

**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 ANDREW J. ENTWISTLE IN FURTHER SUPPORT OF
(I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENTS AND PLAN OF ALLOCATION AND (II) LEAD
COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

I, ANDREW J. ENTWISTLE, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I, Andrew J. Entwistle, am a partner at the law firm of Entwistle & Cappucci LLP, counsel for Lead Plaintiffs and Class Representatives GAMCO Global Gold, Natural Resources & Income Trust, and GAMCO Natural Resources, Gold & Income Trust, and Court-appointed Lead Counsel for the certified Class in this class action (the “Action”). I have personal knowledge of the matters set forth herein based upon my close supervision of and active participation in the Action.

2. I respectfully submit this Declaration in further support of (i) Lead Plaintiffs’ Motion for Final Approval of Class Action Settlements and Plan of Allocation (“Final Approval Motion”) (ECF Nos. 355-356), and (ii) Lead Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Fee and Expense Motion”) (ECF Nos. 357-358).

3. The settlements (“Settlements”) in this Action resolve all claims against the (i) Sponsor Defendants,¹ Sponsor Designee Defendants, and Goldman Sachs & Co. LLC (“GS&Co.”) (the “Sponsor/GS&Co. Settlement”), (ii) Underwriter Defendants (the “Underwriter Settlement”), and (iii) Cobalt Defendants (the “Cobalt Settlement”).

¹ Unless otherwise defined, all capitalized terms herein have the same meaning set forth in the (i) 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); (ii) 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); and/or (iii) Stipulation and Agreement of Settlement Between Plaintiffs and Underwriter Defendants Other Than Goldman Sachs & Co. LLC, dated November 28, 2018 (ECF No. 352-1).

4. The Sponsor/GS&Co. Settlement resolves all claims asserted against Cobalt's private equity sponsors, certain individuals designated to the Cobalt board of directors by the Sponsor Defendants, and GS&Co., which underwrote certain Cobalt Securities offerings during the Class Period. The claims against these Defendants are being settled in exchange for a payment of \$146.85 million in cash.

5. The Underwriter Settlement resolves all claims asserted against entities (other than GS&Co.) that underwrote Cobalt Securities offerings during the Class Period. The claims against the Underwriter Defendants are being settled in exchange for a payment of \$22.75 million in cash.

6. The Cobalt Settlement resolves all claims asserted against Cobalt and certain of its former officers and directors in exchange for a payment of \$220 million. By order of the Bankruptcy Court in *In re Cobalt International Energy, Inc.*, Case No. 4:17-bk-36709 (Bankr. S.D. Tex.), the only asset available to satisfy this payment by Cobalt on its own behalf and on behalf of the former Cobalt officer and director defendants is directors & officers liability insurance owned by Cobalt (the "D&O Policies"). The projected proceeds of the D&O Policies available to fund the Cobalt Settlement include (i) at least \$4.2 million in existing proceeds from prior settlements with certain insurance carriers that issued the D&O Policies, and (ii) future recoveries of up to \$161.5 million from ongoing litigation by the Cobalt Defendants against the remaining insurance carriers (the "Insurance Coverage Litigation").

I. THE CLASS MEETS THE RULE 23 CERTIFICATION REQUIREMENTS

7. On June 15, 2017, the Court granted Lead Plaintiffs' Motion for Class Certification and Appointment of Class Representatives and Class Counsel (the "Class Certification Order"). ECF No. 244. The Class Certification Order found all of the requirements under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") had been met, and certified the following Class of Cobalt investors:

All persons and entities who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby. Included within the Class are all persons and entities who purchased shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Class are all persons and entities who purchased Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014.²

8. On November 2, 2018 and November 29, 2018, the Court entered orders preliminarily approving the Settlements and certifying the Class for purposes of each of the Settlements under Fed. R. Civ. P. 23(a) and (b)(3) (the "Preliminary Approval Orders"). ECF Nos. 346, 347, 354. In their Final Approval Motion, Lead Plaintiffs respectfully

² Excluded from the Class are Defendants; the officers and directors of Defendants during the Class Period (the "Excluded Officers and Directors"); members of the immediate family of the Individual Defendants and of the Excluded Officers and Directors; any entity in which any Defendant, any Excluded Officer or Director, or any of their respective immediate family members has, and/or had during the Class Period, a controlling interest; Defendants' liability insurance carriers; any affiliates, parents, or subsidiaries of the corporate Defendants; all corporate Defendants' plans that are covered by ERISA; and the legal representatives, heirs, agents, affiliates, successors-in-interest or assigns of any excluded person or entity, in their respective capacity as such.

request entry of final Judgments that include certification of the Class upon final approval of the Settlements. ECF Nos. 356-1–356-3.

9. Even assuming the Class had not already been certified, all requirements for certification of a settlement class under Fed. R. Civ. P. 23(a) and (b)(3) are met.

A. Numerosity

10. The Class is so numerous that joinder of all Class Members is impracticable. Cobalt had over 350 million shares outstanding during the Class Period that were held by more than a hundred record holders. ECF No. 165-1 at 16-18. Additionally, 599 institutional investors held Cobalt common stock during the Class Period. *Id* at 31-32.

B. Commonality

11. The questions of law and fact are common to the Class. Among others, this includes whether Defendants made materially false and misleading statements concerning (i) Cobalt's business partners in Angola and (ii) the viability of the Lontra and Loengo wells in Angola.

C. Typicality

12. The claims asserted by Class Representatives are typical of the Class's claims. All claims arise from the same alleged material misstatements and omissions during the Class Period. In addition, all Class Members purchased Cobalt Securities at prices alleged to be artificially inflated by Defendants' misrepresentations and suffered losses when the truth about Cobalt's Angolan partners and oil wells was disclosed and the value of their securities declined.

D. Adequacy

13. Class Representatives and Class Counsel have adequately protected the interests of the Class throughout the litigation. They have vigorously prosecuted claims on behalf of the Class for four years, and have succeeded in obtaining a recovery of at least \$173.8 million for the Class, with a potential additional recovery of up to \$161.5 million from the Insurance Coverage Litigation (together, the “Settlement Amount”).

E. Superiority

14. A Class is the superior method for fairly and efficiently resolving all claims asserted against Defendants. There are no pending individual actions asserting the same claims against Defendants, and no valid requests for exclusion from the Class have been submitted. *See infra* Section III. Accordingly, no individual Class member has an interest in pursuing a separate action against Defendants, or in resolving such claims individually. The current claims administration process is effective in managing the distribution of the Net Settlement Amount to Class members. *Id.*

F. Predominance

15. Common questions of law and fact among Class Members predominate over any individualized issues. This includes, among others, whether: (i) Defendants made material misrepresentations and omissions during the Class Period; (ii) Defendants’ alleged misrepresentations were material; (iii) the Sponsor Defendants sold Cobalt stock while in possession of material nonpublic information about Cobalt; and (iv) the Sponsor Defendants exercised control over Cobalt.

16. Lead Plaintiffs respectfully submit that all requirements of Fed. R. Civ. P. 23(a) and (b)(3) have been met and support entry of final Judgments certifying the Class.

II. NOTICE TO THE CLASS SATISFIED RULE 23

17. Notice to the Class was approved by the Court in the Preliminary Approval Orders. ECF Nos. 346, 347, 354. The Preliminary Approval Orders also appointed Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as Claims Administrator to disseminate the Court-approved Notice and Claim Forms (“Notice Packet”) to Class Members in consultation with Lead Counsel.

18. Through January 7, 2019, Epiq mailed 85,122 Notice Packets to potential Class Members and their nominees by first-class mail. *See* 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 (“Villanova Decl.”), dated January 8, 2019, ¶ 8. ECF No. 359-2.

19. In addition to these individual mailings, Epiq arranged for publication of the Court-approved Summary Notice in *The Wall Street Journal* and transmitted the Summary Notice over the *PR Newswire*. *Id.* ¶ 9.

20. Epiq also made copies of all Settlement documents available to Class Members on a dedicated website (www.CobaltSecuritiesLitigation.com) established for this litigation and maintained by Epiq. *Id.* ¶ 13. The dedicated website set forth, in bold text, a detailed explanation of the deadline for objecting to the Settlements and requesting exclusion from the Class, as well as the Settlement Hearing scheduled for February 13, 2019. Lead Counsel also made this information available on their respective firm websites.

21. Since January 7, 2019, Epiq has continued to mail Notice Packets to potential Class Members and nominees. As of February 5, 2019, Epiq has mailed a total of 110,539 Notice Packets to potential Class Members and nominees. In addition, Epiq has re-mailed 51 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the U.S. Postal Service. *See* Supplemental Declaration of Alexander Villanova Regarding: (A) Mailing of the Notice and Claim Form; and (B) Report on Requests for Exclusion Received, dated February 5, 2019 (“Supplemental Villanova Decl.”), ¶ 2 (attached hereto as Exhibit 1).

22. As required by Fed. R. Civ. P. 23(c)(2)(B), the Notice described: (i) the nature of the Action; (ii) the definition of the Class; (iii) the Class claims, issues, and defenses; (iv) the process by which Class Members may enter an appearance through their own counsel; (v) how Class Members can exclude themselves from the Class; (vi) the binding effect of the Settlement approval proceedings; (vii) the proposed Plan of Allocation; and (viii) the reasons the Settling Parties are proposing the Settlements. The Notice also supplied the date, time, and place of the Settlement Hearing, and the procedures for commenting on the Settlements and appearing at the hearing.

23. The Notice also satisfied the requirements under the PSLRA by including: (i) the amount of the Settlements proposed to be distributed to the parties to the Action, determined in the aggregate and on an average per-share basis; (ii) a statement from the Settling Parties concerning the issues on which the Settling Parties disagree; (iii) a statement indicating the maximum amount of attorneys’ fees and expenses (both on an aggregate and per share basis) sought by Lead Counsel, and a brief explanation supporting

the requested fees and expenses; (iv) the names, telephone numbers, and addresses of Lead Counsel who are reasonably available to answer questions concerning any matter contained in the Notice; and (v) a brief statement explaining the reasons why the Settling Parties are proposing the Settlements. *See* 15 U.S.C. § 78u-4(a)(7)(A)-(F).

III. NO OBJECTIONS TO THE SETTLEMENTS OR VALID EXCLUSION REQUESTS

24. As set forth in the Notice, any objections to the Settlements, Plan of Allocation and/or the Fee and Expense Motion had to be received by counsel for the Settling Parties by January 23, 2019.

25. No objections to the Settlements, Plan of Allocation and/or the Fee and Expense Motion have been received by counsel for the Settling Parties or Epiq. In addition, no notices of an intent to appear at the Settlement Hearing and object to the Settlements, Plan of Allocation and/or the Fee and Expense Motion have been received by counsel for the Settling Parties or Epiq.

26. As set forth in the Notice, any requests by Class Members to exclude themselves from the Settlements had to be received by January 23, 2019.

27. On January 28, 2019, Epiq received one untimely request for exclusion, which did not provide any Cobalt Securities information or otherwise meet the requirements set forth in the Notice. In fact, the only indication it was a request for exclusion was a handwritten notation on the Notice recipient's mailing label. *See* Supplemental Villanova Decl. ¶ 4, Ex. A. The purported exclusion request contained no information on the party's Cobalt Securities transactions during the Class Period as

required by the Notice. *See* Notice ¶ 46. Because the purported exclusion request is both untimely and does not provide the required information to determine whether the party is a member of the Class, Lead Counsel are deeming the request to be invalid.

IV. THE SETTLEMENTS MEET THE STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e)

28. Each of the requirements for final approval of the Settlements under Rule 23(e)(2) and Fifth Circuit precedent have been met. *See Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983). As detailed in Lead Plaintiffs' initial submissions in support of approval of the Settlements (ECF Nos. 355-356, 359) and as summarized below, the Settlements are fair, reasonable and adequate, and are in the best interests of the Class.

A. Adequate Representation By Class Representatives And Class Counsel

29. The first factor under Rule 23(e)(2)(A), *i.e.*, adequate representation by Class Representatives and Class Counsel, is met. Plaintiffs litigated the claims against Defendants on behalf of the Class for four years. This included the production of 131,900 pages of documents, detailed responses to written discovery requests from Defendants, the presentation of ten separate witnesses for depositions, and continuous consultation with Plaintiffs' Counsel on litigation strategy and case developments.

30. Plaintiffs' Counsel likewise engaged in extensive litigation efforts on behalf of the Class. This included (i) the preparation of two detailed amended complaints; (ii) overcoming Defendants' multiple motions to dismiss the amended complaints and subsequent motions for interlocutory appeal; (iii) review and analysis of over 1.3 million pages of documents produced by Defendants and third-parties; (iv) taking deposition

testimony from nearly 20 witnesses; (v) detailed briefing on class certification and in opposition to Defendants' appeals of the Class Certification Order; (vi) consultation with numerous experts on issues of liability and damages; and (vii) lengthy arm's-length settlement negotiations with Defendants that were neither collusive nor fraudulent.

B. The Settlements Were Negotiated At Arm's Length

31. Rule 23(e)(2)(B) and the first *Reed* factor are met, *i.e.*, the Settlements were negotiated at arm's length and are not the product of fraud or collusion. Each of the Settlements was reached after extensive arm's-length negotiations between Plaintiffs' Counsel and counsel for Defendants, with the assistance of former United States District Judge Layn R. Phillips as a mediator.

32. The Settling Parties had a formal in-person mediation session in New York on October 3, 2017. They also submitted detailed mediation statements to facilitate this full-day mediation session with Judge Phillips. While no settlement was reached at this mediation session, the Settling Parties continued to negotiate throughout 2018 with Judge Phillips's assistance.

33. Throughout the settlement negotiations, the Settling Parties were represented by counsel with extensive experience in securities class action cases. Counsel had extensive involvement in litigating the Action over the course of four years and understood the strengths and weaknesses of Plaintiffs' claims.

34. Through their extensive negotiations, the Settling Parties executed settlement stipulations with (i) the Sponsor Defendants, Sponsor Designee Defendants, and GS&Co. on October 9, 2018; (ii) the Cobalt Defendants on October 11, 2018; and (iii) the

Underwriter Defendants on November 28, 2018 (collectively, the “Settlement Stipulations”). ECF Nos. 334-1, 337-1, 352-1. The extensive arm’s-length negotiations that resulted in the Settlement Stipulations demonstrate that the Settlements are not the product of fraud or collusion.

C. The Settlements Are Fair And Adequate

35. The Settlements meet all of the fairness and adequacy standards under Rule 23(e)(2)(C)(i)-(iv) and the applicable *Reed* factors:

- Rule 23(e)(2)(C)(i) and the second through fourth *Reed* factors are satisfied because continued litigation of the Action would require the Settling Parties to engage in substantial and complex additional fact and expert discovery, summary judgment motion practice, pre-trial preparation and post-trial appeals. The Settlements were reached only after substantial litigation over the course of four years, which enabled the Settling Parties to evaluate the Settlements in light of the strengths and weaknesses of their asserted claims and defenses. Moreover, Plaintiffs faced substantial risks in proving Defendants’ liability, loss causation, and class-wide damages. There was also a risk that Class Members would not obtain any meaningful recovery against Cobalt as a bankrupt entity, or that the Class Certification Order would be modified or reversed on appeal. In contrast, the Settlements provide an immediate recovery of at least \$173.8 million for Class Members without the risk, expense and delay of further litigation.
- Rule 23(e)(2)(C)(ii) is satisfied because the proposed method of distributing the Settlement proceeds is effective. Settlement proceeds will be distributed to Class Members who submit valid Claim Forms to Epiq as the Court-appointed Claims Administrator. Epiq is reviewing all submitted Claim Forms for eligibility and will mail or wire claimants their *pro rata* share of the Net Settlement Fund to be calculated under the Plan of Allocation.
- Rule 23(e)(2)(C)(iii) is satisfied because the requested attorneys’ fees and litigation expenses are fair and adequate. Lead Counsel have applied for an attorneys’ fee award of 25% of the Settlement Fund, which is in line with approved percentages in similar securities class actions. Lead Counsel also seek reimbursement of \$1,972,357.01 in typical costs and expenses incurred by Plaintiffs’ Counsel in litigating the Action, and \$56,977 in costs and expenses incurred directly by Plaintiffs in connection with their representation of the Class

as permitted under the PSLRA. *See* 15 U.S.C. § 78u-4(a)(4). Under the Settlement Stipulations, these requested attorneys' fees and expenses will be paid on approval by the Court, and will be reimbursed to the Settlement Fund if these amounts are reduced or reversed in subsequent legal proceedings. ECF Nos. 334-1, 337-1, 352-1.

- Rule 23(e)(2)(C)(iv) is satisfied because the Settling Parties have not entered into any supplemental agreements that would impact the fairness of the Settlements. The Settling Parties have executed confidential Supplemental Agreements that allow Defendants to terminate the Settlements if a certain threshold number of Class Members request exclusion from the Class. This is a standard provision in securities class actions and no valid exclusion requests were received by the Court-approved deadline. *See* Section III.

D. The Settlements Treat Class Members Equitably

36. Rule 23(e)(2)(D) is satisfied because the Settlements treat Class Members equitably. The Net Settlement Fund will be distributed in accordance with the Plan of Allocation to all Class Members who submit valid Claim Forms. The Plan of Allocation will be applied uniformly to all Class Members who submit valid Claim Forms.

37. Accordingly, if the Plan of Allocation is approved by the Court, all Class Members that submit valid Claim Forms will receive a recovery based on the same formula that calculates their *pro rata* share of the Net Settlement Fund.

E. The Settlements Are Within The Range Of Reasonableness

38. The Settlements satisfy the fifth *Reed* factor because they are well within the range of reasonable recovery in the Action. The Class will receive \$173.8 million in cash under the Settlements in exchange for releasing all claims against Defendants. The Class can also recover up to \$161.5 million in additional funds from the ongoing Insurance Coverage Litigation.

39. The Settlement Amount is a substantial recovery for the Class, especially given the fact that Cobalt filed for bankruptcy during the course of this litigation, leaving the D&O Policies as the only possible source of recovery from the Company. The Settlement Amount is also within the range of reasonable recovery given the lack of meaningful personal resources of the Individual Defendants and the multiple risks of further litigation noted above.

F. Lead Counsel, Class Representatives And Class Members Support Final Settlement Approval

40. The Settlements satisfy the sixth *Reed* factor because Lead Counsel, Class Representatives, and Class Members all support the Settlements. Lead Counsel and other Plaintiffs' Counsel have concluded that the Settlements are fair, reasonable, and adequate to the Class based on their thorough understanding of the strengths and weaknesses of the claims asserted against Defendants.

41. The Court-appointed Class Representatives are each sophisticated institutional investors that have supervised and monitored the work of their counsel throughout the Action. Each was also apprised of the mediation and settlement negotiations with Defendants. The Class Representatives strongly support the Settlements as fair, reasonable and adequate, and in the best interests of the Class.

42. No Class Member has objected to the Settlements or submitted a valid request for exclusion within the Court-approved deadline. *See supra* Section III. This overwhelmingly positive response by Class Members further supports final approval under Rule 23.

V. THE PLAN OF ALLOCATION PROVIDES FOR A FAIR DISTRIBUTION OF THE NET SETTLEMENT FUND

43. All Class Members with valid claims will receive an allocation of the Net Settlement Fund pursuant to the proposed Plan of Allocation. The Plan of Allocation was formulated by Lead Counsel in consultation with their retained damages expert, Dr. Michael Hartzmark.

44. The Plan of Allocation divides the Settlement Amount into three separate funds based on the claims asserted in the Action as follows: (i) a Group 1 Fund for purchasers of Cobalt Securities with claims under Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”); (ii) a Group 2 Fund for purchasers of Cobalt Securities with claims under Section 20A of the Exchange Act; and (iii) a Group 3 Fund for purchasers of Cobalt Securities with claims under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933.

45. Under the Plan of Allocation, the Net Settlement Amount will be distributed *pro rata* to Class Members with valid claims based on which Group Fund they fall under and their Recognized Loss amount. Recognized Losses will be calculated based on (i) the type and number of Cobalt Securities purchased/acquired during the Class Period; (ii) when the Cobalt Securities were purchased/acquired; (iii) whether the Cobalt Securities were held or sold; and (iv) if sold, the date and price at which they were sold. Based on this criteria, the Plan of Allocation accounts for each Class Member’s purchases and sales of Cobalt Securities, as well as their specific claims asserted in the Action.

46. No Class Member will receive preferential treatment under the Plan of Allocation, which will be uniformly applied to the Class. Under the Plan of Allocation, the Net Settlement Fund will be distributed to Authorized Claimants on this *pro rata* basis until the Net Settlement Fund is depleted or it is not economically feasible for further distributions.

VI. LEAD COUNSEL ARE ACTIVELY PROSECUTING THE INSURANCE COVERAGE LITIGATION

47. In the short time since the Court entered the Preliminary Approval Orders, Lead Counsel have commenced the prosecution of claims in the Insurance Coverage Litigation on behalf of the Class.

48. Beyond their research and analysis of the relevant D&O Policies leading up to the Cobalt Settlement, Lead Counsel have conducted significant additional research into the insurance carriers' coverage defenses and the Class's arguments in response.

49. Lead Counsel have also consulted repeatedly with counsel for the Cobalt Defendants concerning strategy in the Insurance Coverage Litigation, including negotiations with the insurance carriers on a revised docket control order in that case.

50. On January 22, 2019, Lead Counsel prepared and filed a petition for intervention in the Insurance Coverage Litigation on behalf of Lead Plaintiffs. This petition was filed before final approval of the Settlements to ensure that the interests of the Class are protected.

51. On January 25, 2019, Lead Counsel attended a status conference in the Insurance Coverage Litigation before the Honorable Kyle Carter in the District Court of Harris County, Texas.

52. On February 1, 2019, Lead Counsel filed an opposition on behalf of Lead Plaintiffs to the insurance carriers' motion to strike Lead Plaintiffs' intervention on standing grounds.

53. Lead Counsel have also joined with counsel for the Cobalt Defendants to prepare and file a joint Fifth Amended Petition to assert claims against the thirteen carriers of the D&O Policies who were not previously named in the Insurance Coverage Litigation.

VII. THE REQUESTED ATTORNEYS' FEES AND LITIGATION EXPENSES TO BE AWARDED UNDER RULE 23(h)

54. Lead Counsel have moved for an attorneys' fee award of 25% of the total Settlement Amount. Lead Counsel have so far recovered \$173.8 million which is expected to increase with additional recoveries in the Insurance Coverage Litigation. An award of 25% is well within the attorneys' fee percentages typically awarded in cases such as this (25% of the amount recovered to date is \$43.45 million).

55. Using a lodestar-multiplier cross-check, the current fee would be a 1.2 multiplier on Plaintiffs' Counsel's \$36,061,893.25 lodestar generated from 59,831.10 hours of attorney and professional support time over four years (counsel did not include time spent on the fee application). This is also within the typical multiplier range in cases such as this.

56. Should Plaintiffs' Counsel recover the entire \$161.5 million in available insurance proceeds on behalf of the Class in the Insurance Coverage Litigation without expending any more billable hours, the additional fee on this recovery would raise the multiplier to 2.3, still well within the range of lodestar multipliers of 2 to 4.5 that are commonly awarded in complex class actions with substantial contingency. Moreover, Lead Counsel have already commenced the prosecution of claims on behalf of the Class in the Insurance Coverage Litigation, and the time expended will continue to lower the multiplier. *See supra* Section VI.

57. Lead Plaintiffs and the other Class Representatives fully support the requested fee award and the requested reimbursement of expenses in the amount of \$1,972,357.01 incurred in prosecuting the Action. They also support the reimbursement of \$56,977 in costs and expenses incurred by Class Representatives directly in connection with their representation of the Class as permitted under the PSLRA.

58. Under either the percentage or lodestar method, the factors considered in the Fifth Circuit for awarding attorneys' fees confirm that the requested fee award is reasonable. *See, e.g., Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642 n.25 (5th Cir. 2012); *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974):

- As noted above, Epiq disseminated the Notice Packets to more than 110,539 potential Class Members and nominees, informing them of, among other things, Lead Counsel's intention to apply to the Court for an award of attorneys' fees of up to 25% of the Settlement Fund and reimbursement of up to \$5 million in litigation expenses. The objection deadline has passed and not a single Class Member has filed an objection to the requested attorneys' fee award and litigation expense reimbursement.

- Plaintiffs' Counsel expended a total of more than 59,800 hours investigating, prosecuting and resolving this Action without compensation for four years. The substantial time and effort devoted to this case by Plaintiffs' Counsel was critical in obtaining the favorable result achieved by the Settlements and, as a result, this factor supports the fee request.
- Plaintiffs' Counsel faced very significant challenges to establishing liability and damages. Defendants argued throughout the litigation that they engaged in no wrongdoing, including that there were no false statements or omissions and no insider trading. Moreover, Defendants litigated discovery issues extensively and filed voluminous briefing in this Court and in the Fifth Circuit challenging the adequacy of the Amended Complaints and class certification.
- Considerable litigation skills were required for Plaintiffs' Counsel to achieve the Settlements in this Action. Plaintiffs' Counsel are among the nation's leading securities class action firms. The skill of their attorneys, the quality of their efforts in the Action, their substantial experience in securities class actions, and their commitment to the litigation were key elements in enabling Lead Counsel to negotiate the Settlements.
- Plaintiffs' Counsel dedicated substantial time and effort to the Action, often to the exclusion of other potential retentions, despite the very significant risks of no recovery and while deferring any payment of their fees and expenses until a settlement was reached.
- Plaintiffs' Counsel assumed significant contingency fee risk with no guarantee of compensation absent a successful resolution of the Action. Moreover, they dedicated extensive time and effort to litigating the Action in the face of myriad and major substantive and procedural challenges by Defendants.
- There were also unique risks in financing and prosecuting the Action, including proceeding against Cobalt as a bankrupt corporate Defendant. While Plaintiffs' Counsel understood that they would have to spend substantial time and money and face significant risks without any assurances, they nonetheless prosecuted the case vigorously for years to achieve a successful outcome.

VIII. CONCLUSION

59. For all of the reasons discussed above, and those set forth in the Final Approval Motion, Fee and Expense Motion, and supporting Joint Declaration (ECF No.

359), Lead Plaintiffs and Lead Counsel respectfully submit that (i) the Class meets all of the standards under Fed. R. Civ. P. 23(a) and (b)(3) and certification should be affirmed; (ii) the Settlements and Plan of Allocation meet all of the requirements of Fed. R. Civ. P. 23(e)(2) and the *Reed* factors and should be granted final approval; and (iii) the requested award of attorneys' fees and reimbursement of litigation expenses meet all of the standards applicable in this Circuit and should be approved.

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

Executed on February 6, 2019.



Andrew J. Entwistle

EXHIBIT 1

**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)

**SUPPLEMENTAL DECLARATION OF ALEXANDER VILLANOVA
REGARDING: (A) MAILING OF THE NOTICE AND CLAIM FORM;
AND (B) REPORT ON REQUESTS FOR EXCLUSION RECEIVED**

I, ALEXANDER VILLANOVA, hereby declare as follows:

1. I am a Senior Project Manager employed by Epiq Class Action & Claims Solutions, Inc. (“Epiq”).¹ Pursuant to the Court’s November 2, 2018 Order Preliminarily Approving Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC and Providing for Notice (ECF No. 347), November 2, 2018 Order Preliminarily Approving Settlement with 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 November 29, 2018 Order Preliminarily Approving Settlement Between Plaintiffs and Underwriter Defendants Other Than Goldman Sachs & Co. LLC and Providing for Notice (ECF No. 354)

¹ Unless otherwise defined herein, all capitalized terms have the meanings set forth 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 Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Acting Solely as Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (ECF No. 337-1); 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) (collectively, the “Stipulations”).

(collectively, the “Preliminary Approval Orders”), Epiq was authorized to act as the Claims Administrator in connection with the Settlements of the above-captioned action. I submit this Declaration as a supplement to my earlier declaration, 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, dated January 8, 2019 (ECF No. 359-2) (the “Initial Mailing Declaration”). The following statements are based on my personal knowledge and information provided by other Epiq employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

CONTINUED DISSEMINATION OF THE NOTICE PACKET

2. Since the execution of my Initial Mailing Declaration, Epiq has continued to disseminate copies of the Notice and Claim Form (the “Notice Packet”) in response to additional requests from potential members of the Class, brokers, and nominees. Through February 5, 2019, Epiq has mailed a total of 110,539 Notice Packets to potential Class Members and nominees. In addition, Epiq has re-mailed a total of 51 Notice Packets to persons whose original mailing was returned by the U.S. Postal Service and for whom updated addresses were provided to Epiq by the Postal Service.

3. Epiq also continues to maintain the dedicated website for the Action (www.CobaltSecuritiesLitigation.com) in order to assist potential members of the Class. On January 10, 2019, Epiq posted to the website copies of the papers filed in support of the motion for final approval of the Settlements and Plan of Allocation and in support of Lead Plaintiffs’ motion for an award of attorneys’ fees and expenses. Epiq will continue

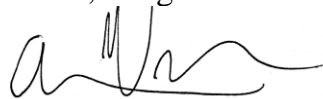
maintaining and, as appropriate, updating the website and toll-free telephone number until the conclusion of the administration.

REPORT ON REQUESTS FOR EXCLUSION RECEIVED

4. The Notice informed potential members of the Class that requests for exclusion from the Class are to be mailed or otherwise delivered, addressed to *In re Cobalt International Energy, Inc. Securities Litigation, EXCLUSIONS*, c/o Epiq, P.O. Box 4109, Portland, OR 97208-4109, such that they are received by Epiq no later than January 23, 2019. Epiq has been monitoring all mail delivered to that Post Office Box. As of the date of this Declaration, Epiq has received one request for exclusion, which was untimely and invalid. The request, which was filed on behalf of two recipients of the Notice – a trust and an individual residing at the same address – was not signed and did not include any of the information concerning holdings and transactions in Cobalt Securities required for a valid request for exclusion as set forth in the Notice. It only included a handwritten note on the Notice recipient’s mailing label that requested an exclusion. The request was received by Epiq on January 28, 2019, after the January 23, 2019 deadline for receipt of requests for exclusion. A copy of the request is attached hereto as Exhibit A (for privacy reasons, the street address of the persons requesting exclusion have been redacted).

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

Executed on February 5, 2019, at Beaverton, Oregon.



Alexander Villanova

Exhibit A

Exclusion Request - 1

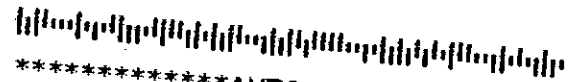
Exclude us from this settlement



*****AUTO**3-DIGIT 737
A G BECKER & TIM BECKER CO-TTEE
ARLO & JOYCE BECKER REV TRUST U/T/A
DTD 10/28/1998



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*****AUTO**3-DIGIT 737
MSSB C/F
NEVALEEN JOYCE BECKER
IRA STANDARD

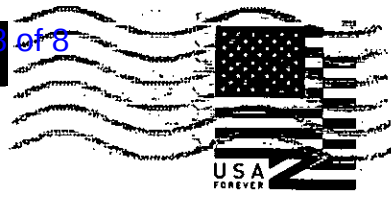


07



Mr. and Mrs. Arlo Becker

23 JAN 2019 PM 5 L



Cobalt International Energy
c/o Epig
P.O. Box 4109
Portland, OR. 97208-4109

97208-410909

