp, Inc. Sec. Litig.*, No. 04-8141 (S.D.N.Y.) (representing the Ohio Public Employees Retirement System, State Teachers Retirement System of Ohio, and Ohio Police & Fire Pension Fund and reaching settlements of \$1 billion); *In re HealthSouth Corp. Sec. Litig.*, No. 03-1501 (N.D. Ala.) (representing the State of Michigan Retirement System, New Mexico State Investment Council, and the New Mexico Educational Retirement Board and securing settlements of more than \$600 million); and *In re Countrywide Sec. Litig.*, No. 07-5295 (C.D. Cal.) (representing the New York State and New York City Pension Funds and reaching settlements of more than \$600 million).

225. Likewise, as demonstrated in its firm resume, BFTA's partners have served as lead and co-lead counsel on behalf of dozens of institutional investors, and have secured significant recoveries on behalf of investors in some of the most prominent fraud cases in recent decades. *See* Ex. 7 - C. In addition to the settlement achieved here, those matters include *In re MF Global Holdings, Ltd.*, No. 11-CV-7866 (S.D.N.Y.) (secured proposed partial settlements of \$204.4 million; ongoing litigation against non-settling defendants); *In re Comput. Scis. Corp.*

*Sec. Litig.*, No. 11-CV-0610 (E.D. Va.) (obtained \$97.5 million cash settlement, representing the second largest all-cash, class-wide recovery in a securities case pending in the Eastern District of Virginia); and *In re Celestica, Inc. Sec. Litig.*, No. 07-CV-312 (S.D.N.Y.) (obtained cash settlement of \$30 million).

## **VII. REQUEST FOR PAYMENT OF LITIGATION EXPENSES**

226. Class Counsel seek payment from the Settlement Fund of \$4,675,424.65 in litigation expenses reasonably and necessarily incurred by Class Counsel in connection with prosecuting the claims against Defendants. *See* Exs. 5 - 7. The Settlement Notice advised potential Class Members that Class Counsel would seek payment of expenses not to exceed \$5.6 million. *See* Ex. 4-A at 2. Class Counsel's request is below this "cap."

227. From the beginning of the case, Class Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Thus, Class Counsel were motivated to take steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the case. Class Counsel maintained strict control over the litigation expenses.

228. As set forth in their declarations, Class Counsel have incurred a total of \$4,675,424.65 in litigation expenses in connection with the prosecution of the Action. *See* Exs. 6-7. As attested to, these expenses are reflected on the books and records maintained by each firm. These books and records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred. Expenses are set forth in detail in each firm's declaration, which identifies the specific category of expense—*e.g.*, online/computer research, experts' fees, travel costs, duplicating, telephone, fax and postage expenses, and other costs incurred for which counsel seek payment. These expense items are

billed separately by each firm and such charges are not duplicated in the respective firms' billing rates.

229. Of the total amount of expenses, \$2,866,697.28 or approximately 61%, was expended on experts and consultants. As set forth in Section II.D.7. above, these professionals were essential to the overall prosecution of the Action, particularly with regard to refuting Defendants' principal attacks on scienter, loss causation and damages, and addressing the highly complex accounting standards that were at the heart of the alleged fraud. Class Counsel retained the former Chief Auditor of the Public Company Accounting Overview Board to opine on the application of complex accounting rules under U.S. GAAP. In addition, to opine on loss causation and damages, Class Counsel retained a NERA economics expert. NERA is regularly relied on by defendants and substantially bolstered the credibility and impact of the Class' arguments on these issues which were heavily in dispute. Indeed, the Phillips Declaration recognizes that these complex issues were hotly contested throughout the mediation process. *See* Ex. 2 ¶¶10-11, 13-14. Class Counsel believes that the quality of the experts had a significant impact at the final mediation and substantially increased the value of the Settlement.

230. Another significant component of expenses, \$1,114,970.93 or 24% of the total, relates to the electronic document hosting and searching database. The Class here reaped the benefits of the latest technology which allowed Class Counsel to conduct intelligent searches, using de-duping algorithms, clustering (artificial intelligent technology that groups documents by related concepts), as well as other enhancements that substantially reduced the amount of attorney time needed to review documents.

231. Additionally, \$179,515.39 relates to travel, business transportation, and meals. In connection with the extensive discovery taken and defended by Class Counsel in the Action,

among other tasks, Class Counsel was required to travel throughout the country and seeks payment for the costs of this travel. (Any first or business class airfare has been reduced to economy rates for purposes of this application.)

232. Mediation fees totaled \$61,720.86.

233. The other expenses for which plaintiffs' counsel seek reimbursement are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include court fees, online legal and factual research, transcription costs, costs related to the document productions, copying costs, long distance telephone and facsimile charges, and postage and delivery expenses.

234. All of the litigation expenses incurred were necessary to the successful prosecution and resolution of the claims against Defendants.

#### **VIII. REIMBURSEMENT OF THE COSTS AND EXPENSES OF THE CLASS REPRESENTATIVES**

235. Additionally, Class Representatives Anchorage Police & Fire and SCERS seek reimbursement of their reasonable lost wages and expenses, pursuant to the PSLRA, 15 U.S.C. §78u-4(a)(4), incurred in connection with their representation of the Class in the total amount of \$11,880.00. The amount of time and effort devoted to this Action by the representatives of Anchorage Police & Fire and SCERS, who were deposed and produced documents, attended mediation sessions, and participated in ongoing settlement discussions, is detailed in the accompanying Anchorage and SCERS Declarations. *See* Exs. 1 and 19, annexed hereto. Only reimbursement for time devoted to certain extensive work, largely out of the office, is being sought.

236. Class Counsel respectfully submit that this award, which would be paid directly to Class Representatives, is fully consistent with Congress's intent, as expressed in the

PSLRA, of encouraging institutional and other highly experienced plaintiffs to take an active role in bringing and supervising actions of this type. As set forth in the Fee Memorandum and in the supporting declarations submitted on behalf of Class Representatives, these fiduciaries have been fully committed to pursuing the Class's claims against the Defendants. Anchorage Police & Fire and SCERS have actively and effectively fulfilled their obligations as representatives of the Class, complying with all of the many demands placed upon them during the litigation and settlement of this Action, and providing valuable assistance to Class Counsel. The efforts expended by Mr. Jarvis and Mr. Colville during the course of this Action are precisely the types of activities courts have found to support reimbursement to class representatives, and fully support Class Representatives' request for reimbursement.

237. Critically, if not for the willingness of SCERS and Anchorage to step forward, this Action would have been likely prosecuted by an individual rather than sophisticated institutional investors. Indeed, this Court expressed its concerns in this regard in appointing the Class Representatives as Lead Plaintiffs over an individual investor who in the Court's view had made a wholly inadequate choice of counsel. (ECF No. 31). It has been well documented that institutional investors that serve as lead plaintiffs materially increase the settlement value compared to individual investors. *See, e.g.,* C.S. Agnes Cheng, et al., *Institutional Monitoring Through Shareholder Litigation*, 95 J. Fin. Econ. 356 (2010) ("Based on a large sample from 1996 to 2005, we find that institutional lead plaintiffs, as opposed to individual plaintiffs, increase the likelihood of the lawsuit surviving the motion to dismiss and help achieve larger settlements.").

238. The Settlement Notice apprised the Class that Class Counsel may seek reimbursement of the costs and expenses of Class Representatives in a total amount not to

exceed \$30,000. *See* Ex. 4 - A at 2, 7. The total amount requested herein by Class Representatives Anchorage Police & Fire (\$3,550) and SCERS (\$8,330) is well below this cap.

**IX. THE REACTION OF THE CLASS TO THE FEE AND EXPENSE APPLICATION**

239. As mentioned above, consistent with the Notice Order, to date, 370,248 Claim Packets have been mailed to potential Class Members advising them that Class Counsel would seek an award of attorneys' fees that would not exceed 25% of the Settlement Fund, and payment of expenses in an amount not to exceed \$5,600,000. *See* Ex. 4-A at 2, 7. Additionally, the Settlement Summary Notice was published in *The Wall Street Journal* and was transmitted over *PR Newswire*. *See* Ex. 4 ¶8. The Settlement Notice and the Stipulation have also been available on the settlement website maintained by GCG. *Id.* ¶9. While the deadline set by the Court for Class Members to object to the Fee and Expense Application has not yet passed, to date no objections have been received. Class Counsel will respond to any objections received in our reply papers, which are due October 27, 2015.

**X. MISCELLANEOUS EXHIBITS**

240. Attached hereto as Exhibit 16 is a true and accurate copy of the study by Cornerstone Research, *Securities Class Action Filings: 2014 Year in Review* (2015).

241. Attached hereto as Exhibit 17 is a table of securities class action settlements between \$80 million and \$160 million reached after the passage of the PSLRA, compiled by BFTA from data requested from Institutional Shareholder Services.

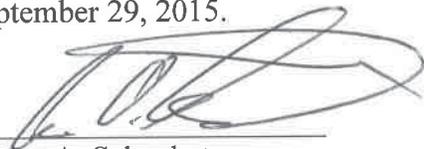
242. Attached hereto as Exhibit 18 is true and correct copy of the Transcript of Proceedings (Sept. 15, 2014), *Dobina v. Weatherford Int'l Ltd.*, No. 11-CV-1646.

**XI. CONCLUSION**

243. In view of the significant recovery to the Class and the substantial challenges presented by the claims and facts in this case, as described above and in the accompanying memorandum of law, Class Representatives and Class Counsel respectfully submit that the Settlement should be approved as fair, reasonable, and adequate and that the proposed Plan of Allocation should likewise be approved as fair, reasonable, and adequate. In view of the significant recovery achieved and the quality of work performed, among other things, as described above and in the accompanying memoranda of law, Class Counsel respectfully submits that the Fee and Expense Application be approved in full.

We declare, under penalty of perjury, that the foregoing facts are true and correct.

Executed on September 29, 2015.

  
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Ira A. Schochet

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Javier Bleichmar

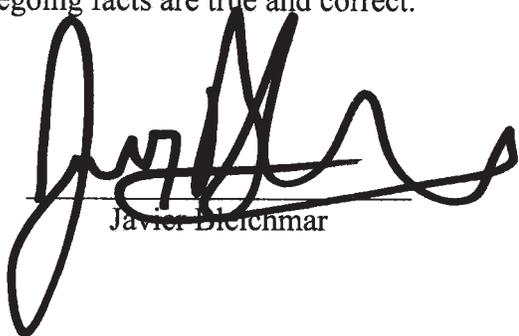
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Executed on September 29, 2015.

\_\_\_\_\_  
Ira A. Schochet

  
\_\_\_\_\_  
Javier Diechmar

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2015, I caused the foregoing Joint Declaration of Ira A. Schochet and Javier Bleichmar In Support of Class Representative's Motion for Approval of Proposed Class Action Settlement and Plan of Allocation and Class Counsel's Motion for Award of Attorneys' Fees and Payment of Litigation Expenses to be served electronically on all ECF participants.

*/s/ Joel H. Bernstein*

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Joel H. Bernstein

## EXHIBIT LIST

1	Declaration of Anchorage Police & Fire Retirement System in Support of Approval of Proposed Class Action Settlement and Requests for Attorneys' Fees and Expenses, dated September 25, 2015
2	Declaration of Layn R. Phillips, dated September 23, 2015
3	Weatherford Int'l Form 10-Q, dated June 30, 2015
4	Affidavit Regarding (A) Mailing of the Settlement Notice and Proof of Claim Form; (B) Publication of Summary Settlement Notice; (C) Website and Telephone Helpline; and (D) Report on Requests for Exclusion and Opt-ins Received to Date, dated September 28, 2015
5	Summary Table of Class Counsel's Lodestars and Expenses
6	Declaration of Ira A. Schochet Filed on Behalf of Labaton Sucharow LLP in Support of Application for Award of Attorneys' Fees and Expenses, dated Sept. 29, 2015
7	Declaration of Javier Bleichmar Filed on Behalf of Bleichmar, Fonti, Tountas & Auld LLP in Support of Application for Award of Attorneys' Fees and Expenses, dated Sept. 29, 2015
8	Summary of Tasks Performed by Class Counsel Attorneys and Support Staff
9	<i>Dobina, et al. v. Weatherford Int'l, et al.</i> , Feb. 19, 2014 Transcript
10	Excerpt of National Law Journal Billing Survey (2015)
11	Renzo Comolli & Svetlana Starykh, <i>Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review</i> (NERA Jan. 2015)
12	Laarni Bulan, Ellen Ryan, Laura Simmons, <i>Securities Class Action Settlements: 2014 Review and Analysis</i> (Cornerstone 2015)
13	<i>In re Lehman Brothers</i> , April 16, 2014 Transcript
14	Ashby Jones, <i>Why Have Federal Civil Jury Trials Basically Disappeared?</i> , Wall St. J. L. Blog (Sept. 21, 2010, 10:35 AM)
15	Judge Morton Denlow (Ret.), "Magistrate Judges' Important Role in Settling Cases," <i>The Federal Lawyer</i> (May/June 2014)
16	Cornerstone Research, <i>Securities Class Action Filings, 2014 Year in Review</i> (2015)
17	Table – Fees in Settlements from \$80 million to \$160 million
18	<i>Dobina, et al. v. Weatherford Int'l, et al.</i> , Sept. 15, 2014 Transcript
19	Declaration of Sacramento City Employees' Retirement System In Support of Approval of Proposed Class Action Settlement and Requests for Attorneys' Fees and Expenses, dated September 29, 2015