UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GLENN FREEDMAN, individually and on behalf of all similarly situated, Plaintiff, v. WEATHERFORD INTERNATIONAL, LTD., et al., Defendants.	:	Civil Action No. 12-CV-2121 (LAK)

MEMORANDUM OF LAW IN SUPPORT OF CLASS REPRESENTATIVES' MOTION FOR APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION

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Class Representatives, Anchorage Police & Fire Retirement System ("Anchorage Police & Fire") and Sacramento City Employees' Retirement System ("SCERS" and, together with Anchorage Police & Fire, the "Class Representatives" or "Co-Lead Plaintiffs"), respectfully submit this memorandum of law in support of their motion for approval of the proposed settlement (the "Settlement") and Plan of Allocation. The terms of the Settlement are set forth in the Stipulation and Agreement of Settlement, dated June 30, 2015 (the "Stipulation"), which was previously filed with the Court. ECF No. 191-1.[1]

PRELIMINARY STATEMENT

The Class Representatives have obtained in the Settlement an outstanding recovery of $120,000,000.00 in cash, thereby resolving all claims against 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, the "Defendants").

This excellent result is the product of more than three years of extensive and hard-fought litigation, one that was achieved in the face of a real risk of non-recovery during various phases of the litigation, including at class certification after the Supreme Court granted *certiorari* in *Halliburton Co. v. Erica P. John Fund, Inc*., 134 S. Ct. 636 (2013) ("*Halliburton II*"). *Halliburton II* created unprecedented risk in the post-PSLRA era and raised the very palpable prospect that the class would not be certified. Nevertheless, the Class Representatives continued to pursue discovery vigorously during the pendency of *Halliburton II*, rejecting Defendants' overtures and attempts to stay the Action.

[1] All capitalized terms not defined herein have the same meanings set forth in the Stipulation.

Even after *Halliburton II* was decided and the concerns to which that case had given rise had passed, other daunting risks presented themselves, including the Supreme Court's recent decision in *Omnicare, Inc. v. Laborers District Council Construction Industry Pension Fund*, 135 S.Ct. 1318 (2015). *Omnicare* allowed Defendants to challenge falsity, which is typically an admitted element in a restatement, by claiming that the alleged false statements were opinions. In other words, Defendants argued that even though restated financial statements are technically false under the accounting rules, they are not false under the securities laws unless the Class could meet the more stringent standards for statements of opinion set forth in *Omnicare*.

In addition to the new risks under *Halliburton II* and *Omnicare,* which developed after the motion to dismiss was denied, Defendants also raised serious challenges on scienter, loss causation, and damages. For example, Defendants repeatedly underscored the fact that the accounting and tax issues were mind-numbingly complex, even for accounting and tax practitioners. Thus, the Individual Defendants would have likely argued at trial that they relied on their tax and accounting departments, auditors, and outside consultants, and that they could not have possibly understood the arcane minutiae at issue to have the requisite intent to defraud. With respect to loss causation and damages, Defendants would have likely argued that the Class needed to disaggregate the multiple tax and accounting issues and hundreds of underlying transactions that caused the restatements. Although the Class had strong counter arguments, the risks at summary judgment and trial were substantial.

While avoiding those risks, the Settlement recovers a significant amount of the Class' estimated damages, 14.1% to 57%, depending on the range of damages that could have been achieved in light of Defendants' arguments. This is well above the average securities class action recovery of 5% to 6%. *See* Section I.C.8., *infra*. This is also a superior recovery when compared to

the related *Dobina* securities class action against Weatherford, which settled last year for $52.5 million and was fully funded by insurance. This Settlement was paid by the Company, not the insurers.

The accompanying Joint Declaration of Ira A. Schochet and Javier Bleichmar ("Joint Decl." or "Joint Declaration")[2] describes in detail the history of this litigation, including the strategy and significant effort that led to the Settlement, and the wealth of data, facts and analyses with which Class Representatives and Class Counsel were able to adequately determine the appropriate level at which to agree to resolve the claims. Among other things, the Class Representatives and Class Counsel: (i) conducted a thorough pre-filing investigation into the claims of the Class, including interviewing 34 former Weatherford employees and other persons with relevant knowledge; (ii) researched and filed a detailed Consolidated Amended Class Action Complaint ("Consolidated Complaint"); (iii) successfully opposed Defendants' motion to dismiss; (iv) completed extensive fact discovery including, reviewing 8 million pages of documents, taking 22 fact-witness depositions, and filing numerous motions to compel; (v) exchanged expert reports with Defendants; (vi) certified the Class; and (vii) engaged in tough and lengthy settlement negotiations with the assistance of a former federal district court judge and nationally-recognized mediator. As a result of this thorough

[2] *See* Joint Declaration of Ira A. Schochet and Javier Bleichmar in Support of Class Representatives' 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, dated September 29, 2015, submitted herewith.

The Court is respectfully referred to the Joint Declaration for a full discussion of the factual background and procedural history of the Action, the extensive litigation efforts of Class Counsel, the risks and obstacles faced if litigation continued, a discussion of the negotiations leading to the Settlement, and the reasons why the Settlement and Plan of Allocation are fair, reasonable, and adequate and should be approved by the Court. All exhibits referenced herein are annexed to the Joint Declaration. For clarity, citations to exhibits that themselves have attached exhibits, will be referenced as "Ex. ___ - ___." The first numerical reference refers to the designation of the entire exhibit attached to the Joint Declaration and the second reference refers to the exhibit designation within the exhibit itself.

and comprehensive prosecution of the Action, the Class reached the Settlement just one month before submitting summary judgment papers and the joint-pretrial order, at a time when the Class Representatives and Class Counsel fully understood the strengths and weaknesses of their case.

As a result of that analysis, both Class Counsel and the Class Representatives, sophisticated institutional investors that were actively involved in the Action, fully support the Settlement. *See* Declaration of Anchorage Police & Fire Retirement System in Support of Approval of Proposed Class Action Settlement and Requests for Attorneys' Fees and Expenses (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 and Expenses (Ex. 19).

Accordingly, for all the reasons discussed herein and in the Joint Declaration, it is respectfully submitted that the amount provided by the Settlement – when measured by the efforts to achieve it, the risks of proceeding without it, and by the range of damages that the Class Representatives could have obtained through trial if they were successful – is not only fair, reasonable and adequate, but is an outstanding result for the Class that should be approved by the Court. Likewise, the Plan of Allocation, which was developed with the assistance of the Class' damages expert, provides a fair and equitable method for distribution among eligible Class Members and should also be approved by the Court.

ARGUMENT

I. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Standards For Evaluating Class Action Settlements

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, this Court may approve a class action settlement where it finds the settlement to be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Wal-Mart Stores Inc. v. Visa U.S.A., Inc.,* 396 F.3d 96, 116 (2d Cir. 2005). The evaluation of a proposed settlement requires an assessment of both the procedural and

substantive fairness of the settlement. *See McReynolds v. Richards-Cantave*, 588 F.3d 790, 804 (2d Cir. 2009).

While the decision to grant or deny approval of a settlement lies within the broad discretion of the trial court, a number of courts have observed a general policy in favor of settling class actions. *See Wal-Mart*, 396 F.3d at 116 ("We are mindful of the 'strong judicial policy in favor of settlements, particularly in the class action context.'") (citation omitted); *see also Aponte v. Comprehensive Health Mgmt. Inc.*, No. 10 Civ. 4825 (JLC), 2013 WL 1364147, at *2 (S.D.N.Y. Apr. 2, 2013) (noting that "[c]ourts examine procedural and substantive fairness in light of the 'strong judicial policy in favor of settlement[]' of class action suits") (citation omitted); *In re WorldCom, Inc. ERISA Litig.*, No. 02 Civ. 4816 (DLC), 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (noting that "public policy favors settlement, especially in the case of class actions").

Because a settlement represents an exercise of judgment by the negotiating parties, the Second Circuit has cautioned that, while a court should not give "rubber stamp approval" to a proposed settlement, it must "stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974); *see also In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 Civ. 10240 (CM), 2007 WL 2230177, at *4 (S.D.N.Y. July 27, 2007) (in evaluating a settlement, "a court neither substitutes its judgment for that of the parties who negotiated the settlement nor conducts a mini-trial of the merits of the action") (citation omitted).

In addition to the presumption of fairness that attaches to a settlement reached as a result of arm's-length negotiations, the Second Circuit has identified nine factors that courts should consider in deciding the substantive fairness of a class action settlement:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the

> proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Grinnell, 495 F.2d at 463 (citations omitted); *see also In re Wachovia Equity Sec. Litig.*, No. 08 Civ. 6171 (RJS), 2012 WL 2774969, at *3-5 (S.D.N.Y. June 12, 2012). "[N]ot every factor must weigh in favor of settlement, rather the court should consider the totality of these factors in light of the particular circumstances." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004) (citation omitted). As demonstrated below and in the Joint Declaration, the Settlement amply satisfies the criteria for approval articulated by the Second Circuit.

B. The Settlement Is Procedurally Fair

A presumption of fairness attaches to a proposed settlement if it is reached by experienced counsel after arm's-length negotiations, and great weight is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation. *See Shapiro v. JPMorgan Chase & Co.*, No. Civ. 8831(CM)(MHD), 2014 WL 1224666, at *7 (S.D.N.Y. Mar. 24, 2014). A court may find the negotiating process is fair where, as here, "the settlement resulted from 'arm's-length negotiations and that plaintiffs' counsel have possessed the experience and ability . . . necessary to effective representation of the class's interests.'" *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (citation omitted); *see also Wachovia Equity*, 2012 WL 2774969, at *3.

Here, the Settlement is the product of vigorous and informed arm's-length negotiations by highly experienced, fully-informed counsel with the assistance of an experienced mediator, Judge Layn R. Phillips (Ret.), one of the premier mediators in complex, multi-party, high-stakes litigation. *See* Declaration of Layn R. Phillips, dated September 23, 2015, ¶¶2-5 (Ex. 2); Joint Decl. ¶¶104-07;

see also In re Citigroup Inc. Bond Litig., 296 F.R.D. 147, 155 (S.D.N.Y. 2013) (noting the procedural fairness of settlement mediated by Judge Phillips); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 293 F.R.D. 459, 465 (S.D.N.Y. 2013) (noting the procedural fairness of settlement in mediation session before Judge Phillips); *In re Bear Stearns Cos., Inc. Sec., Derivative & ERISA Litig.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (finding procedural fairness of settlement that was mediated by Judge Phillips and describing Judge Phillips as "an experienced and well-regarded mediator of complex securities cases"); *see also In re Delphi Corp. Sec. Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 498 (E.D. Mich. 2008) (speaking of Judge Phillips, "the Court and the parties have had the added benefit of the insight and considerable talents of a former federal judge who is one of the most prominent and highly skilled mediators of complex actions").

The Parties scheduled the first in-person mediation session for October 2014, under the auspices of Judge Phillips. Prior to the mediation, the Parties exchanged detailed mediation statements setting out their respective positions. While the mediation allowed the Parties to engage with each other and exchange information and analyses, their efforts proved unsuccessful as the Parties maintained widely differing opinions of the case. Ex. 2. ¶¶7-10; Joint Decl. ¶106. Thus, at the conclusion of the October 2014 mediation, there was a very large and significant gap between the Parties' settlement positions. Ex. 2 ¶10; Joint Decl. ¶106.

Following the close of fact discovery and the exchange of expert reports, the Parties and their counsel participated in another intensive full-day mediation session at the end of May 2015, again before Judge Phillips. Prior to the mediation, the Parties again exchanged supplemental mediation statements and exhibits which demonstrated that the Parties were well-versed on the evidence developed during fact discovery. While the Parties made substantial progress during the mediation, they could not reach an agreement. In particular, while Defendants at the end of the session had

offered the Class a very substantial amount of recovery, the Class Representatives and their counsel were still not satisfied that it was sufficient to resolve their claims based on their assessment of the claims' relative strengths and weaknesses. Joint Decl. ¶107. Accordingly, notwithstanding the risks of turning down this amount, with the possibility of recovering much less, or nothing, with continued litigation, the Class Representatives rejected it, knowing that any continued mediation efforts similarly might have failed.

The Class Representatives' judgment as to what could be accomplished by their persistence was more than justified. Over the course of subsequent days, through multiple telephonic exchanges with Judge Phillips, the Parties reached an agreement in principle to settle the Action on June 2, 2015 for $120 million. The amount was based on the mediator's recommendation which the Class Representatives judged as not only much improved over Defendants' offer, but well-within the range of recovery that they had earlier deemed necessary to fairly compensate the Class for its damages. Ex. 2 ¶¶13-17; Joint Decl. ¶107.

The recommendation of the Class Representatives, each a sophisticated institutional investor that manages millions in retirement fund assets, supports the fairness of the Settlement. A settlement reached "under the supervision and with the endorsement of a sophisticated institutional investor . . . is 'entitled to an even greater presumption of reasonableness.'" *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 0165(CM), 2007 WL 4115809, at *5 (S.D.N.Y. Nov. 7, 2007) (citation omitted). "'Absent fraud or collusion, the court should be hesitant to substitute its judgment for that of the parties who negotiated the settlement.'" *Id*. (citation omitted). The Class Representatives took a very active role in all aspects of this Action, as envisioned by the PSLRA, including extensive efforts in discovery and participation in settlement negotiations. *See generally* Exs. 1 and 19.

Furthermore, Class Counsel has extensive experience prosecuting complex securities class actions and are intimately familiar with the facts of this case. They believe that the Settlement is not only fair, reasonable, and adequate, but is an excellent result for the Class and the Class Representatives. Their opinion is entitled to "great weight." *City of Providence v. Aeropostale Inc. et al.,* No. 11 Civ. 7132, 2014 WL 1883494, at *5 (S.D.N.Y. May 9, 2014), *aff'd*, *Arbuthnot v. Pierson*, 607 Fed. App'x. 73 (2d Cir. 2015). *See also* Ex. 2 ¶19 ("It is also my opinion that this settlement was the result of extensive arm's length negotiation, and highly skilled advocacy on both sides.").

Each of these considerations confirm the reasonableness of the Settlement and that the Settlement is entitled to the presumption of procedural fairness.

C. The Settlement Satisfies The Second Circuit's Test Of Substantive Fairness

1. The Complexity, Expense, And Likely Duration Of The Action Supports Approval Of The Settlement

"This factor captures the probable costs, in both time and money, of continued litigation." *Shapiro*, 2014 WL 1224666, at *8. Securities class actions like this one are by their nature complicated, and district courts in this Circuit have long recognized that "[a]s a general rule, securities class actions are 'notably difficult and notoriously uncertain' to litigate." *Bear Stearns,* 909 F. Supp. 2d at 266 (citation omitted); *see also In re Alloy, Inc., Sec. Litig.*, No. 03 Civ. 1597 (WHP), 2004 WL 2750089, at *2 (S.D.N.Y. Dec. 2, 2004) (approving settlement, noting action involved complex securities fraud issues "that were likely to be litigated aggressively, at substantial expense to all parties"); *In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. 02 Civ. 5575, 2006 WL 903236, at *8 (S.D.N.Y. Apr. 6, 2006) (due to their "notorious complexity," securities class actions often settle to "circumvent[] the difficulty and uncertainty inherent in long, costly trials") (citation omitted). This case is no exception.

The Class' claims here raise numerous factual issues concerning complex tax accounting rules, remediation of tax accounting problems, internal controls, corporate debt and liquidity, and SEC disclosure practices, as well as complicated legal issues concerning falsity, scienter, and loss causation, among other things, each of which would require extensive percipient and expert testimony at trial.

Indeed, the tax accounting issues in the Action were extraordinarily complex given that the Restatements resulted from multiple types of tax topics, including (i) uncertain tax positions; (ii) deferred tax assets and liabilities; (iii) valuation allowances; and (iv) the tax treatment of intercompany dividends and interest payments. Joint Decl. ¶112. Accordingly, one of the serious risks considered in agreeing to the Settlement was the difficulty of ensuring that a jury would sufficiently understand these complicated tax and accounting rules, guidelines, and regulations. The Class had a heavy burden to successfully simplify the issues in order to prove its case in chief. And even if the Class had succeeded in making the tax and accounting issues understandable, Defendants could have very well convinced the jury that the complexity substantially undermined scienter, particularly of the Individual Defendants, who were not tax or accounting professionals.

The Class was not aided by a roadmap from a government investigation, or from any other case or proceeding. Although an investigation by the SEC has been ongoing for some time, the Class obtained very little benefit, if any, despite Class Counsel's efforts. For example, while Class Counsel did subpoena SEC deposition transcripts from numerous former and then-current employees who had been deposed by the SEC, each of the witnesses (represented by counsel paid by the Company) refused to produce the transcripts. When the Class Representatives moved to compel, the District Court for the Southern District of Texas denied the motion on the basis that it was protecting

the privacy interest of the witnesses. The Class Representatives appealed the ruling to the Fifth Circuit, which was pending at the time of settlement. *Id.* ¶¶72-73.

Likewise, the Class obtained no discernible benefit from the *Dobina* litigation. The instant Action was more complex and broader in scope than *Dobina,* given that the First Restatement at issue 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 complicated 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 relatively small number in the First Restatement. *Id.* ¶¶162-63. Moreover, the witnesses deposed in *Dobina* consisted only of lower-level personnel and did not include *any* of the critical witnesses deposed in this Action. Plaintiffs in *Dobina* never deposed the CEO, CFO, the head of tax or his right hand man. *Id.* ¶¶160-61. Therefore, Class Counsel did not have any meaningful benefit from any regulatory body or private litigation to assist it in formulating its case.

Finally, absent this Settlement, the Action would have proceeded through summary judgment briefing and possibly to trial at considerable additional expense and investment of time, with no guarantee of success. While the Parties have completed class and fact discovery, and all but completed expert discovery except for depositions, additional "motions would be filed raising every possible kind of pre-trial, trial and post-trial issue conceivable." *In re Initial Pub. Offering Sec. Litig.*, 260 F.R.D. 81, 117 (S.D.N.Y. 2009) (citation omitted). The expense and time of continued litigation would have been substantial. Summary judgment preparation and filing, which Class Representatives were working on at the time of settlement, would have been extensive and a trial would have likely lasted at least several weeks, if not months, and even if successful, post-trial

motions and appeals would have certainly followed. The post-trial motions and appeals process would have likely spanned years, during which time the Class would have received no distribution of any damage award. In addition, an appeal of any verdict would carry the risk of reversal, in which case the Class would receive no recovery at all, even after having prevailed on the claims at trial. *See Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[E]ven if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation . . . the passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery.").

Finally, even winning at trial does not guarantee a recovery to the Class, because, as is well known to Class Counsel here, there is always a risk that the verdict could be reversed by the trial court or on appeal. *See, e.g., Hubbard v. BankAtlantic Bancorp, Inc.,* 688 F.3d 713 (11th Cir. 2012) (affirmance of judgment as a matter of law for defendants, after jury verdict for plaintiffs); *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); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of litigation); *cf. In re Apollo Grp., Inc. Sec. Litig.*, 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, later reinstated by the Ninth Circuit Court of Appeals, and judgment re-entered after denial of *certiorari* by the U.S. Supreme Court).

Thus, this factor weighs heavily in favor of approval of the Settlement.

2. The Reaction Of The Class To The Settlement

One court has noted that the reaction of a class to a settlement "is considered perhaps 'the most significant factor to be weighed in considering its adequacy.'" *Veeco Instruments,* 2007 WL 4115809, at *7 (citation omitted). "[T]he absence of objectants may itself be taken as evidencing the

fairness of a settlement." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997) (citation omitted); *see also In re Luxottica Grp. S.p.A. Sec. Litig.*, 233 F.R.D. 306, 311-12 (E.D.N.Y. 2006).

While the deadline of October 13, 2015 for Class Members to object or seek exclusion has not passed, in response to an extensive Court-approved notice program, in which 370,248 Settlement Notices have been mailed to potential Class Members and their nominees, to date not a single Class Member has objected to the Settlement and five requests for exclusion from the Class have been received, only two of which are valid (representing 1700 shares). *See* Ex. 4 ¶12.[3] A full discussion of the program disseminating the notice is set forth below in Section II.

3. The Stage Of The Proceedings And The Amount Of Discovery Completed

In considering this factor, "'the question is whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement.'" *Bear Stearns,* 909 F. Supp. 2d at 267 (quoting *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 190 (S.D.N.Y. 2012)). To satisfy this factor, parties need not have even engaged in formal or extensive discovery. *See Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 363 (S.D.N.Y. 2002). Having completed fact discovery, and all but expert discovery except depositions, the Class Representatives and Class Counsel evaluated thoroughly and extensively the recovery obtained in relation to the merits of the claims and risks of continued litigation.

Indeed, the Settlement is the result of more than three years of extensive and hard-fought litigation by committed and tenacious Class Representatives. Class Counsel completed fact

[3] If any objections or additional requests for exclusion are received, Class Representatives will respond in their reply papers due on October 27, 2015.

discovery including deposing all of the key witnesses who would testify at trial (including the Individual Defendants); submitted four expert reports and analyzed five expert reports submitted by Defendants; and developed a compelling factual record demonstrating that Defendants faced serious liability. In particular, the Class Representatives engaged in an extensive pre-filing investigation, including reviewing public filings concerning the Company, interviewing 34 former Weatherford employees, and consulting with several experts in the areas of accounting, loss causation, market efficiency, and corporate financial liquidity. Joint Decl. ¶¶22-23. The Class Representatives successfully opposed Defendants' motion to dismiss and upon the Court's order denying Defendants' motion, promptly launched fact discovery. The extensive fact discovery efforts included the review and/or analysis of 1.3 million documents consisting of approximately eight million pages produced by Defendants and third-parties (including the "Big Four" accounting firms), as well as conducting 22 depositions. *Id*. ¶¶43-65, 75-78. The 22 depositions included both Individual Defendants and all of the key witnesses who Class Counsel expected would be called at trial, many of whom were senior executives or outside auditors who had specialized expertise in tax, accounting, and financial reporting. *Id*. ¶¶60-65. The Class Representatives also negotiated and resolved various significant discovery disputes with the Defendants, sometimes requiring the assistance of the Court. *Id*. ¶¶45-49, 57-59.

Additionally, the Class Representatives filed their motion for class certification in the very early stages of discovery, demonstrating an aggressive stance compared to many practitioners in securities class actions who wait until the end. Accompanying the class certification motion was an expert report from Eugene Agronin, Ph.D, supporting the proposition that the market for Weatherford securities was efficient during the Class Period. The Court denied the motion with prejudice, following the Supreme Court's grant of certiorari in *Halliburton II,* after which then Class

Representatives continued to aggressively pursue merits discovery. After the Supreme Court issued its decision in *Halliburton II* affirming the fraud-on-the market presumption, the Class Representatives re-filed their motion for class certification, which went unchallenged by Defendants, and was granted on September 29, 2014. *Id*. ¶¶66-71.

The Class Representatives also engaged in extensive expert discovery, including submitting four expert reports, reviewing five expert reports submitted by Defendants' experts, and supervising the drafting of expert rebuttal reports that responded to each of the expert reports that Defendants submitted. *Id*. ¶¶79-100. Additionally, the Class Representatives were in the middle of preparing their summary judgment papers when the Action settled.[4]

Accordingly, the Class Representatives and Class Counsel developed a comprehensive understanding of the major issues in the Action, and at the time the Settlement was reached, had "a clear view of the strengths and weaknesses of their case[]" and of the range of possible outcomes at trial. *Teachers Ret. Sys. of La. v. A.C.L.N., Ltd*., No. 01-Civ-11814 (MP), 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) (quotation marks and citation omitted). The Court thus should find that this factor also strongly supports approval of the Settlement.

[4] As set forth in the Joint Declaration and the Memorandum of Law in Support of Class Counsel's Motion for Award of Attorneys' Fees and Payment of Litigation Expenses, both submitted herewith, when compared to the stage of proceedings and amount of discovery in *Dobina*, the Class Representatives prosecuted the Action more aggressively and engaged in substantially more work than the plaintiffs in *Dobina*. For example, as noted above, Class Counsel took 22 fact depositions, completed fact discovery including the review and analysis of 8 million pages of documents, served four expert reports, analyzed five expert reports, and supervised the drafting of three expert rebuttal reports, and certified the Class. In *Dobina*, counsel took ten fact depositions (of lower-level witnesses) and then counsel agreed to stay the balance of the deposition schedule, including all of the individual defendants, at the time of settlement; reviewed and analyzed approximately 2.3 million pages; and exchanged one expert report on market efficiency. *See* Joint Decl. ¶160-66.

4. The Risks Of Establishing Liability

In assessing the Settlement, the Court should balance the benefits afforded to the Class, including the immediacy and certainty of a recovery, against the continuing risks of litigation. *See Grinnell*, 495 F.2d at 463. As this case amply demonstrates, securities class actions present hurdles to proving liability that are difficult for plaintiffs to meet. *See AOL Time Warner*, 2006 WL 903236, at *11 (noting that "[t]he difficulty of establishing liability is a common risk of securities litigation"); *Alloy,* 2004 WL 2750089, at *1 (finding that issues present in securities action presented significant hurdles to proving liability).

The principal claims in the Action are based on §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. "To establish a §10(b) claim, a plaintiff must prove: (1) the defendant made a material misrepresentation or omission; (2) with scienter; (3) in connection with the purchase or sale of a security; (4) reliance; (5) economic loss; and (6) loss causation." *IBEW Local Union No. 58 Pension Trust Fund & Annuity Fund v. Royal Bank of Scotland Grp. PLC*, 783 F.3d 383, 389 (2d Cir. 2015) (citing *Stoneridge Inv. Partners, LLC v. Scientific–Atlanta, Inc.*, 552 U.S. 148, 157 (2008)).

The central allegation in this case is that Defendants made false and misleading statements concerning the Company's financial statements requiring three separate restatements over the span of eighteen months during the Class Period. Considering the highly complicated nature of the tax and accounting matters at issue, there is no question that the Class would have confronted a number of challenges in establishing liability at trial. Indeed, Defendants' arguments in motions and settlement negotiations made it clear that the Parties held, in many cases, polar opposite views of the factual and legal issues presented, many of which would have been the subject of expert testimony.

a. Risks In Proving Scienter

The Class faced a significant challenge in proving that Defendants acted with scienter as "[p]roving a defendant's state of mind is hard in any circumstances." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 579 (S.D.N.Y. 2008); *see also Fishoff v. Coty Inc.*, No. 09 Civ. 628(SAS), 2010 WL 305358, at *2 (S.D.N.Y. Jan. 25, 2010) ("The element of scienter is often the most difficult and controversial aspect of a securities fraud claim."). By a 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).

Here, as noted above, the complexity of the tax and accounting issues was truly exceptional, even for the standard accounting securities class action. The Class faced tremendous risks in proving that Weatherford did not follow the tax and accounting rules due, in large part, to the their nuanced nature. *See S.E.C. v. Price Waterhouse*, 797 F. Supp. 1217, 1241 (S.D.N.Y. 1992) ("no finding of fraud or recklessness can rationally be made" where financial misstatements "involved complex issues of accounting as to which reasonable accountants could reach different conclusions"). Specifically, 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 more straightforward story, like in *Dobina*.

In fact, the variety of transactions with different tax issues was a pervasive characteristic of the Second and Third Restatements but effectively absent from the First Restatement, which was largely a result of one set of transactions, recurring for multiple years, and leading to one tax and accounting issue concerning intercompany payments. The intercompany payments error was

resolved after the First Restatement. Defendants, therefore, 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 Restatements. While the Class Representatives believe they could have proven that the link between the First Restatement and the subsequent two Restatements, in terms of the accounting steps that were required to have been taken before each of them, was much stronger and direct than accepted by Defendants, it would have required a detailed and thorough explanation of arcane tax and accounting minutiae. Joint Decl. ¶118.

Moreover, 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 (or, at the very least, each category). The Class Representatives intended to neutralize this difficulty by stressing the common inadequacies in Weatherford's procedures for identifying accounting errors. However, Defendants would have likely responded with a double-barreled assault, (i) challenging both Class Representatives' allegations with regard to whether Defendants had reason to know of, or recklessly disregarded any alleged inadequacies in the procedures they deployed, and, (ii) by asserting that 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 alleged known procedural inadequacies, but because of the complexity and subjective nature of the accounting decisions at issue. *Id.* ¶¶116-17.

To further rebut scienter, Defendants then would have likely argued that they had not made the tax and accounting decisions alone. Rather, they had relied on tax and accounting consultants, including local tax experts, PwC, Deloitte and EY. Indeed, the Individual Defendants, who relied on the Company's tax group, would have likely argued that they relied on their tax employees in good

faith and did not, and could not possibly be expected to, understand the level of detail and intricacy of tax experts. *Id.* ¶119.

Finally, Defendants would point to the lack of insider sales of stock or any other evidence suggesting profiteering by the Individual Defendants. *Id.* ¶121

Although the Class Representatives were confident that they would have been able to support their claims with persuasive testimony and documentary evidence, jury reactions to such testimony are inherently difficult to predict. Defendants would have presented counter-evidence, including expert testimony as well as different interpretations of the evidence offered by the Class to support their various defenses to liability. Continued litigation involved substantial risks in proving Defendants' liability and a finding in favor of the Class by the jury was never assured. Accordingly, Defendants had potentially valid defenses to scienter that posed significant risks to the Class' recovery.[5]

b. The Risks Concerning *Omnicare*

In *Omnicare,* the Supreme Court held that to prove the falsity of statements of opinion, plaintiffs must plead and prove that the speaker did not truly hold the opinion or that the statements did not rest on some meaningful inquiry. 135 S.Ct. 1318 at 1325-28, 1332. Accordingly, Defendants would have likely argued at summary judgment and trial 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 a "more likely than not" standard, is not black and white. Therefore, according to Defendants, the Class would have had to satisfy *Omnicare* and prove that

[5] The Court is respectfully referred to paragraphs 111 to 121 of the Joint Declaration for a more detailed discussion of the risks faced by Class Representatives in proving scienter.

Defendants truly did not believe that the financial statements were true, or show that Defendants had not conducted an adequate investigation. Joint Decl. ¶¶123-24.

The Class Representatives had many counter-arguments, including that, for example, tax and accounting reserves are not just entirely discretionary opinions. Rather, there are rules, standards, and procedures that must be followed under the tax code and accounting rules which establish guidelines and parameters that circumscribe the range of possible opinions. Nonetheless, despite these arguments, this Court's recent decision in *City of Westland Police and Fire Retirement System v. MetLife, Inc*., No. 12-0256, ECF No. 90 at 28-29 (S.D.N.Y. Sept. 11, 2015), would have provided further support to Defendants in light of the similarities between that case and this one. *MetLife* also concerned accounting reserves, and the Court in that case found that, under *Omnicare,* it is "substantially more difficult for a securities plaintiff to allege adequately (or, ultimately, to prove) that such a statement [of opinion] is false than it is to allege adequately (or prove) that a statement of pure fact is false." Joint Decl. ¶¶125-26.

5. The Risks Of Establishing Loss Causation And Damages

Even if Defendants' liability were established, the Class Representatives would have had to prove the existence and the amount of damages. Loss causation requires proof of a "causal connection between the material misrepresentation and the [economic] loss" suffered. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 338 (2005). Once causation is established, damages estimation remains "a complicated and uncertain process, typically involving conflicting expert opinion about the difference between the purchase price and [share's] 'true' value absent the alleged fraud." *Global Crossing*, 225 F.R.D. at 459 (citation and quotation marks omitted).

Defendants would have likely argued at summary judgment and trial that for each category of tax issues (*i.e.*, uncertain tax positions, deferred tax assets and liabilities, and withholding tax accrual, etc.), the Class had the burden to disaggregate those issues for loss causation and damages.

See, e.g., In re Moody's Corp. Sec. Litig., 07 Civ. 8375 GBD, 2013 WL 4516788, at *12 (S.D.N.Y. Aug. 23, 2013) (holding that "plaintiffs must disaggregate at least some portion of the declines in share prices from losses resulting from other, non-fraud-related events"). For example, if the Class had not been able to prove scienter on the uncertain tax positions, Defendants would have argued that the portion of the restatement attributable to the uncertain tax positions could not have caused the loss. There were multiple categories on which Defendants would have likely argued that a jury would have to separately determine scienter and therefore apportion damages with its concomitant disaggregation effect on loss causation. Joint Decl. ¶¶127-30.

The Class Representatives obviously had counterarguments, mainly that Defendants should not have issued the Restatements at all until they had a reasonable basis to ensure their accuracy, and that breaking up the Restatements into smaller tax issues obfuscated the Class' argument that the entire tax process was broken. The Class, however, risked that the Court at summary judgment, or the jury at trial, would agree with Defendants. *Id.* ¶131.

Defendants were also prepared to argue, in part with the aid of expert testimony, that in light of Weatherford's risk disclosures relating to the material weakness and related possibility of additional financial statement error, the Second and Third Restatements were known risks to the market and could not have caused the losses that members of the Class incurred. The Class Representatives would have responded, as this Court held on the motion to dismiss, that such disclosures "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). Nevertheless, Defendants still sought to preserve this issue for the trier of fact, as their loss causation expert opined on the issue. The Class' expert was prepared to

refute this argument, but if the Class could not have the issue resolved in its favor on summary judgment, it faced the uncertain prospect of a battle of experts on it. Joint Decl. ¶133.

The amount of damages would also have been hotly-contested at trial. Expert testimony rests on many subjective assumptions that a jury could reject as speculative or unreliable. Here, 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. *Id*. ¶132. Therefore, the risk that the jury would credit Defendants' damages position over that of Class Representatives had considerable consequences in terms of the amount of recovery for the Class, even assuming liability was proven and, again, the reaction of a jury to battling expert testimony is highly unpredictable. The Class Representatives and Class Counsel thus recognized the possibility that a jury could be swayed by convincing testimony from Defendants' expert, and find little or no damages. *See, e.g.*, *Veeco Instruments,* 2007 WL 4115809, at *10 ("The jury's verdict with respect to damages would depend on its reaction to the complex testimony of experts, a reaction which at best is uncertain.").[6]

In sum, proving loss causation and damages would have been a serious risk at summary judgment or trial.[7] Accordingly, in the absence of a settlement, there was a very real risk that the

[6] The Court is respectfully referred to paragraphs 127 to 134 of the Joint Declaration for a more detailed discussion of the risks faced by Class Representatives in establishing loss causation and damages.

[7] *See, e.g., Apollo Grp.,* 2008 WL 3072731 (on a motion for judgment as a matter of law, overturned a jury verdict in favor of shareholders based on insufficient evidence presented at trial to establish loss causation); *Phillips v. Scientific-Atlanta, Inc.*, 489 Fed. App'x. 339 (11th Cir. 2012) (upholding summary judgment in favor of defendants on loss causation grounds in a case litigated since 2001); *In re BankAtlantic Bancorp, Sec. Litig.*, No. 07-61542-CIV-UNGARD, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (court granted defendants' judgment as a matter of law on the basis of loss causation, overturning jury verdict and award in plaintiff's favor after

Class would have recovered an amount significantly less than the total Settlement Amount – or even nothing at all. In contrast, the substantial and certain payment of $120,000,000.00 by Defendants, particularly when viewed in the context of the risks and the uncertainties involved in this Action, clearly weighs heavily in favor of approving the Settlement.

6. The Risks Of Maintaining the Class Action Through Trial

Although the Court certified the Class on September 29, 2014, certification can be reviewed and modified at any time by the Court before final judgment. *See* Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."); *see also Annunziato v. Collecto, Inc*., 293 F.R.D. 329, 340 (E.D.N.Y. 2013) ("[u]nder rule 23, district courts have the power to amend class definitions or decertify classes as necessary") (citation omitted). The Settlement avoids any uncertainty with respect to class certification.

7. Ability To Withstand A Greater Judgment

The ability of a defendant to pay a judgment greater than the amount offered in settlement is relevant to whether a settlement is fair. *Grinnell*, 495 F.2d at 463. However, even if defendants could withstand a greater judgment, "this factor, standing alone, does not suggest the settlement is unfair," especially where, as here, the "other Grinnell factors weigh heavily in favor of settlement." *D'Amato*, 236 F.3d at 86; *see also Cavalieri v. General Elec. Co*., No. 06-315, 2009 WL 2426001, at *2 (N.D.N.Y. Aug. 6, 2009) ("The court also notes that although neither party contends that defendants are incapable of withstanding greater judgment, that does not 'indicate that the settlement is unreasonable or inadequate.'") (citation omitted); *In re Sony SXRD Rear Projection TV Class Action Litig.*, No. 06 Civ. 5173 (RPP), 2008 WL 1956267, at *8 (S.D.N.Y. May 1, 2008) ("a

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four-week trial conducted by Labaton Sucharow), *aff'd*, 688 F.3d 713 (11th Cir. 2012); *Robbins,* 116 F.3d at 1441 (finding no loss causation and overturning $81 million jury verdict).

defendant is not required to 'empty its coffers' before a settlement can be found adequate") (citation omitted).

This factor is particularly relevant here because the Settlement was not funded by the Directors & Officers liability policies. Joint Decl. ¶102. While it is unclear whether Defendants are capable of withstanding a greater judgment, as a practical matter, the prospects of recovering a substantially greater sum would have been offset by the inevitable post-trial motions and appeals Defendants would likely pursue following any judgment. Additionally, settlement eliminates the risk of collection. Defendants have paid the Settlement Amount into an escrow account pursuant to the Stipulation, which is already earning interest for the Class. *See Prasker v. Asia Five Eight LLC*, No. 08 Civ. 5811(MGC), 2010 WL 476009, at *5 (S.D.N.Y. Jan. 6, 2010) (approving settlement and noting that "[t]he settlement eliminated the risk of collection by requiring Defendants to pay the Fund into escrow").

8. The Reasonableness Of The Settlement In Light Of The Best Possible Recovery And The Attendant Risks Of Litigation

The last two substantive factors courts within the Second Circuit consider are the range of reasonableness of a settlement in light of (i) the best possible recovery and (ii) litigation risks. *Grinnell*, 495 F.2d at 463. In analyzing these last two factors, the issue for the Court is not whether the Settlement represents the best possible recovery, but how the Settlement relates to the strengths and weaknesses of the case. The court "'consider[s] and weigh[s] the nature of the claim, the possible defenses, the situation of the parties, and the exercise of business judgment in determining whether the proposed settlement is reasonable.'" *Id*. at 462 (citation omitted). Courts agree that the determination of a "reasonable" settlement "is not susceptible of a mathematical equation yielding a particularized sum[.]" *PaineWebber*, 171 F.R.D. at 130 (quotation marks and citations omitted). Instead, "in any case there is a range of reasonableness with respect to a settlement[.]" *Newman v.*

Stein, 464 F.2d 689, 693 (2d Cir. 1972); *see also Global Crossing*, 225 F.R.D. at 461 (noting that "the certainty of [a] settlement amount has to be judged in [the] context of the legal and practical obstacles to obtaining a large recovery"); *In re Indep. Energy Holdings PLC Sec. Litig.*, No. 00 Civ. 6689 (SAS), 2003 WL 22244676, at *4 (S.D.N.Y. Sept. 29, 2003) (noting few cases tried before a jury result in full amount of damages claimed).

Here, according to analyses prepared by the Class' damages expert, the Settlement represents a recovery of approximately 14.1% to 57% of the estimated damages of between approximately $850 million to $210 million, respectively, under different scenarios where a jury credited either the Class Representatives' best possible case or narrowest possible case. Joint Decl. ¶¶3, 154. This recovery falls well within the range of reasonableness and is more than double the average recovery of 5% to 6%. *See, e.g., In re Merrill Lynch & Co. Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) (court approved $40.3 million settlement representing approximately 6.25% of estimated damages and noting that this is at the "higher end of the range of reasonableness of recovery in class actions securities litigations"); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 246 F.R.D. 156, 167 (S.D.N.Y. 2007) (approving $125 million settlement that was "between approximately 3% and 7% of estimated damages [and] within the range of reasonableness for recovery in the settlement of large securities class actions");[8] Joint Decl. ¶155.

Moreover, the Settlement recovers an excellent percentage of damages when compared to the $52.5 million settlement in *Dobina*. That settlement represented 10.5% of their estimated

[8] *See also In re Omnivision Techs., Inc. Sec. Litig.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (settlement yielding 6% of potential damages after deducting fees and costs was "higher than the median percentage of investor losses recovered in recent shareholder class action settlements"); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that class action settlements since 1995 typically recovered between 5.5% and 6.2% of estimated losses).

recoverable aggregate damages of $500 million. If *Dobina* had settled for the relative percentage achieved here (14.1% of $500 million), it would have settled for $70.5 million and, conversely, if this case had settled for the percentage obtained in *Dobina* (10.5% of $850 million), the recovery would have been $89.25 million. *Id*. ¶156. The difference and the incremental benefit to the Class is substantive.

The excellent result here is even more compelling given that the Settlement was entirely funded by the Company, and not by insurers, as was the case in *Dobina*. *See id*. ¶158. Considering the risk that the Class might not have been able to prove liability at trial, and the possibility that damages awarded by a jury could have been significantly lower than those demanded by the Class (or none at all), the Settlement is an excellent recovery. *See Indep. Energy*, 2003 WL 22244676, at *4 (noting few cases tried before a jury result in full amount of damages claimed); *In re Citigroup Inc. Sec., Litig*., 07 Civ. 9901, 2013 WL 3942951, at *11 (S.D.N.Y. Aug. 1, 2013) (noting that "the risk that the class would recover nothing or would recover a fraction of the maximum possible recovery must factor into the decision-making calculus").

II. THE NOTICE PROGRAM SATISFIED RULE 23 AND DUE PROCESS

In accordance with the Notice Order, to date 370,248 copies of the Notice of Proposed Class Action Settlement and Motion for Attorneys' Fees and Expenses (the "Settlement Notice") have been mailed to potential Class Members and their nominees. *See* 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 Exclusions and Opt-Ins Received to Date, ¶¶3-7, Ex. 4. The Summary Settlement Notice was also published in *The Wall Street Journal* and disseminated over the *PR Newswire* on August 21, 2015. *Id.* ¶8. The Settlement Notice, the Proof of Claim form, the Stipulation and its Exhibits, and the Notice Order were also posted on a case-specific website identified in the Notice. *Id.* ¶9.

The Settlement Notice contains a detailed description of the nature and procedural history of the Action, as well as the material terms of the Settlement, including, *inter alia*: (i) the recovery under the Settlement; (ii) the manner in which the Net Settlement Fund will be allocated among eligible Class Members; (iii) a description of the claims that will be released in the Settlement; (iv) the right and mechanism for Class Members to exclude themselves; (v) the right and mechanism to opt-back into the Class; and (vi) the right and mechanism for Class Members to object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application.

Accordingly, the notice program fully satisfied Rule 23(c)(2)(B), which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The notice program also satisfied the specific requirements of PSLRA and Rule 23(e)(1), which requires that notice must be provided in a "reasonable manner"—*i.e.*, it must "'fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.'" *Wal-Mart,* 396 F.3d at 114 (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)).

Although the deadlines to object or seek exclusion are not until October 12, 2015, to date no objections to the Settlement have been received, there have been no objections to the proposed Plan of Allocation. The Claims Administrator has received five requests for exclusion from the Class (only two of which are valid).

III. THE PLAN OF ALLOCATION IS FAIR AND REASONABLE

If the Court approves the proposed Settlement, upon completion of the claims filing process, the Net Settlement Fund will be distributed to Class Members according to the Plan of Allocation set forth in the Notice. "[T]he adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and

reasonable in light of that information." *PaineWebber*, 171 F.R.D. at 133; *Luxottica Grp.*, 233 F.R.D. at 316-17. As with the Settlement, the opinion of experienced and informed counsel carries considerable weight. *Indep. Energy*, 2003 WL 22244676, at *5. "When formulated by competent and experienced class counsel, an allocation plan need have only a 'reasonable, rational basis.'" *Global Crossing*, 225 F.R.D. at 462 (citing *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 429-30 (S.D.N.Y. 2001)).

The Plan of Allocation, which was fully described in the Settlement Notice, was prepared with the assistance of the Class' damages expert and provides for the distribution of the Net Settlement Fund among Authorized Claimants based upon each Class Member's "Recognized Loss," as calculated by the formulas described in the Settlement Notice. 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 Plan. The table will be utilized in calculating Recognized Loss Amounts for Authorized Claimants. Joint Decl. ¶¶145-47.

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, whether the stock was sold during the Class Period, and, if so, when. *Id*. ¶148.

Accordingly, the proposed Plan of Allocation is designed to fairly and rationally allocate the proceeds of this Settlement among the Class. Notably, no Class Member has objected to the Plan of Allocation to date. Accordingly, Class Counsel respectfully requests that this Court approve the Plan of Allocation.

CONCLUSION

The Settlement reached in this Action is an outstanding result that provides an immediate substantial and certain benefit for the Class. For the reasons set forth herein and in the Joint Declaration, the Class Representatives and Class Counsel respectfully submit that the Settlement and Plan of Allocation are fair, reasonable, and adequate, and request that the Court grant approval of the Settlement and Plan of Allocation.[9]

Dated: September 29, 2015

Respectfully submitted,

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[9] A proposed form of Judgment, negotiated by the Parties, and a proposed order approving the Plan of Allocation will be submitted to the Court with Class Representatives' reply papers, after the deadlines for seeking exclusion and objecting have passed.

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2015, I caused the foregoing Memorandum of Law in Support of Class Representatives' Motion for Approval of Proposed Class Action Settlement and Plan of Allocation to be served electronically on all ECF participants.

/s/ Joel H. Bernstein
Joel H. Bernstein