

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-3428 (NFA)

**DECLARATION OF ALEXANDER VILLANOVA IN SUPPORT OF LEAD  
PLAINTIFFS' MOTION FOR APPROVAL OF DISTRIBUTION PLAN**

I, ALEXANDER VILLANOVA, hereby declare and state as follows:

1. I am a Senior Project Manager for Epiq Class Action and Claims Solutions, Inc. (“Epiq”). I am over 21 years of age and am not a party to this Action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently thereto.

2. Epiq was retained by Lead Counsel to serve as the Claims Administrator in connection with the Settlements in the above-captioned action (the “Action”).<sup>1</sup> In its Order

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<sup>1</sup> Unless otherwise defined in this Declaration, all capitalized terms have the meaning defined in the Stipulation and Agreement of Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC dated October 9, 2018 (ECF No. 334-1) (the “Sponsor/GS&Co. Stipulation”), the Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors dated October 11, 2018 (ECF No. 337-1) (the “Cobalt Stipulation”), and the Stipulation and Agreement of Settlement Between Plaintiffs and Underwriter Defendants Other Than Goldman Sachs & Co. LLC dated November 28, 2018 (ECF No. 352-1) (the “Underwriter Stipulation” and, collectively with the Sponsor/GS&Co. Stipulation and Cobalt Stipulation, the “Stipulations”). The Stipulations set forth the terms and conditions of Lead Plaintiffs’ settlement with the Sponsor Defendants, Sponsor Designee Defendants, and Goldman Sachs & Co. LLC (the “Sponsor/GS&Co. Settlement”), Lead Plaintiffs’ settlement with

Preliminarily Approving Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC and Providing for Notice (ECF No. 347), Order Preliminarily Approving Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors and Providing for Notice (ECF No. 346), and Order Preliminarily Approving Settlement between Plaintiffs and Underwriter Defendants other than Goldman Sachs & Co. LLC and Providing for Notice (ECF No. 354) (collectively the “Preliminary Approval Orders”), the Court approved the retention of Epiq as the Claims Administrator. As Claims Administrator, Epiq has, among other things: (i) mailed the Notice of (I) Pendency of Class Action and Proposed Settlements; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Proof of Claim and Release Form (the “Claim Form”, and together with the Notice, the “Notice Packet”) to potential Settlement Class Members and brokers and other nominees; (ii) created and continues to maintain a toll-free helpline for inquiries during the course of the administration; (iii) created and continues to maintain a Settlements website and post case-specific documents on it; (iv) caused the Summary Notice to be published; (v) provided, upon request, additional copies of the Notice Packet

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the Cobalt Defendants (the “Cobalt Settlement”), and Lead Plaintiffs’ settlement with the Underwriter Defendants (the “Underwriter Settlement” and, together with the Sponsor/GS&Co. Settlement and Cobalt Settlement, the “Settlements”). The recoveries from the Settlements total at least \$173,800,000 and up to \$335,300,000 (the “Settlement Fund”), depending on the outcome of litigation with the Cobalt Defendants’ insurance carriers.

to potential Settlement Class Members, brokers, and other nominees; and (vi) received and processed Claims.

3. On February 13, 2019, the Court issued judgments approving all three Settlements<sup>2</sup> and its Order Approving Plan of Allocation of Net Settlement Fund (ECF No. 367). Epiq has completed processing all Claims received through November 6, 2020, in accordance with the terms of the Stipulations and the Court-approved Plan of Allocation set forth in the Preliminary Approval Orders, and hereby submits its administrative determinations accepting and rejecting the Claims in preparation for a distribution of the Net Settlement Fund to Authorized Claimants. Epiq also presents this declaration in support of Lead Plaintiffs' Motion for Approval of Distribution Plan.

#### **DISSEMINATION OF NOTICE**

4. As more fully described in the Declaration of Alexander Villanova Regarding: (A) Mailing of the Notice and Claim Form; (B) Publication of the Summary Notice; and (C) Report on Requests for Exclusion Received to Date (ECF No. 359-2) (the "Mailing Decl."), as of January 7, 2019, Epiq had mailed 85,122 Notice Packets to potential Settlement Class Members and their nominees. Mailing Decl. ¶ 7. Since that date, 29,445

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<sup>2</sup> See Judgment Approving Class Action Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC (ECF No. 368) (the "Sponsor/GS&Co. Judgment"), Judgment Approving Class Action Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors (ECF No. 369) (the "Cobalt Judgment"), and Judgment Approving Class Action Settlement Between Plaintiffs and Underwriter Defendants Other than Goldman Sachs & Co. LLC (ECF No. 370) (the "Underwriter Judgment" and, together with the Sponsor/GS&Co. Judgment and Cobalt Judgment, the "Judgments").

additional Notice Packets have been disseminated. In total, Epiq has disseminated 114,567 Notice Packets to potential Settlement Class Members, brokers, and other nominees.

5. Epiq established and continues to maintain a website ([www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com)) and a toll-free telephone helpline (1-877-440-0638) to assist potential Settlement Class Members. The Settlements website, which provides access to important documents relevant to the Settlements, and the telephone helpline enable Settlement Class Members to obtain information about the Settlements.

6. In accordance with paragraph 8(d) of the Preliminary Approval Orders, on December 18, 2018, Epiq caused the Summary Notice to be published in *The Wall Street Journal* and released via *PR Newswire*. Mailing Decl. ¶ 9.

#### **PROCEDURES FOLLOWED IN PROCESSING CLAIMS**

7. Under the terms of the Preliminary Approval Orders and as set forth in the Notice, each Settlement Class Member who wished to be eligible to receive a distribution from the Net Settlement Fund was required to complete and submit to Epiq a properly executed Claim Form postmarked no later than April 4, 2019, together with adequate supporting documentation for the transactions and holdings reported in the Claim. Through November 6, 2020, Epiq has received and fully processed 22,172 Claims (the “Presented Claims”).

8. In preparation for receiving and processing Claims, Epiq: (i) conferred with Lead Counsel to define the guidelines for processing Claims; (ii) created a unique database to store Claim details, images of Claims, and supporting documentation (the “Settlements Database”); (iii) trained staff in the specifics of the Settlements so that Claims would be

properly processed; (iv) formulated a system so that telephone and email inquiries would be properly responded to; (v) developed various computer programs and screens for entry of Settlement Class Members' identifying information and their transactional information; and (vi) developed a proprietary "calculation module" that would calculate a Recognized Loss for the Group 1 Fund, the Group 2 Fund, and/or the Group 3 Fund (collectively, the "Group Funds"), pursuant to the Court-approved Plan of Allocation of the Net Settlement Fund stated in the Notice.<sup>3</sup>

9. Settlement Class Members seeking to share in the Net Settlement Fund were directed in the Notice to submit their Claims to a post office box address specifically

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<sup>3</sup> The Net Settlement Fund "will be divided into three (3) separate funds for purposes of making allocations to Authorized Claimants.... The division into these three funds is based on the identity of the Settling Defendants contributing to each settlement or recovery and the types of claims asserted against each group of Settling Defendants. (a) The **Group 1 Fund** is intended to compensate Class Members who (i) purchased Cobalt common stock, 2019 Notes, and/or 2024 Notes during the Class Period at prices that Plaintiffs allege were artificially inflated as a result of material misstatements or omissions that certain Settling Defendants made recklessly or with intent to defraud in violation of Section 10(b) of the Exchange Act, and (ii) were injured when the alleged misstatements or omission were revealed and the price of Cobalt Securities declines. (b) The **Group 2 Fund** is intended to compensate Class Members who purchased Cobalt common stock during the Class Period contemporaneously with sales in Cobalt common stock by the Sponsor Defendants, who were alleged to have sold the stock while in possession of material, adverse, non-public information about Cobalt's business in violation of Section 20A of the Exchange Act. (c) The **Group 3 Fund** is intended to compensate Class Members who purchased Cobalt Common Stock, 2019 Notes, and/or 2024 Notes in or traceable to a public offering of one of those securities during the Class Period. These Class Members had asserted claims under Sections 11, 12(a)(2) and/or 15 of the Securities Act based on alleged misrepresentations and material omissions in the offering documents for the offerings of these securities." Notice ¶¶ 76-77. A Recognized Loss is calculated based upon which of the three groups includes the Claim, the Claim's type of Cobalt Security (i.e., Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024), and the date the Claim's Cobalt Security was purchased or acquired. *See Id.* ¶¶ 80-91, *Calculation of Recognized Losses*.

designated for the Settlements. Notice Packets returned by the United States Postal Service as undeliverable were reviewed for updated addresses and, where available, updated addresses were entered into the database and Notice Packets were mailed to the updated addresses. Any correspondence received at the post office box was reviewed and, when necessary, appropriate responses were provided to the senders.

## **PROCESSING CLAIMS**

### **A. Paper Claims**

10. Of the 22,172 Presented Claims, 4,963 are paper Claims. Once received, the paper Claims were opened and prepared for scanning. This process included unfolding documents, removing staples, copying nonconforming-sized documents, and sorting documents. This manual task of preparing the paper Claims is very laborious and time-intensive. Once prepared, paper Claims were scanned into the Settlements Database together with all submitted documentation. Subsequently, each Claim was assigned a unique Claim number. Once scanned, the information from each Claim, including the Claimant's name, address, account number/information from the supporting documentation, and the Claimant's purchase/acquisition transactions, sale transactions, and holdings listed on the Claim, was entered into the Settlements Database. Once entered into the Settlements Database, each Claim was reviewed to verify that all required information had been provided. The documentation provided by the Claimant in support of the Claim was reviewed for authenticity and compared to the information provided in the Claim to verify the Claimant's identity and the purchase/acquisition transactions, sale transactions, and holdings listed on the Claim.

11. To process the transactions detailed in the Claims, Epiq utilized internal codes (“message codes”) to identify and classify deficiency or ineligibility conditions existing within those Claims. Appropriate message codes were assigned to the Claims as they were processed. For example, where a Claim was submitted by a Claimant who did not have any eligible transactions in Cobalt Securities during the Class Period (e.g., the Claimant purchased Cobalt common stock only before or after the Class Period), that Claim would receive a message code that denoted ineligibility. Similar defect message codes were used to denote other ineligible conditions, such as duplicate Claims. These message codes would indicate to Epiq that the Claimant was not eligible to receive any payment from the Net Settlement Fund with respect to that Claim unless the deficiency was cured in its entirety. Examples of conditions of ineligibility are as follows:

- No Documentation Submitted for the Entire Claim
- Duplicate Claim Submitted
- No Eligible Purchase During the Class Period
- No Signature
- No Recognized Claim

12. Given that a Claim may be deficient only in part, but otherwise acceptable, Epiq utilized message codes that were applied only to specific transactions within a Claim. For example, if a Claimant submitted a Claim with supporting documentation for all but one purchase transaction, that one transaction would receive a defect message code. The message code indicated that although the transaction was deficient, the Claim was otherwise eligible for payment if other transactions in the Claim calculated to a Recognized

Claim according to the Court-approved Plan of Allocation. Thus, even if the deficiency was never cured, the Claim could still be partially accepted. Examples of transaction-specific message codes are as follows:

- Claim did not Balance/Trade Discrepancy
- Inadequate Documentation for transaction
- Received Shares (i.e., shares transferred into or out of an account)
- No Proof of Unsold Holdings

**B. Electronic Claims**

13. Of the 22,172 Presented Claims, 17,209 were filed electronically (“Electronic Claims”). Electronic Claims are typically submitted by institutional investors (“Electronic Claim Filers” or “E-Claim Filers”) who may have hundreds or thousands of transactions during the Class Period. Rather than provide reams of paper requiring data entry, the E-Claim Filers submitting Electronic Claims either mail a computer disc or electronically submit a file to Epiq so that Epiq can upload all transactions to the Settlements Database.

14. Epiq maintains an electronic filing operations team (the “Electronic Filing Team”) to coordinate and supervise the receipt and handling of all Electronic Claims. In this case, the Electronic Filing Team reviewed and analyzed each electronic file to ensure that it was formatted in accordance with Epiq’s required format and to identify any potential data issues or inconsistencies within the file. If any issues or inconsistencies arose, Epiq notified the filer. If the electronic file was deemed to be in an acceptable format, it was then loaded to the Settlements Database.



15. Once each electronic file was loaded, the Electronic Claims were coded to denote any deficient or ineligible conditions that existed within them. These message codes are similar to those applied to paper Claims. In lieu of manually applying message codes, the Electronic Filing Team performed programmatic reviews on Electronic Claims to identify deficient and ineligible conditions (such as, but not limited to, price out-of-range issues, out-of-balance conditions, transactions outside the Class Period, etc.). The output was thoroughly verified and confirmed as accurate.

16. The review process also included message coding any Electronic Claims that were not accompanied by a signed Claim Form, which serves as a “Master Proof of Claim Form” for all Claims referenced on the electronic file submitted. This process was reviewed by Epiq’s Electronic Filing Team and, when appropriate, Epiq contacted the E-Claim Filers whose submissions were missing information. This ensured that only fully completed Claims, submitted by properly authorized representatives of the Claimants, were considered eligible for payment from the Net Settlement Fund.

17. Finally, at the end of the process, Epiq performed various targeted reviews of Electronic Claims. Specifically, Epiq used criteria such as the calculated Recognized Claims and other identified criteria to message code and reach out to a number of E-Claim Filers and request that various sample purchases, sales, and holdings selected by Epiq be documented by providing confirmation slips or other transaction-specific supporting documentation. These targeted reviews help to ensure that electronic data supplied by Claimants does not contain inaccurate information.

### **EXCLUDED PERSONS**

18. Epiq also reviewed all Claims to ensure that they were not submitted by, or on behalf of, “Excluded Persons,” to the extent that the identities of such persons or entities were known to Epiq through the list of Defendants and other excluded persons and entities set forth in the Stipulations and the Notice and from the Claimants’ certifications on the Claim Forms. Epiq also reviewed all Claims against the list of persons who were excluded from the Settlement Class pursuant to request.

### **THE DEFICIENCY PROCESS**

#### **A. Paper Claims**

19. Approximately 42% of the paper Claims, i.e., 2,060 of the 4,963 paper Claims, were incomplete or had one or more defects or conditions of ineligibility, such as the Claim not being signed, not being properly documented, or indicating no eligible transactions in Cobalt Securities during the Class Period. The “Deficiency Process,” which primarily involved mailing letters to Claimants and responding to communications from Claimants by email and/or telephone, was intended to assist Claimants in properly completing their otherwise deficient submissions so that they could be eligible to participate in the Settlements.

20. If paper Claims were determined to be defective, a Notice of Deficient Proof of Claim Submission (a “Deficiency Letter”) was sent to the Claimants describing the defect(s) in the Claims and what, if anything, was necessary to cure the defect(s) in these Claims. The Deficiency Letter advised Claimants that submission of appropriate information and/or documentary evidence to complete the Claim had to be sent within

twenty (20) days from the date of the Deficiency Letter or the Claim would be recommended for rejection to the extent that the deficiency or condition of ineligibility was not cured. The Deficiency Letter also advised Claimants that to contest these administrative determinations, they were required to submit written statements to Epiq requesting Court review of their Claims and setting forth the basis for such requests. Epiq sent a total of 2,092 Deficiency Letters to Claimants who filed paper Claims that Epiq determined to be defective. Attached hereto as Exhibit A is an example of a Deficiency Letter.

21. Claimants' responses to Deficiency Letters were scanned into the Settlements Database and associated with the corresponding Claims. The responses were then carefully reviewed and evaluated by Epiq's team of processors. If a Claimant's response corrected the defect(s), Epiq manually updated the Settlements Database to reflect the changes in the status of the Claim.

**B. Electronic Claims**

22. In addition, for Electronic Claims, Epiq used the following process to contact the banks, brokers, nominees, and other E-Claim Filers who submitted their data electronically to confirm receipt of their submissions and to notify the filers of any deficiencies or Electronic Claims that were ineligible. These E-Claim Filers were sent an email to the email address included with their Claim Form ("Status Email") with an attached report containing detailed information associated with the Claims and indicating which of those Claims within the filing were deficient and/or rejected ("Transaction Report").

23. The Status Email sent to the email address of record provided with the Claim Form:

(a) Notified the filer that any Claims with deficiencies not corrected within twenty (20) days from the date of the Status Email may be rejected;

(b) Advised the filer of the right to contest the rejection of the Claim(s) and request this Court's review of Epiq's administrative determination within twenty (20) days from the date of the Status Email; and

(c) Provided instructions for how to submit corrections.

24. The Transaction Report attached to the Status Email identified each of the individual Claims that were found to be deficient or ineligible and the basis for that deficiency or condition of ineligibility.

25. Epiq has mailed a Status Email and Transaction Report to 285 E-Claim Filers. Samples of a Status Email and Transaction Report are attached hereto as Exhibit B and Exhibit C, respectively.

26. The E-Claim Filers' responses were reviewed by the Electronic Filing Team, scanned and/or loaded into Epiq's database, and associated with the corresponding Electronic Claims. If a response corrected the defect(s) or affected an Electronic Claim's status, Epiq manually and/or programmatically updated the database to reflect such change in status of the Electronic Claim.

### **DISPUTED CLAIMS**

27. As noted above, Claimants were advised they had the right to contest Epiq's administrative determination of deficiencies or ineligibility within twenty (20) days from

the date of the Deficiency Letter or Status Email (together the “Deficiency Notice”) and that they could request that the dispute be submitted to the Court for review. More specifically, Claimants were advised in the Deficiency Notice that, if they disputed Epiq’s determination, they had to provide a statement of reasons indicating the grounds for contesting the determination, along with supporting documentation, and if the dispute concerning the Claim could not otherwise be resolved, Lead Counsel would thereafter present the request for review to the Court for a final determination.

28. A total of 14 Claimants contested Epiq’s administrative determinations and requested review by the Court. To resolve the disputes without necessitating the Court’s intervention, Epiq contacted all persons requesting Court review and attempted to answer all questions, fully explain Epiq’s determination of the Claim’s status, and facilitate the submission of missing information or documentation where applicable. As a result of these efforts, 11 requests for Court review have either been cured or the request for Court review has been retracted.

29. Of the 14 Claimants that had contested Epiq’s determination to reject their Claims, only three (3) Claimants (each a “Disputing Claimant”) have outstanding requests for Court review (each a “Disputed Claim”). Exhibit D attached hereto (the “Disputed Claims Chart”) contains copies of Claims and supporting documentation submitted by the 3 Disputing Claimants and other documents related to each Disputed Claim.<sup>4</sup> The Claims

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<sup>4</sup> For privacy reasons, the documents included in Exhibit D have been redacted to remove all personal information such as street addresses, email addresses, telephone numbers, account numbers, Taxpayer ID, Social Security, or Social Insurance Numbers, and all financial and transaction information not related to the Claimants’ transactions in Cobalt

are labeled Disputed Claim Nos. 1-3 and are categorized as follows:

<b>Disputed Claims Category</b>	<b>Number of Claims</b>
Claims determined not to have a Recognized Claim	1
Claims with no Eligible Class Period Purchases	2

30. Epiq recommends the rejection of Disputed Claim Nos. 1-3 for the following reasons:

(a) **Category A: Claims determined to not calculate to a Recognized Claim under the Court-approved Plan of Allocation.** As set forth in the Disputed Claims Chart, Epiq recommends Disputed Claim No. 1 for rejection because this Disputed Claim does not calculate to a Recognized Claim under the Court-approved Plan of Allocation. The Claim submitted on behalf of Disputed Claim No. 1 purchased shares of Cobalt common stock and sold these same shares within the same artificial inflation period, resulting in no Recognized Claim under the Court-approved Plan of Allocation. Because all shares for this Claim were purchased and sold within the same artificial inflation period the Recognized Loss Amount is \$0.00. *See* Notice ¶ 90(b)(i). Specifically, “For each share of Cobalt Common Stock purchased or otherwise acquired for consideration from March 1, 2011 through November 3, 2014, inclusive, and: (b) sold from April 16, 2012 through November 3, 2014, the Group 1 Recognized Loss is the lesser of: (i) the artificial inflation per

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Securities, unless the financial or transaction information serves as a basis for the dispute or as a basis for the Claim’s rejection.

share on the date of purchase as stated in Table A minus the artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase price minus the sale price.” *Id.* ¶ 82(b). As the entirety of the shares of Cobalt common stock purchased were sold within the same artificial inflation period, the difference between the artificial inflation per share on the date of purchase and on the date of sale equals \$0.00, and thus the Recognized Claim for Disputed Claim No. 1 is \$0.00.

(b) **Category B: Claims with No Eligible Class Period Purchases of Cobalt Securities.** As set forth in the Disputed Claims Chart, Epiq recommends Disputed Claim Nos. 2 through 3 for rejection because none of these Disputed Claims claimed an eligible class period purchase of Cobalt Securities. The Claims submitted on behalf of Disputed Claim Nos. 2 through 3 reflect no eligible transactions of Cobalt Securities during the Class Period, nor did they provide documentation showing that the shares purchased between the years 2016 and 2018 were traceable to the registered public offerings occurring on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013, and thus are not eligible under the Court-approved Plan of Allocation as they are not Class Members.

31. Epiq has made multiple attempts to contact each Disputed Claimant, by telephone and/or email. For those Disputing Claimants who Epiq was able to contact, an Epiq representative answered all their questions and fully explained Epiq’s determination of the Claim’s status. However, these Claimants have indicated their desire to maintain the request for Court review.

**LATE BUT OTHERWISE ELIGIBLE CLAIMS**

32. Of the 22,172 Presented Claims, 4,152 were received or postmarked after the April 4, 2019 Claim submission deadline established by the Court. Epiq processed all late Claims received through November 6, 2020, and 2,299 have been found to be otherwise eligible in whole or in part (the “Late But Otherwise Eligible Claims”). Epiq has not rejected any Claim received through November 6, 2020, solely based on its late submission, and Epiq believes no delay has resulted from the provisional acceptance of these Late But Otherwise Eligible Claims. To the extent they are eligible but for the fact that they were late, they are recommended for payment.

33. However, there must be a final cut-off date to conduct the initial distribution so that there may be a proportional allocation of the Net Settlement Fund and the initial distribution may be accomplished. Acceptance of additional Claims or responses to Deficiency Notices received during the finalization of the administration and the preparation of this application would necessarily require a delay in the distribution. Accordingly, Epiq also respectfully requests that this Court order that no Claim received or adjusted after November 6, 2020, be eligible for payment from the initial distribution for any reason whatsoever. Claims received or adjusted after November 6, 2020, shall be eligible to participate in subsequent distributions subject to the provisions of paragraphs 42(d) and 42(e) of the proposed distribution plan discussed below. However, should an adjustment be received that results in a lower Recognized Claim amount, that adjustment will be made and the Recognized Claim amount will be reduced accordingly prior to a distribution to that Claimant.



### QUALITY ASSURANCE

34. An integral part of the claims administration process is the Quality Assurance review. Throughout the administration process, Epiq's Quality Assurance personnel worked to verify that Claims were processed properly by ensuring that information was entered correctly into the database, deficiency and/or rejection message codes were assigned accurately, and Deficiency Notices and/or rejection notification letters were sent appropriately. After all Claims were processed, Deficiency Notices and/or rejection letters were sent, and Claimants' responses to the Deficiency Notices and/or rejection letters were reviewed and processed, Epiq's Quality Assurance personnel performed additional Quality Assurance reviews. These final Quality Assurance reviews further ensured the correctness and completeness of all Claims processed prior to preparing this declaration and all Epiq's final documents in support of distribution of the Net Settlement Fund. As part of the Quality Assurance reviews, Epiq:

- (a) Verified that all Claim Forms had signatures of authorized individuals;
- (b) Verified that true duplicate Claims were identified, verified, and rejected;
- (c) Verified that persons and entities excluded from the Settlement Class did not file Claims or their Claims were rejected upon review;
- (d) Performed a final Quality Assurance review of Claims and all supporting documentation to ensure completeness of Claims;

- (e) Determined that all Claimants requiring Deficiency Notices and/or rejection letters were sent such letters or emails;
- (f) Performed a review of deficient Claims;
- (g) Performed additional review of Claims with high Recognized Claim amounts;
- (h) Reviewed Claims that were designated invalid;
- (i) Reviewed Claims with a Recognized Claim amount equal to zero;
- (j) Performed other reviews based on Claims completion requirements and the approved calculation specifications based on the Court-approved Plan of Allocation; and
- (k) Re-tested the accuracy of the Recognized Claim amount calculation program.

35. As part of its due diligence in processing the Claims, Epiq reviewed and compared the entire Settlements database against the “watch list” of known questionable filers that Epiq has developed throughout its years of experience as a claims administrator. Epiq performs searches based on names, aliases, addresses, and city/zip codes. In addition, Epiq’s claim processors are trained to identify any potentially inauthentic documentation when processing claims, including Claims submitted by Claimants not previously captured in the “watch list.” Processors are instructed to message code any Claims that match to a record on the “watch list” and escalate them to management for review. No Claims were identified as having been submitted by someone on the “watch list.”

**RECOMMENDATIONS FOR APPROVAL AND REJECTION**

36. As noted above, the number of Claims on this motion is 22,172.

**Timely Submitted and Valid Claims**

37. A total of 18,020 Claims were received or postmarked on or before the Court-approved Claim submission deadline of April 4, 2019, of which 8,886 were determined by Epiq to be eligible and are recommended for approval (“Timely Eligible Claims”). The total Recognized Claim amount for these Claims is \$1,139,035,498.09 for the Group 1 Fund, \$209,009,380.59 for the Group 2 Fund, and \$819,409,321.35 for the Group 3 Fund.

**Late But Otherwise Eligible Claims**

38. A total of 4,152 Claims were received or postmarked after the Court-approved Claim submission deadline of April 4, 2019, but received on or before November 6, 2020. Of those, 2,299 were determined by Epiq to be otherwise eligible and are recommended for approval (“Late But Otherwise Eligible Claims”). The total Recognized Claim amount for these Claims is \$387,847,878.63 for the Group 1 Fund, \$87,033,900.18 for the Group 2 Fund, and \$235,157,659.05 for the Group 3 Fund.

**Rejected Claims**

39. After the responses to Deficiency Notices were processed, a total of 10,987 Claims (including the Disputed Claims discussed above) remain recommended for rejection by the Court (“Rejected Claims”) for the following reasons:

- (a) 3,554 Claims Did Not Fit Settlement Class Definition;
- (b) 5,542 Claims did not result in a Recognized Claim or would receive no Distribution Amount based on the Court Approved Plan of Allocation;

- (c) 74 Claims were duplicates;
- (d) 1,543 Claims were void or withdrawn; and
- (e) 274 Claims had uncured conditions of ineligibility.

**Lists of All Presented Claims**

40. Attached hereto as Exhibits E through G are listings of all the Presented Claims:

- (a) Exhibit E lists the Timely Eligible Claims and shows each Claimant's Recognized Claim;
- (b) Exhibit F lists the Late But Otherwise Eligible Claims and shows each Claimant's Recognized Claim; and
- (c) Exhibit G lists the Rejected Claims and the reasons for rejection.

**FEES AND DISBURSEMENTS**

41. Epiq agreed to be the Claims Administrator in exchange for payment of its fees and out-of-pocket expenses. Lead Counsel received reports on and invoices for the work Epiq performed with respect to the provision of notice and administration of the Settlements. Attached hereto as Exhibit H are copies of Epiq's invoices for its work performed on behalf of the Settlement Class as well as an estimate for the work that will be performed and the costs that will be incurred in connection with the initial distribution of the Net Settlement Fund.<sup>5</sup> As set forth in these invoices, the cost of administration for

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<sup>5</sup> Should the estimate of fees and expenses to conduct the initial distribution of the Net Settlement Fund exceed the actual cost to conduct the distribution, the excess will be returned to the Net Settlement Fund and will be available for subsequent distribution to Authorized Claimants.

this project through the initial distribution is \$414,755.71 in fees and expenses. To date, Epiq has not received any payment for its fees and expenses. Accordingly, there is a total of \$414,755.71 payable to Epiq.

**DISTRIBUTION PLAN FOR THE NET SETTLEMENT FUND**

42. Should the Court concur with Epiq's determinations concerning the provisionally accepted and rejected Claims, including the Late But Otherwise Eligible Claims, Epiq recommends the following distribution plan (the "Distribution Plan"):

(a) Epiq will conduct an initial distribution (the "Initial Distribution") of the Net Settlement Fund, after deducting all payments approved by the Court, and after payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, while maintaining a 10% reserve to address any tax liability and claims administration-related contingencies that may arise, as follows:

(1) Epiq will calculate award amounts for all Authorized Claimants as if the entire Net Settlement Fund were to be distributed now. In accordance with the Court-approved Plan of Allocation, Epiq will calculate each Authorized Claimant's: (a) *pro rata* share of the Group 1 Fund based on the amount of the Authorized Claimant's Group 1 Fund Recognized Claim in comparison to the total Group 1 Fund Recognized Claims of all Authorized Claimants<sup>6</sup>; (b) *pro rata* share of the Group 2 Fund based on the

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<sup>6</sup> As of the filing date of this Motion, the total amount of the Settlement Fund has not reached a complete resolution. So as not to delay the Initial Distribution to Court-approved and Court-Authorized Claimants, the Initial Distribution will exclusively include the \$10 million from the Sponsor/GS&Co. Settlement Amount allocated to the **Group 1 Fund**.

amount of the Authorized Claimant's Group 2 Fund Recognized Claim in comparison to the total Group 2 Fund Recognized Claims of all Authorized Claimants; and (c) *pro rata* share of the Group 3 Fund based on the amount of the Authorized Claimant's Group 3 Fund Recognized Claim in comparison to the total Group 3 Fund Recognized Claims of all Authorized Claimants.<sup>7</sup>

(2) Epiq will, pursuant to the terms of the Plan of Allocation, eliminate from the Initial Distribution any Authorized Claimant whose combined *pro rata* share of the Group Funds calculates to less than \$10.00.<sup>8</sup> These Claimants will not receive any payment from the Net Settlement Fund, and Epiq will send notifications to those Authorized Claimants advising them of that fact.

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Subsequent Distributions will include at least \$4,200,000 in Cobalt Settlement Existing Proceeds and 100% of any additional future recoveries in the insurance coverage litigation, less all Court-approved attorneys' fees, taxes, and expenses on those settlements and recoveries, allocated to the Group 1 Fund. *See* Notice ¶ 77(a). Therefore, the *pro rata* share of the **Group 1 Fund** award amount calculated during the Initial Distribution of the Net Settlement Fund shall be limited to the funds originating from the Sponsor/GS&Co. Settlement Amount. A supplemental distribution (the "Supplemental Distribution") will occur once the future recoveries, if any, in the insurance coverage litigation have been recovered. At that time, Epiq will calculate and send an additional *pro rata* payment, subject to the same \$10.00 minimum Distribution Amount as required in the Initial Distribution (*see Id.* ¶ 99), to all eligible Class Members, which shall include any funds from the future recoveries in the insurance coverage litigation in addition to the Cobalt Settlement Existing Proceeds.

<sup>7</sup> *See* Notice ¶¶ 79, 96.

<sup>8</sup> *See Id.* ¶¶ 67, 99.

(3) After eliminating Claimants who would have received less than \$10.00, Epiq will recalculate the *pro rata* share of the Group 1 Fund, the Group 2 Fund, and the Group 3 Fund for all Authorized Claimants who would have received \$10.00 or more pursuant to the calculations described in subparagraph (a)(1) above. The sum of these *pro rata* shares is the Authorized Claimant’s “Distribution Amount.”<sup>9</sup>

(4) The First Distribution will be compromised of 90% of the remaining balance of each Group Fund will be distributed to Authorized Claimants whose Distribution Amount calculates to \$10.00 or more pursuant to subparagraph (a)(3) above, on a *pro rata* basis based on their Distribution Amounts. The remaining 10% of each Group Fund will be held in reserve (the “Reserve”) to address any tax liability and claims administration-related contingencies that may arise.<sup>10</sup> To the extent the Reserve is not depleted, the remainder will be distributed in the “Second Distribution” described in subparagraph (d) below.

(b) In order to encourage Authorized Claimants to deposit their payments promptly, all distribution checks will bear a notation: “CASH PROMPTLY. VOID

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<sup>9</sup> See *Id.* ¶ 96.

<sup>10</sup> “All Court-approved attorneys’ fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Sponsor/GS&Co., Underwriter and Cobalt Settlements will be deducted proportionally based on the relative size of the three funds.” *Id.* ¶ 77(d).

AND SUBJECT TO REDISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE DATE].”<sup>11</sup>

(c) Authorized Claimants who do not cash their Initial Distribution checks within the time allotted or on the conditions set forth in footnote 11 will irrevocably forfeit all recovery from the Settlements. The funds allocated to all such stale-dated checks will be available to be redistributed to other Authorized Claimants in the second distribution.

(d) Consistent with the Court-approved Plan of Allocation, after Epiq has made reasonable and diligent efforts to have Authorized Claimants cash their Initial Distribution checks, which efforts shall consist of the follow-up efforts described in footnote 11, but not earlier than nine (9) months after the Initial Distribution, Lead

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<sup>11</sup> For Authorized Claimants whose checks are returned as undeliverable, Epiq will endeavor to locate new addresses through reasonable methods. Where a new address is located, Epiq will update the database accordingly and reissue a distribution check to the Authorized Claimant at the new address. In the event a distribution check is lost, damaged, or otherwise requires reissuance, Epiq will issue replacements. Distribution reissues will be undertaken only upon written instructions from the Authorized Claimant, provided that the Authorized Claimant returns the previous check where appropriate. For all checks, Epiq will void the initial payment prior to reissuing a payment. In order not to delay further distributions to Authorized Claimants who have timely cashed their checks, Epiq’s outreach program, described in the preceding sentences, shall end 30 days after the initial void date. Authorized Claimants will be informed that, if they do not cash their Initial Distribution checks within 90 days of the mail date, or they do not cash check reissues within 30 days of the mailing of such reissued check, their check will lapse, their entitlement to recovery will be irrevocably forfeited, and the funds will be reallocated to other Authorized Claimants. Reissue requests for lost or damaged checks will be granted after the void date on the checks as long as the request for the reissue is received no later than 45 days prior to the next planned distribution. Requests for reissued checks in connection with any subsequent distributions (should such distributions occur) will be handled in the same manner.



Counsel will conduct a second distribution of the Net Settlement Fund (the “Second Distribution”). Any amounts remaining in the Net Settlement Fund after the Initial Distribution (including from the Reserve and the funds allocated to all void stale-dated checks), after deducting Epiq’s unpaid fees and expenses incurred in connection with administering the Settlements, including Epiq’s estimated costs of the Second Distribution, and after deducting the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be distributed to all Authorized Claimants in the Initial Distribution who cashed their first distribution check and who would receive at least \$10.00 from such distribution based on their *pro rata* share of the remaining funds. Additional distributions, after deduction of costs and expenses as described above and subject to the same conditions, shall occur thereafter in six-month intervals until Lead Counsel, in consultation with Epiq, determine that further distribution is not cost-effective.

(e) At such time as Lead Counsel, in consultation with Epiq, determine that further distribution of the funds remaining in the Net Settlement Fund is no longer cost-effective, if sufficient funds remain to warrant the processing of Claims received after November 6, 2020, such Claims will be processed and any such Claims that are otherwise valid, as well as any earlier received Claims for which an adjustment was received after November 6, 2020, and resulted in an increased Recognized Claim, may be paid in accordance with subparagraph (f) below. If any funds remain in the Net Settlement Fund after payment of such late or late-adjusted Claims, the remaining balance of the Net Settlement Fund, after payment of any

unpaid fees or expenses incurred in connection with administering the Net Settlement Fund and after the payment of any taxes or estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, will be contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be recommended by Lead Counsel and approved by the Court.

(f) No new Claims submitted after November 6, 2020, may be accepted, and no further adjustments to Claims received on or before November 6, 2020, that would result in an increased Recognized Claim amount, may be made for any reason after November 6, 2020, subject to the following exception. If Claims are received or modified after November 6, 2020, that would have been eligible for payment or additional payment under the Plan of Allocation if timely received, then, at the time that Lead Counsel, in consultation with Epiq, determine that further redistribution is not cost-effective as provided in subparagraph (e) above, and after payment of any unpaid fees or expenses incurred by Epiq in connection with administering the Net Settlement Fund and after deducting the payment of any taxes or estimated taxes, the costs of preparing appropriate tax returns, and any escrow fees, such late Claimants, at the discretion of Lead Counsel, may be paid the distribution amounts or additional distribution amounts on a *pro rata* basis that would bring them into parity (to the extent possible) with other Authorized Claimants who have cashed all their prior distribution checks.

(g) Unless otherwise ordered by the Court, Epiq may destroy the paper copies of the Claims and all supporting documentation one year after the Second

Distribution and may destroy electronic copies of the same one year after all funds have been distributed.

**CONCLUSION**

Epiq respectfully requests that the Court enter an Order approving its administrative determinations accepting and rejecting the Claims submitted herein and approving the proposed Distribution Plan. Epiq further respectfully submits that its fees and expenses, as reflected on the invoices attached hereto as Exhibit H, should be approved for payment from the Settlement Fund.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 16<sup>th</sup> day of November 2020.



Alexander Villanova