

**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)

**MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND PLAN OF
ALLOCATION**

TABLE OF CONTENTS

INTRODUCTION 2

ARGUMENT..... 5

I. THE SETTLEMENTS MEET THE STANDARDS FOR FINAL APPROVAL UNDER RULE 23(e) 5

 A. Class Representatives and Lead Counsel Adequately Represented the Class 7

 B. The Settlements Were Negotiated At Arm’s-Length And There Was No Fraud Or Collusion 8

 C. The Settlements Are Fair And Adequate Given The Costs And Delay Of Trial And Appeal 9

 D. The Stage Of The Proceedings Warrants Final Approval of the Settlements 11

 E. The Settlements Are Fair And Reasonable Given The Risks Of Trial And Appeal..... 12

 F. The Settlements Are Well Within The Range Of Reasonableness 16

 G. Lead Counsel, Class Representatives And Settlement Class Members Support Final Approval 17

 H. The Other Factors Set Forth in Rule 23(e)(2) Support Final Approval of the Settlements 19

 1. The Proposed Method of Distributing Settlement Proceeds is Effective 19

 2. The Requested Attorneys’ Fees And Expenses Are Fair And Reasonable 20

 3. The Supplemental Agreements Do Not Affect the Fairness of the Settlements 21

 4. The Settlements Treat Settlement Class Members Equitably..... 21

II. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED 22

III. THE NOTICE TO THE SETTLEMENT CLASS SATISFIED RULE 23..... 24

CONCLUSION 27

TABLE OF AUTHORITIES

Cases

Billitteri v. Sec. Am., Inc.,
2011 WL 3586217 (N.D. Tex. Aug. 4, 2011)..... 9, 16

Dura Pharm., Inc. v. Broudo,
544 U.S. 336 (2005)..... 23

Erica P. John Fund, Inc. v. Halliburton Co.,
2018 WL 1942227 (N.D. Tex. Apr. 25, 2018) 21

In re 2014 RadioShack ERISA Litig.,
2016 WL 6561597 (N.D. Tex. Jan. 25, 2016) 26

In re Anadarko Petroleum Corp. Class Action Litig.,
2014 WL 12599393 (S.D. Tex. Sept. 11, 2014) 20

In re Deepwater Horizon,
739 F.3d 790 (5th Cir. 2014) 5

In re Dell Inc., Sec. Litig.,
2010 WL 2371834 (W.D. Tex. June 11, 2010),
aff’d sub nom. Union Asset Mgmt. Holding A.G. v. Dell, Inc.,
669 F.3d 632 (2012)..... 10, 20, 22

In re Enron Corp. Sec. & ERISA Litigs.,
2003 WL 22494413 (S.D. Tex. July 24, 2003)..... 26

In re Enron Corp. Sec., Derivative & “ERISA” Litig.,
2003 WL 22962792 (S.D. Tex. Nov. 5, 2003) 6

In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.,
851 F. Supp. 2d 1040 (S.D. Tex. 2012) 9, 10, 12

In re OCA, Inc. Sec. & Derivative Litig.,
2008 WL 4681369 (E.D. La. Oct. 17, 2008) 27

In re OCA, Inc. Sec. & Derivative Litig.,
2009 WL 512081 (E.D. La. Mar. 2, 2009) passim

Klein v. O’Neal,
705 F. Supp. 2d 632 (N.D. Tex. 2010) 10

Nathenson v. Zonagen Inc.,
267 F.3d 400 (5th Cir. 2001) 16

Newby v. Enron Corp.,
394 F.3d 296 (5th Cir. 2004) 5, 7

Quintanilla v. A&R Demolition Inc.,
2008 WL 9410399 (S.D. Tex. May 7, 2008) 9

Reed v. Gen. Motors Corp.,
703 F.2d 170 (5th Cir. 1983) passim

Schwartz v. TXU Corp.,
2005 WL 3148350 (N.D. Tex. Nov. 8, 2005)..... 13, 18, 20

Turner v. Murphy Oil USA, Inc.,
472 F. Supp. 2d 830 (E.D. La. 2007)..... 17

Statutes

15 U.S.C. § 78u-4(a)(7) 24

15 U.S.C. § 78u-4(a)(7)(A)-(F) 25

Rules

Fed. R. Civ. P. 23..... 3, 7, 26, 27

Fed. R. Civ. P. 23(c)(2) 24

Fed. R. Civ. P. 23(c)(2)(B) 24, 25

Fed. R. Civ. P. 23(e) 5, 24

Fed. R. Civ. P. 23(e)(2) 6, 7, 19

Fed. R. Civ. P. 23(e)(2)(A)..... 7

Fed. R. Civ. P. 23(e)(2)(B) 8

Fed. R. Civ. P. 23(e)(2)(C)(i) 9, 12, 16

Fed. R. Civ. P. 23(e)(2)(C)(ii) 19

Fed. R. Civ. P. 23(e)(2)(C)(iii) 19

Fed. R. Civ. P. 23(e)(2)(C)(iv) 19, 21

Fed. R. Civ. P. 23(e)(2)(D)..... 19
Fed. R. Civ. P. 23(e)(3) 6

Lead Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust (the “GAMCO Funds”), and additional plaintiffs St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, “Plaintiffs”) on behalf of themselves and the Settlement Class, respectfully submit this motion in support of final approval of the settlements in this Action (the “Settlements”) with the (i) Cobalt Settling Defendants, (ii) Sponsor Defendants, Sponsor Designee Defendants and GS&Co., and (iii) Underwriter Settling Defendants (collectively, “Defendants,” and with the Plaintiffs, the “Parties”), and for approval of the proposed plan of allocation of the net proceeds of the Settlement (the “Plan of Allocation”).¹

Plaintiffs respectfully submit that each of the Settlements is “fair, reasonable, and adequate” under Fed. R. Civ. P. 23(e), and the Court should now grant final approval to the Settlements.

¹ Unless otherwise defined, all capitalized terms herein have the same meanings as 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 (the “Sponsor/GS&Co. Stipulation”) (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 (the “Cobalt Stipulation”) (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 (the “Underwriter Stipulation”) (ECF No. 352-1) (collectively, the “Stipulations”).

Nature And Stage Of The Proceeding

The Court granted preliminary approval of the Settlements on November 2, 2018 and November 29, 2018. ECF Nos. 346-347, 354. Lead Plaintiffs now respectfully submit this memorandum of law in support of their motion for final approval of each of the respective Settlements and the Plan of Allocation.

Issues To Be Ruled Upon

This motion raises the following issues to be ruled upon by the Court:

1. Whether the proposed Settlements satisfy the requirements for final approval under Federal Rule of Civil Procedure 23(e).
2. Whether the Plan of Allocation is fair, reasonable and adequate.
3. Whether the notice to the Settlement Class was satisfactory under Federal Rules of Civil Procedure 23(c)(2) and 23(e), the Private Securities Litigation Reform Act of 1995 (“PSLRA”), and principles of due process.

INTRODUCTION

Subject to this Court’s final approval, Plaintiffs have agreed to settle all claims asserted against Defendants in this Action in exchange for at least \$173.8 million payable to the Settlement Class from Defendants as follows: (i) \$146.85 million from the Sponsor/GS&Co. Settling Defendants; (ii) \$22.75 million from the Underwriter Settling Defendants, and (iii) \$4.2 million from the Cobalt Settling Defendants plus any future recoveries up to an additional \$161.5 million from ongoing litigation between the Cobalt Settling Defendants and their insurance carriers. Plaintiffs and Class Counsel respectfully submit that the proposed Settlements represent a substantial and favorable recovery for the

Settlement Class and readily meet the standards for final approval under Rule 23 of the Federal Rules of Civil Procedure.

The proposed Settlements are the result of four years of intensive litigation between the Parties. As detailed in the Joint Declaration,² the litigation efforts in this case included, among other things, (i) Plaintiffs' extensive investigation of the claims against Defendants; (ii) the filing of two detailed consolidated class action complaints; (iii) two rounds of motions to dismiss the complaints; (iv) a motion for class certification and related appeals; (v) extensive fact and expert discovery, including consultation with various experts; and (vi) arm's-length negotiations between the Parties under the supervision of former United States District Judge Layn R. Phillips, a highly-experienced mediator. This substantial work gave Plaintiffs and Plaintiffs' Counsel a thorough understanding of the strengths and weaknesses of the claims and defenses asserted in the Action. Plaintiffs support the Settlements (¶ 102) and, together with Lead Counsel, respectfully submit that the Settlements represent an outstanding recovery that is in the best interests of the Settlement Class.

In reaching the Settlements, Plaintiffs and Lead Counsel considered the numerous litigation risks associated with continuing the litigation. As detailed below, these included

² Plaintiffs respectfully refer the Court to the Joint Declaration of Andrew J. Entwistle and David R. Stickney in Support of Lead Plaintiffs' Motion for Final Approval of Class Action Settlements and Plan of Allocation and Lead Counsel's Motion for Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Joint Declaration") filed herewith. The Joint Declaration contains a detailed description of, among other things, the nature of the claims asserted, the procedural history of the Action, the negotiations leading to the Settlements, and the terms of the Plan of Allocation. Citations herein to "¶ ___" refer to paragraphs in the Joint Declaration, and all exhibits referenced herein are attached to the Joint Declaration.

a risk that Defendants would ultimately prevail at summary judgment, trial or appeal. The litigation of such proceedings would likely take years to complete and could have jeopardized a favorable result for Plaintiffs and the Settlement Class. Moreover, Plaintiffs faced a risk that the Fifth Circuit Court of Appeals would decertify some or all of the Class, which would significantly undermine any Class-wide recovery. Plaintiffs also faced the risks that Cobalt's bankruptcy posed to obtaining a meaningful recovery for the Class. The Settlements will enable the Settlement Class to immediately recover a substantial benefit without incurring the significant risks of ongoing litigation.

The Plan of Allocation for distribution of the Settlement proceeds is designed to make fair distributions to Settlement Class Members who were injured by the misconduct alleged in the Operative Complaint. The proposed Plan of Allocation was developed in consultation with Dr. Michael Hartzmark, a highly-regarded damages expert who has been credited by the Court at the class certification stage of the Action. ¶¶ 129-130, Ex. 3 (Hartzmark Declaration).

The Court granted preliminary approval of the Sponsor/GS&Co. and Cobalt Settlements on November 2, 2018 (ECF Nos. 346 and 347) and granted preliminary approval of the Underwriter Settlement on November 29, 2018 (ECF No. 354). The Court also approved the process by which the Settlement Class would receive notice of the Settlements and submit claims, objections, or requests for exclusion. 85,122 copies of the Notice have been mailed to potential Settlement Class Members and their nominees. The Notice, Claim Form and other key Settlement documents have also been made available on a dedicated website maintained by the Claims Administrator. In addition, the Summary

Notice has been published in *The Wall Street Journal* and transmitted over the *PR Newswire*. While the deadline for objecting to and requesting exclusion from the Settlement Class has not yet passed, no Settlement Class Member has objected to the Settlements or Plan of Allocation (§ 127); nor has any Settlement Class Member sought exclusion from the Settlement Class to date. See Joint Declaration, Ex. 2 (Villanova Declaration § 14). This positive reaction by the Settlement Class Members further supports final approval of the Settlements and Plan of Allocation.

As detailed further below, Plaintiffs submit that the Settlements and Plan of Allocation are fair, reasonable, and adequate and respectfully request that they be approved.

ARGUMENT

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

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise or settlement of class action claims. See Fed. R. Civ. P. 23(e). A class action settlement should be approved if the court finds it “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); see also *Newby v. Enron Corp.*, 394 F.3d 296, 301 (5th Cir. 2004) (the gravamen of the inquiry is whether the proposed settlement is “fair, adequate, and reasonable and is not the product of collusion between the parties”). The Fifth Circuit has also recognized a strong public policy in favor of pretrial settlements of class action lawsuits. See *In re Deepwater Horizon*, 739 F.3d 790, 807 (5th Cir. 2014) (noting a public interest favoring

class action settlements); *see also In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 2003 WL 22962792, at *4 (S.D. Tex. Nov. 5, 2003) (same).

Rule 23(e)(2) provides that the Court should determine whether a proposed settlement is “fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
 - (i) the costs, risks, and delay of trial and appeal;
 - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
 - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
 - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.”

Federal Rule of Civil Procedure 23(e)(2) (as amended on December 1, 2018).

Consistent with these factors, courts in this Circuit also consider the following six-part test to determine whether a class action settlement is fair, reasonable, and adequate: “(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs’ success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members.” *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983); *see*

also *Newby*, 394 F.3d at 301 (applying *Reed* factors to proposed settlement of securities class action).³

As set forth in Plaintiffs' motions for preliminary approval, the Settlements easily satisfy each factor in the final approval test and meet the favored public policy goal of resolving securities class action claims.

A. Class Representatives and Lead Counsel Adequately Represented the Class

Rule 23(e)(2)(A) favors final approval of the Settlements because the Class Representatives and Lead Counsel "have adequately represented the class." Here, the Class Representatives litigated the Action vigorously on behalf of the Settlement Class for four years. They each produced documents in response to Defendants' discovery requests, made representatives available for class certification depositions, responded to written discovery, and consulted with Lead Counsel on litigation strategy and case developments. ¶¶ 47, 71-72, 160-165. In addition, the Class Representatives have claims that are typical of other Class Members and have no conflict of interests with other members of the Class. Accordingly, the Court previously found that Plaintiffs were adequate representatives for the Class when certifying the Class for litigation purposes. *See* ECF No. 244, at 7-8, 20.

Lead Counsel, along with the other Plaintiffs' Counsel, likewise have "adequately represented the class" throughout the litigation. Among other things, Lead Counsel

³ The December 1, 2018 amendments to Rule 23(e)(2) are not intended to "displace any factor" used by the Circuit Courts to assess final settlement approval, but rather to focus on core concerns to guide the approval decision. *See* Fed. R. Civ. P. 23, 2018 Advisory Committee Notes. The factors in amended Rule 23(e)(2) are entirely consistent with the factors used by the Fifth Circuit to assess final settlement approval and are each addressed in the sections below.

(i) conducted a comprehensive factual investigation of the claims at issue in the Action; (ii) prepared two detailed amended complaints based on their factual investigation and on documents produced by Defendants during fact discovery; (iii) prevailed on Defendants' multiple motions to dismiss the amended complaints and overcame Defendants' motions for interlocutory appeal; (iv) conducted extensive factual discovery, including the review and analysis of over 1.3 million pages of documents produced by Defendants and third-parties and obtaining testimony from nearly 20 witnesses, including the individual defendants; (v) prepared comprehensive submissions in support of class certification, as well as the taking and defending of numerous class certification depositions; (vi) prepared detailed briefing in opposition to Defendants' appeal of the Court's Class Certification Order; (vii) consulted with experts on the Foreign Corrupt Practices Act ("FCPA"), the oil and gas industry, and issues pertaining to Class-wide damages and loss causation; and (viii) engaged in protracted arm's-length settlement negotiations. ¶¶ 18-32, 34-52, 62-65, 67-74, 82-86, 92-95, 146.

B. The Settlements Were Negotiated At Arm's-Length And There Was No Fraud Or Collusion

Rule 23(e)(2)(B) and the first *Reed* factor also support final approval because the Settlements were negotiated after substantial discovery and there is no evidence of fraud or collusion in connection with the Settlements. Each of the Settlements was reached only after extensive arm's-length negotiations by experienced counsel with the assistance of Judge Phillips (Ret.), an experienced and well-respected mediator. *See* Joint Declaration, Ex. 1 (Phillips Declaration). The Parties engaged in a formal in-person mediation session

with Judge Phillips in October 2017, which included the exchange of detailed mediation statements. Following the mediation, the Parties continued to negotiate with the assistance of Judge Phillips throughout 2018, culminating in the acceptance of mediator proposals to settle the claims against the respective Defendant groups. ¶¶ 95-100.

The Parties were represented by counsel with extensive experience litigating and settling securities class actions. ¶¶ 143-144. Having litigated the Action for four years, including through the completion of extensive fact discovery, counsel was well versed on the strengths and weaknesses of Plaintiffs' claims and the potential defenses thereto.

The extensive arm's-length negotiations that resulted in each of the Settlements demonstrates that they are procedurally fair and are not the product of fraud or collusion. *See, e.g., In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1063-65 (S.D. Tex. 2012) (approving settlement where parties engaged in arm's-length negotiations for over three months with the benefit of discovery to gauge the strengths and weaknesses of the case); *Billitteri v. Sec. Am., Inc.*, 2011 WL 3586217, at *10 (N.D. Tex. Aug. 4, 2011) (finding no fraud or collusion in settlement reached through counsel's diligent arm's-length negotiations before a neutral mediator); *Quintanilla v. A&R Demolition Inc.*, 2008 WL 9410399, at *4 (S.D. Tex. May 7, 2008) (same).

C. The Settlements Are Fair And Adequate Given The Costs And Delay Of Trial And Appeal

Rule 23(e)(2)(C)(i) and the second *Reed* factor further support final approval of the Settlements. Continued litigation of the Action would involve complex and costly trial and post-trial proceedings that would delay the ultimate resolution of the claims without any

guarantee of recovery for the Class. “When the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened.” *Klein v. O’Neal*, 705 F. Supp. 2d 632, 651 (N.D. Tex. 2010); *see also Heartland*, 851 F. Supp. 2d at 1064 (approving settlement and noting that litigating case to trial would be “time consuming, and ‘[i]n evitable appeals would likely prolong the litigation, and any recovery by class members, for years.”); *In re Dell Inc., Sec. Litig.*, 2010 WL 2371834, at *7 (W.D. Tex. June 11, 2010) (noting that “[s]ecurities litigation on the whole is ‘notoriously difficult and unpredictable’ . . . [t]hus the complexity, expense, and likely duration of the suit weighs in favor of approval of the settlement.”), *aff’d sub nom. Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632 (5th Cir. 2012).

Further litigation of the Action would have required the Parties to engage in substantial additional fact and expert discovery, dispositive motion practice, pre-trial preparation, and post-trial appeals. Specifically, Plaintiffs intended to take several additional fact depositions of relevant non-parties. The Parties would have also engaged in extensive expert discovery concerning Cobalt’s oil and gas exploration activities, the underwriting of Cobalt’s Class Period securities offerings, and the calculation of Class-wide damages, among other issues. This would have included the preparation of detailed expert reports and numerous expert witness depositions.

The Parties also planned to file detailed summary judgment motions seeking dispositive pre-trial rulings on the asserted claims. At trial, the Parties would likely face motions *in limine* to exclude certain expert testimony and documentary evidence, the

outcome of which also could have a significant impact on the jury's consideration of liability and damages. Numerous post-trial issues would have likely been the subject of appeals by the Parties, which could further delay and potentially eliminate any recovery for the Class.

In contrast, the Settlements provide an immediate and substantial recovery of at least \$173.8 million for the Class, without exposing Class Members to the risk, expense and delay of continued litigation. Accordingly, this factor plainly supports final approval of the Settlements.

D. The Stage Of The Proceedings Warrants Final Approval of the Settlements

The third *Reed* factor also weighs in favor of final approval of the Settlements. The Settlements were reached after the Parties engaged in comprehensive litigation efforts over the course of four years. This included extensive pre-trial motion practice such as (i) briefing on three separate motions to dismiss Plaintiffs' complaints by each Defendant group; (ii) briefing on Plaintiffs' motion for class certification; (iii) briefing on Defendants' class certification appeals; and (iv) the litigation of four significant discovery motions before this Court concerning issues of privilege and the scope of Defendants' document productions. ¶¶ 26-29, 53-60, 63-65, 67-68, 82-86.

Plaintiffs, through their counsel, also conducted thorough fact and expert discovery into the claims and defenses at issue in the Action. As noted above, this included, among other things: (i) the review and analysis of more than 1.3 million pages of documents produced by Plaintiffs, Defendants and third-parties; (ii) nearly 20 fact depositions of key

witnesses, including certain of the Cobalt Individual Defendants, Sponsor Designee Defendants and Underwriter Defendants; (iii) the depositions of the Parties' experts on class certification; and (iv) the depositions of ten Plaintiff representatives. ¶¶ 34-44, 48-52, 70, 72. The Parties also exchanged detailed expert reports on issues pertaining to class certification. ¶¶ 68-69. In addition, Plaintiffs consulted with experts retained by Lead Counsel concerning the oil and gas industry, the FCPA, and the issues of Class-wide damages. ¶¶ 92-93.

These efforts and the Court's findings on the various pre-trial motions gave the Parties a clear understanding of the strengths and weaknesses of their respective positions. As a result, the Parties were able to fully evaluate the claims and agree on Settlements that are fair, reasonable and adequate to the Settlement Class. Accordingly, this factor also favors final approval of the Settlements. *See, e.g., Heartland*, 851 F. Supp. 2d at 1064 ("Under [this] factor, the key issue is whether 'the parties and the district court possess ample information with which to evaluate the merits of the competing positions'"); *In re OCA, Inc. Sec. & Derivative Litig.*, 2009 WL 512081, at *12 (E.D. La. Mar. 2, 2009) (same).

E. The Settlements Are Fair And Reasonable Given The Risks Of Trial And Appeal

Rule 23(e)(2)(C)(i) and the fourth *Reed* factor further support final approval of the Settlements because Plaintiffs recognize that, although there is substantial evidence to support their claims, there are also substantial risks in establishing liability and damages at trial. Weighing these risks against the certain and substantial recovery for the Settlement

Class demonstrates that the Settlements are fair, reasonable, and adequate. *See, e.g., OCA*, 2009 WL 512081, at *13 (settlement approval favored where plaintiffs faced substantial risks in establishing elements of securities law violations); *Schwartz v. TXU Corp.*, 2005 WL 3148350, at *18 (N.D. Tex. Nov. 8, 2005) (“plaintiffs’ uncertain prospects of success through continued litigation” supported approval of securities class action settlement).

The Cobalt Settling Defendants contested every element of the claims asserted against them under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”). On the Section 10(b) claim, these Defendants disputed the falsity of the alleged misstatements concerning Cobalt’s Angolan partners and oil wells. ¶ 26. The Cobalt Settling Defendants also asserted that they did not act with the requisite scienter in making these statements, and that investor losses were not caused by the disclosure of facts correcting their alleged misstatements. *Id.* Although evidence was elicited during discovery that supported the core elements of the claims, Plaintiffs nonetheless faced the risk that the Court or jury would find otherwise at summary judgment or trial.

Moreover, Cobalt’s bankruptcy posed substantial risks to a meaningful recovery for the Class *even if* Plaintiffs proved the Cobalt Settling Defendants’ liability. Cobalt’s bankruptcy rendered it unable to pay any significant monetary damages obtained against it at trial, and any monetary judgment against it was likely to be subordinated and/or discharged in bankruptcy through Cobalt’s Chapter 11 cases. ¶ 117. Likewise, without indemnification from Cobalt, none of the Cobalt Individual Defendants have personal assets adequate to pay a judgment that is even a fraction of Class-wide damages. ¶ 118. Their stock holdings in a bankrupt Cobalt are worthless. In any case, the Cobalt Settlement

preserves the right of these Defendants and the Class to seek recovery from insurance policies covering the misdeeds by the Cobalt Settling Defendants. ¶¶ 90, 97.

The Sponsor Defendants also disputed their exercise of day-to-day control over Cobalt's operations in response to the claim under Section 15 of the Securities Act of 1933 ("Securities Act"). ¶ 27. In addition, these Defendants vigorously contested their liability for alleged insider trading under Section 20A of the Exchange Act. Specifically, the Sponsor Defendants denied any knowing use of material nonpublic information in connection with their Class Period sales of Cobalt stock. ¶ 63. They further asserted that Plaintiffs cannot establish any violation of Section 10(b) of the Exchange Act, which they argued is a necessary predicate to proving insider trading under Section 20A. *Id.* Class recovery on such claims would be significantly curtailed or eliminated should the Sponsor Defendants persuade the Court or jury of any of these arguments at summary judgment or trial.

The Underwriter Settling Defendants also strongly contested any wrongdoing in connection with their underwriting of Cobalt's Class Period securities offerings. Among other arguments, the Underwriter Defendants challenged the falsity of the alleged misstatements in the Offering Materials concerning Cobalt's Angolan partners and oil wells, as well as Plaintiffs' ability to rebut their negative causation defense on the claims asserted against them under Sections 11 and 12 of the Securities Act. ¶¶ 27, 107. These Defendants also asserted an affirmative "due diligence" defense, for which they contended that they conducted adequate due diligence on Cobalt prior to each offering, and that they reasonably believed the accuracy of the Company's statements concerning its Angolan

partners and oil wells. ¶ 107. There would be no Class recovery under the Securities Act claims if the Underwriter Settling Defendants prevailed on this affirmative defense at summary judgment or trial.

Plaintiffs also faced the risk that the Class would be decertified in whole or in part by Defendants' appeals before the Fifth Circuit. The Cobalt Settling Defendants and Sponsor Defendants argued in their pending appeal that this Court erred in finding Plaintiffs are entitled to a class-wide presumption of reliance for the Section 10(b) claim. ¶¶ 83, 120. Should they prevail on this issue before the Fifth Circuit, certification of the Class could be jeopardized, imperiling claims against the Defendants.

On appeal, the Underwriter Settling Defendants additionally asserted that no Section 11 class can be certified for the Cobalt common stock offerings because share purchases cannot be traced to these offerings on a Class-wide basis. ¶¶ 84, 121. They also disputed class certification for the Cobalt note offerings given purported individualized issues on the location of note purchases (*i.e.*, foreign vs. domestic). *Id.* The Underwriter appeal also sought to vacate class certification on grounds that the statute of repose bars the Securities Act claims. *Id.* Although Plaintiffs are confident that the Class was properly certified, Defendants' pending appeals pose additional risks to Class recovery. Such recovery would only be further jeopardized by Defendants' inevitable post-trial appeals of the remaining claims that Plaintiffs prevailed on at trial.

Plaintiffs would have strong legal and factual responses to each of Defendants' arguments at the summary judgment, trial and appellate stages of the Action. However, when viewed in the context of the numerous litigation risks and uncertainties raised by

Defendants' contentions, the substantial Settlements represent an immediate and certain recovery for the Settlement Class. In sum, consideration of the "risks . . . of trial and appeal" further supports final approval of the Settlements. *See* Rule 23(e)(2)(C)(i).

F. The Settlements Are Well Within The Range Of Reasonableness

The fifth *Reed* factor considers "whether the terms of the settlement 'fall within a range of reasonable recovery, given the likelihood of the plaintiffs' success on the merits.'" *Billitteri*, 2011 WL 3586217, at *12 (emphasis in original). As part of this inquiry, courts recognize the uncertainty of securities litigation and the potential difficulty of proving liability and damages at trial. *See Nathenson v. Zonagen Inc.*, 267 F.3d 400, 412 (5th Cir. 2001) (recognizing the complexity of securities fraud class action claims brought under the PSLRA).

Here, the Settlements are well within the range of reasonableness given the multiple risks associated with further litigation of the Action. Under the proposed Settlements, the Settlement Class will receive \$173.8 million in cash in exchange for releasing the claims against Defendants. In addition, the Settlement Class may recover additional amounts through the Cobalt Settlement, depending on resolution of the ongoing coverage litigation against the Cobalt Settling Defendants' insurance carriers. Under any measure, this is a substantial recovery, and is especially so when weighed against the risks of continued litigation with Defendants as noted above. Indeed, the Class might have recovered substantially less or even nothing at all had this Court, the Fifth Circuit, or a jury credited even some of Defendants' arguments concerning liability and damages.

The Settlements also exceed the settlement amounts recovered in similar securities

class action cases over the past decade. According to a 2018 report from NERA Economic Consulting, the average settlement in similar securities class actions ranged from \$25 million to \$59 million between 2009 and June 2018.⁴ According to a 2017 report by Cornerstone Research, securities class action settlements between \$34 million and \$149 million ranked in the 90th percentile of such settlements from 2008 through 2017.⁵ The \$173.8 million recovered for the Settlement Class (with total recoveries potentially exceeding \$300 million upon resolution of the pending insurance coverage litigation), is above historical amounts and exceeds the 90th percentile of securities class action settlements over the last ten years.

When measured against historical settlements, as well as against the particular risks of this litigation, the Settlements represent an extraordinary recovery that is well within the range of reasonableness. The Settlements should be approved for this additional reason.

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

Lead Counsel, Class Representatives, and Settlement Class Members all support final approval of the Settlements, thereby satisfying the sixth *Reed* factor. *See, e.g., Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 852 (E.D. La. 2007) (noting courts

⁴ *See* Stefan Boettrich & Svetlana Starykh, NERA Economic Consulting, *Recent Trends in Securities Class Action Litigation: H1 2018 Update*, at 9 (2018), http://www.nera.com/content/dam/nera/publications/2018/Recent_SCA_Trends_2018_1H.pdf.

⁵ *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2017 Review and Analysis*, Cornerstone Research, at 19, App'x 1 (2018), <http://securities.stanford.edu/research-reports/1996-2017/Settlements-Through-12-2017-Review.pdf>.

generally “give weight to class counsel’s opinion regarding the fairness of the settlement.”); *Schwartz*, 2005 WL 3148350, at *21 (“where the parties have conducted an extensive investigation, engaged in significant fact-finding and Lead Counsel is experienced in class-action litigation, courts typically ‘defer to the judgment of experienced trial counsel who has evaluated the strength of [the] case’”).

Lead Counsel have conducted a thorough fact-finding investigation into the claims against the Defendants and have a firm understanding of the strengths and risks attendant to these claims. Based on this understanding, as well as Lead Counsel’s substantial experience litigating complex securities class actions such as this one, Lead Counsel has concluded that the Settlements are fair, reasonable and adequate to the Settlement Class. Moreover, the Court-appointed Class Representatives strongly endorse the Settlements. Each is a sophisticated institutional investor that has supervised and monitored the work of Plaintiffs’ Counsel throughout the Action, and each was kept apprised of the mediation and settlement negotiations with Defendants. ¶¶ 102, 140, 160-165.

Additionally, the positive response of Settlement Class Members to date further supports final approval of the Settlements. The Court-appointed Claims Administrator, Epiq Class Action & Claims Solutions, Inc. (“Epiq”), has mailed 85,122 copies of the Notice to potential Settlement Class Members and nominees. *See* Joint Declaration, Ex. 2 (Villanova Decl. ¶ 8). The Notice describes the essential terms of the Settlements, and informs Settlement Class Members of their right to opt-out of the Settlement Class or object to any aspect of the Settlements. As set forth in the Notice, the deadline for Settlement Class Members to submit objections to the Settlements or request exclusion

from the Settlement Class is January 23, 2019. While this deadline has not yet passed, to date, no objections to the Settlements or Plan of Allocation have been received. ¶ 127. Nor has Epiq received any requests for exclusion from the Settlement Class to date. *Id.* at Ex. 2 (Villanova Decl. ¶ 14).⁶

H. The Other Factors Set Forth in Rule 23(e)(2) Support Final Approval of the Settlements

Rule 23(e)(2), as amended, also considers (i) the effectiveness of the proposed method of distributing relief to the class; (ii) the terms of any proposed award of attorney's fees; (iii) any agreement made in connection with the proposed settlement; and (iv) the equitable treatment of class members. *See* Rule 23(e)(2)(C)(ii), (iii), and (iv); Rule 23(e)(2)(D). Each of these additional considerations also support approval of the Settlements.

1. The Proposed Method of Distributing Settlement Proceeds is Effective

The proceeds of the Settlement will be distributed to Settlement Class Members who submit eligible Claim Forms with required documentation to the Court-approved claims administrator, Epiq. Epiq will review and process the claims received, provide claimants with an opportunity to cure any deficiency or request review of the denial of their claim by the Court, and will ultimately mail or wire claimants their *pro rata* share of the Net Settlement Fund as calculated under the Plan of Allocation. This type

⁶ Under the schedule set by the Court, Plaintiffs will file reply papers in further support of final approval on February 6, 2019, by which time any objections or requests for exclusion will have been received and addressed by Lead Counsel.

of claims processing is standard in securities class actions and has long been used and found to be effective. *See, e.g., OCA*, 2009 WL 512081, at *6 (granting final approval to settlement and plan of allocation that compensated claimants on a *pro rata* basis according to claimants' recognized loss); *Dell*, 2010 WL 2371864, at *10 (same).

2. The Requested Attorneys' Fees And Expenses Are Fair And Reasonable

Lead Counsel have filed a Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses concurrently herewith (the "Attorneys' Fee Motion"). As detailed therein, Lead Counsel have applied for an attorneys' fee award of 25% of the Settlement Fund, which is consistent with attorneys' fee percentages approved in complex securities class actions such as this. *See, e.g., In re Anadarko Petroleum Corp. Class Action Litig.*, 2014 WL 12599393, at *1 (S.D. Tex. Sept. 11, 2014) (approving attorneys' fees of 25% of settlement fund); *Schwartz*, 2005 WL 3148350, at *27 ("courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the-recovery method."). The Attorneys' Fee Motion also includes a request for reimbursement of \$1,972,357.01 in typical costs and expenses incurred by Plaintiffs' Counsel in prosecuting the claims against the Defendants, and \$56,977 in reimbursement of costs and expenses incurred by Plaintiffs related to their representation of the Settlement Class in this Action.

Pursuant to the terms of the Stipulations, and as is standard in securities class actions, attorneys' fees and expenses will be paid upon any such award being granted by

the Court, and shall be reimbursed to the Settlement Fund if the award is reduced or reversed in any subsequent legal proceedings. *See* ECF Nos. 334-1, 337-1, 352-1.

3. The Supplemental Agreements Do Not Affect the Fairness of the Settlements

Rule 23(e)(2)(C)(iv) asks the Court to consider any additional agreements made by the Parties in connection with the settlement. Here, the only such agreements are the Parties' confidential Supplemental Agreements entered into in connection with each Settlement that set forth the conditions under which each Defendant group would be able to terminate the respective Settlement if the number of Settlement Class Members who request exclusion from the Settlement Class reaches a certain threshold. That type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlements. *See, e.g., Erica P. John Fund, Inc. v. Halliburton Co.*, 2018 WL 1942227, at *5 (N.D. Tex. Apr. 25, 2018) (granting final approval of securities class action settlement that included a supplemental confidential agreement permitting settlement termination in the event of exclusion requests by a certain portion of the class).

4. The Settlements Treat Settlement Class Members Equitably

Finally, the proposed Settlements treat members of the Settlement Class equitably relative to one another. There is no preferential treatment for any members of the Settlement Class. Lead Plaintiffs and the other named Plaintiffs will receive recoveries based on the same formula under the Plan of Allocation (other than awards for reimbursement for the time their employees spent working on the Action as permitted by

the PSLRA). As discussed below in Section II, the Net Settlement Fund will be distributed among the Settlement Class Members in accordance with the Plan of Allocation, which provides a fair and equitable method of allocation.

II. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE APPROVED

The Plan of Allocation should also be granted final approval because it provides a fair and reasonable method to allocate the Net Settlement Fund and does not improperly give preferential treatment to Plaintiffs or any other Settlement Class Member. *See, e.g., Dell*, 2010 WL 2371864, at *10 (to be fair, reasonable, and adequate, “[t]he allocation formula ‘need only have a reasonable, rational basis, particularly if recommended by experienced and competent counsel.’”); *OCA*, 2009 WL 512081, at *11 (granting final approval where the plan of allocation “does not give unfair or preferential treatment to the lead plaintiff or any segment of the class.”). All Settlement Class Members with valid claims for the Net Settlement Fund, including Plaintiffs, will receive an allocation pursuant to the uniformly applied Plan of Allocation.

The Plan of Allocation was formulated by Class Counsel in consultation with their retained damages expert, Dr. Michael Hartzmark, and is consistent with his expert reports submitted in support of class certification in this Action. *See* Joint Declaration, at Ex. 3 (Hartzmark Declaration). Generally, the Plan of Allocation divides the funds obtained in the Underwriter, Sponsor/GS&Co. and Cobalt Settlements into three separate pools based on the nature of claims asserted as follows: (i) a Group 1 Fund, for purchasers of Cobalt Securities with claims under Section 10(b) of the 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.⁷

Each Fund will be distributed *pro rata* to eligible Settlement Class Members based on the group and their Recognized Loss amount. Recognized Losses will be calculated based on (i) the type and number of Cobalt Securities purchased/acquired, (ii) when the securities were purchased/acquired, (iii) whether the securities were held or sold, and (iv) if sold, the date and price at which they were sold. Under the Plan of Allocation, there is no Recognized Loss amount for Cobalt securities acquired during the Class Period and sold before the respective corrective disclosure dates since any losses suffered on such sales would not be the result of Defendants' alleged misstatements and omissions. *See Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 342-43 (2005).

Thus, the Plan of Allocation fairly accounts for each respective Settlement Class Members' purchases and sales of Cobalt securities, as well as the specific claim they have under the federal securities laws. *See OCA*, 2009 WL 512081, at *11 (approving a plan of allocation that "compensates class members in relation to the timing of their actual purchases and sales as well as the amount of their actual losses."). Although the methodologies used in the Plan of Allocation may result in different per-share recoveries for each Authorized Claimant, they will be uniformly applied to all Settlement Class Members. No Settlement Class Member will receive preferential treatment when the

⁷ Court-approved attorneys' fees, Litigation Expenses, Notice and Administration Costs and Taxes for the Settlements will be allocated among the three funds proportionally.

Settlements are distributed. Moreover, under the direction of Lead Counsel, the Claims Administrator will apply the Plan of Allocation to determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund. The Net Settlement Fund will be distributed to Authorized Claimants on this *pro rata* basis until the Fund is depleted or it is no longer economically feasible to do so.

The Plan of Allocation is fully described in the Notice that was distributed to Settlement Class Members pursuant to the Preliminary Approval Order. To date, the Plan of Allocation has received no objections from any Settlement Class Members. ¶ 127. Accordingly, for the reasons set forth herein and in the Joint Declaration, Plaintiffs submit that the Plan of Allocation is fair and reasonable and respectfully request that it be approved by the Court.

III. THE NOTICE TO THE SETTLEMENT CLASS SATISFIED RULE 23

The Notice provided to Settlement Class Members satisfied the requirements of both Fed. R. Civ. P. 23(c)(2) and 23(e). Rule 23(e) requires that notice of the proposed settlement be given “in a reasonable manner to all class members who would be bound by the proposal.” Rule 23(c)(2) further requires certified classes to receive “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” In securities actions, the content of the notice must contain the information outlined in Rule 23(c)(2)(B) and the PSLRA. *See* 15 U.S.C. § 78u-4(a)(7).

Both the content of the Court-approved Notice and the method of its distribution to Settlement Class Members satisfy the notice requirements. Consistent with Fed. R. Civ.

P. 23(c)(2)(B), the Notice described: (i) the nature of the Action; (ii) the definition of the Settlement Class; (iii) the class claims, issues, and defenses; (iv) the process by which Settlement Class Members may enter an appearance through their own counsel; (v) how Settlement Class Members can exclude themselves from the Settlement Class; (vi) the binding effect of the Settlement approval proceedings; (vii) the proposed Plan of Allocation; and (viii) the reasons the 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.

The Notice also satisfied the PSLRA requirement 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 Parties concerning the issues on which the 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 name, telephone number, and address of Lead Counsel who will be reasonably available to answer questions concerning any matter contained in the Notice; (v) a brief statement explaining the reasons why the Parties are proposing the Settlements; and (vi) such other information as may be required by the Court. *See* 15 U.S.C. § 78u-4(a)(7)(A)-(F).

The method of notice also fulfilled the requirements of due process because Lead Counsel and the Court-appointed Claims Administrator informed those Settlement Class Members who could be identified through reasonable efforts of all the information set forth above. Courts in this Circuit routinely find that comparable notice programs meet

the requirements of due process, the PSLRA, and Rule 23. *See, e.g., In re Enron Corp. Sec. & ERISA Litigs.*, 2003 WL 22494413, at *3 (S.D. Tex. July 24, 2003); *OCA*, 2009 WL 512081, at *7-9.

Pursuant to the Preliminary Approval Order, the Court-appointed Claims Administrator began mailing copies of the Notice and Claim Form (the “Notice Packet”) by first-class mail to Settlement Class Members and their nominees on December 4, 2018. *See* Joint Declaration, Ex. 2 (Villanova Decl. ¶¶ 3-5). In addition, the Summary Notice was published in *The Wall Street Journal* and transmitted over the *PR Newswire*. Villanova Decl. ¶ 9. As of January 7, 2019, the Claims Administrator had mailed a total of 85,122 copies of the Notice and Claim Form to potential Settlement Class Members and nominees. *Id.* ¶ 8. The Claims Administrator has also made the Notice, Claim Form and other key documents for the Settlements available to the general public on a website dedicated to the Settlements (www.CobaltSecuritiesLitigation.com). *Id.* ¶ 13.

This thorough approach of providing individual mailings to Settlement Class Members, notice in widely circulated publications, and a dedicated website containing all relevant Settlement documents was undoubtedly the “best notice . . . practicable” for Settlement Class Members. *See* Fed. R. Civ. P. 23(c)(2)(B) (specifying that appropriate notice may be by “United States mail, electronic means, or other appropriate means.”); *see also In re 2014 RadioShack ERISA Litig.*, 2016 WL 6561597, at *4 (N.D. Tex. Jan. 25, 2016) (notice met Rule 23 and due process requirements when it was mailed to class members, published in a news publication and *PR Newswire*, and posted on a dedicated website).

The timing of the Notice is also adequate. Settlement Class Members have 50 days from the initial mailing of the Notice to decide if they want to request exclusion or object to the Settlements or Plan of Allocation. Courts in this Circuit have held that such amount of time, or less, constitutes sufficient notice. *In re OCA, Inc. Sec. & Derivative Litig.*, 2008 WL 4681369, at *16 (E.D. La. Oct. 17, 2008) (finding that 39 days between mailing and objection/exclusion deadline was adequate).

In sum, the Notice complied with the Court's Preliminary Approval Order, as well as the requirements of Fed. R. Civ. P. 23, the PSLRA and due process.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (i) grant final approval of the Settlements; (ii) approve the Plan of Allocation for the Settlements; and (iii) grant such other relief as the Court deems just and proper.

Dated: January 9, 2019

Respectfully submitted,

ENTWISTLE & CAPPUCCI LLP

By: /s/Andrew J. Entwistle
Andrew J. Entwistle
(Texas Bar No. 24038131)
Vincent R. Cappucci (admitted *pro hac vice*)
Jonathan H. Beemer (admitted *pro hac vice*)
299 Park Avenue, 20th Floor
New York, NY 10171
Telephone: (212) 894-7200
Facsimile: (212) 894-7272
E-mail: aentwistle@entwistle-law.com
E-mail: vcappucci@entwistle-law.com
E-mail: jbeemer@entwistle-law.com

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

/s/David R. Stickney

David R. Stickney (admitted *pro hac vice*)
Jonathan D. Uslaner (admitted *pro hac vice*)
Brandon Marsh (admitted *pro hac vice*)
12481 High Bluff Drive, Suite 300
San Diego, CA 92130-3582
Telephone: (858) 793-0070
Facsimile: (858) 793-0323
E-mail: davids@blbglaw.com
E-mail: jonathanu@blbglaw.com
E-mail: brandon.marsh@blbglaw.com

*Counsel for Lead Plaintiffs and Co-Lead
Counsel for the Class*

AJAMIE LLP

Thomas R. Ajamie
(Texas Bar No. 00952400)
Pennzoil Place - South Tower
711 Louisiana, Suite 2150
Houston, TX 77002
Telephone: (713) 860-1600
Facsimile: (713) 860-1699
E-mail: tajamie@ajamie.com

Liaison Counsel for the Class

**KESSLER TOPAZ MELTZER
& CHECK, LLP**

Johnston de Forest Whitman, Jr.
(admitted *pro hac vice*)
Naumon A. Amjed
(admitted *pro hac vice*)
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
E-Mail: jwhitman@ktmc.com
E-Mail: namjed@ktmc.com

Counsel for Plaintiff Sjunde AP-Fonden

MOTLEY RICE LLC

Christopher Moriarty (admitted *pro hac vice*)

28 Bridgeside Blvd.

Mt. Pleasant, SC 29464

Telephone: (843) 216-9245

Facsimile: (843) 216-9450

E-Mail: cmoriarty@motleyrice.com

*Counsel for Plaintiff Universal Investment
Gesellschaft m.b.H.*

CERTIFICATE OF SERVICE

I certify that on January 9, 2019, the foregoing memorandum of law was filed with Clerk of the Court through the Court's ECF system, which will cause the document to be served upon all counsel of record.

/s/ Andrew J. Entwistle _____

Andrew J. Entwistle

EXHIBIT A

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

IN RE COBALT INTERNATIONAL
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 1:14-cv-3428 (NFA)

**JUDGMENT APPROVING CLASS ACTION SETTLEMENT WITH
THE SPONSOR DEFENDANTS, THE SPONSOR DESIGNEE DEFENDANTS
AND GOLDMAN SACHS & CO. LLC**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA (the “Action”);

WHEREAS, (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”) and plaintiffs St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); and (b) defendants (i) The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation (f/k/a First Reserve Corporation), ACM Ltd. (f/k/a KERN Partners Ltd.), and The Carlyle Group, L.P. (collectively, the “Sponsor Defendants”), (ii) Peter R. Coneway, Henry Cornell, Michael G. France, N. John

Lancaster, Scott L. Lebovitz, Kenneth W. Moore, J. Hardy Murchison, Kenneth A. Pontarelli, and D. Jeff van Steenberg (collectively, the “Sponsor Designee Defendants”), and (iii) Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.) (“GS&Co.,” and, together with the Sponsor Defendants and the Sponsor Designee Defendants, the “Settling Defendants,” and together with Plaintiffs, the “Settling Parties”) have entered into a Stipulation and Agreement of Settlement With the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC dated October 9, 2018 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted against the Settling Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated November 2, 2018 (the “Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on February 13, 2019 (the “Settlement Hearing”) to consider, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Settling Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.
2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on October 12, 2018; and (b) the Notice, Plan of Allocation and Summary Notice filed with the Court on November 28, 2018.
3. **Class Certification for Settlement Purposes** – The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities

who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby (the “Settlement Class”). Included within the Settlement Class are all persons and entities who purchased or otherwise acquired 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 Settlement Class are all persons and entities who purchased or otherwise acquired 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. Excluded from the Settlement 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; *provided*, however, that any Investment Vehicle¹ shall not be deemed an excluded person or entity by definition.

¹ “Investment Vehicle,” as defined in the Stipulation and for purposes of this Order, means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds, and hedge funds, in which any of the Settling Defendants have, has, or may have a direct or indirect interest, or as to

[Also excluded from the Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which are excluded pursuant to request.]

4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. as Class Representatives for the Settlement Class and appointing Lead Counsel as Class Counsel for the Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action;

which any of their respective affiliates may act as an investment advisor but of which any of the Settling Defendants or any of their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition of Investment Vehicle does not bring into the Settlement Class any of the Settling Defendants themselves or any of the Sponsor Affiliated Funds (as defined in the Stipulation).

(ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement Class; and (v) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein, including the release of the Released Plaintiffs' Claims as against the Settling Defendants' Releasees; and the dismissal with prejudice of the claims asserted against the Settling Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Settling Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. All of the claims asserted against the Settling Defendants in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice.

The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on the Settling Defendants, Plaintiffs, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns. [The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request, and are, therefore, not bound by the terms of the Stipulation or this Judgment.]

9. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 10 below, upon the Effective Date of the Settlement, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against the Settling Defendants and the other Settling Defendants' Releasees, and shall forever be barred and enjoined from

prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

(b) Without further action by anyone, and subject to paragraph 10 below, upon the Effective Date of the Settlement, the Settling Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees.

10. Notwithstanding paragraphs 9(a)–(b) above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **Bar Order** – Pursuant to the PSLRA and common law, the Court hereby bars all future claims and claims over by any individual or entity against any of the Settling Defendants' Releasees, and by the Settling Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or

members of the Settlement Class arising out of or related to the claims or allegations asserted by Plaintiffs in the Action (the “Bar Order”). For the avoidance of doubt, nothing in this Bar Order shall release any proofs of claim that any of the Settling Defendants has filed in the Cobalt bankruptcy, any claims that the Settling Defendants may have against Cobalt’s liability insurance carriers or liability insurance policies, or any claims that the Sponsor Defendants may have against their own respective liability insurance carriers. Moreover, nothing in this Bar Order shall be construed to impair, negate, diminish, or adversely affect any rights of the Settling Defendants or their successors or assigns under or with respect to any insurance policies, including, but without limitation, any rights to seek to recover or to recover insurance proceeds or payments under any insurance policies with respect to amounts paid pursuant to the Settlement or incurred in connection with the Action, or any other actual or alleged loss or liability.

12. **Judgment Reduction** – Pursuant to the PSLRA and common law, any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Settling Defendants for common damages; or (b) the amount paid by or on behalf of the Settling Defendants to the Settlement Class or Settlement Class Members for common damages. In the event of a judgment against or a settlement involving any or all of the Underwriter Defendants other than GS&Co. (the “Non-Settling Underwriters”) in the Action or any other action arising out of or related to the

claims or allegations asserted by Plaintiffs in the Action, the Non-Settling Underwriters' reduction shall include (to the extent not already included in the aforementioned Bar Order reduction) a judgment credit (or credit in settlement) with respect to all such actions for which the Non-Settling Underwriters may be found liable (or will pay in a settlement subsequent to the settlement memorialized in this Stipulation), in an amount that is the greatest of: (x) the dollar amount paid or contributed by GS&Co. pursuant to the settlement memorialized in this Stipulation, (y) the proportionate share of GS&Co.'s fault in respect of common damages arising in connection with such actions as proven at trial, if applicable, or (z) the amount by which GS&Co. would have been required to make contribution had it not settled, under Sections 9.5 and 11.2 of any applicable Master Agreement Among Underwriters (the "MAAUs"), in respect of the final non-appealable judgment (or settlement) subsequently entered into by the Non-Settling Underwriters.

13. **Rule 11 Findings** – The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

14. **No Admissions** – Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto, the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable from the Settling Defendants under the Operative Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial against the Settling Defendants;

provided, however, that the Settling Parties and the Releasees and their respective counsel may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement.

15. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys’ fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve a plan of allocation for the proceeds of the Settlement Fund; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Settlement.

16. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

17. **Modification of the Agreement of Settlement** – Without further approval from the Court, Plaintiffs and the Settling Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached

thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and the Settling Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, the Judgment including (the Court’s certification of the Settlement Class) shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members, and the Settling Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation on October 9, 2018, as provided in the Stipulation.

19. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action as against the Settling Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment as against the Settling Defendants.

SO ORDERED this _____ day of _____, 2019.

The Honorable Nancy F. Atlas
United States District Judge

Exhibit 1

[List of Persons and Entities Excluded from the Settlement Class Pursuant to Request]

EXHIBIT B

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

IN RE COBALT INTERNATIONAL
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 1:14-cv-3428 (NFA)

**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**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA (the “Action”);

WHEREAS, (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; (b) Cobalt International Energy, Inc. (“Cobalt”) and its debtor affiliates (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases”), by and through Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”); and (c)

defendants Joseph Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” together with Cobalt, the “Cobalt Settling Defendants,” and collectively with Plaintiffs, the “Settling Parties”), have determined to settle all claims asserted against the Cobalt Settling Defendants in this Action with prejudice (the “Settlement”) on the terms and conditions set forth in the Stipulation and Agreement of Settlement Among Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (the “Stipulation”), subject to approval of this Court and the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated November 2, 2018 (the “Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, by Order dated November 20, 2018, the Bankruptcy Court approved the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on February 13, 2019 (the “Settlement Hearing”) to consider, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Cobalt Settling Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on October 12, 2018; and (b) the Notice, Plan of Allocation and Summary Notice filed with the Court on November 28, 2018.

3. **Class Certification for Settlement Purposes** – The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the

Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby (the “Settlement Class”). Included within the Settlement Class are all persons and entities who purchased or otherwise acquired 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 Settlement Class are all persons and entities who purchased or otherwise acquired 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. Excluded from the Settlement 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. [Also excluded from the Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which are excluded pursuant to request.]

4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. as Class Representatives for the Settlement Class and appointing Lead Counsel as Class Counsel for the Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement Class; and (v) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the

requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the substance and timing of the Releases provided for therein, including the prospective release of the Released Plaintiffs' Claims as against the Settling Defendants' Releasees; and the dismissal with prejudice of the claims asserted against the Settling Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Settling Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. All of the claims asserted against the Settling Defendants in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice following the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on the Settling Defendants, Plaintiffs, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits

a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns. [The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request, and are, therefore, not bound by the terms of the Stipulation or this Judgment.]

9. **Releases** – The Releases set forth in paragraphs 20 and 21 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the later of the Effective Date of the Settlement or the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies (the “Termination Date”). Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 10 below, upon the later of the Effective Date or the Termination Date, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim against the Cobalt Settling Defendants and the other Settling Defendants’ Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Settling Defendants’ Releasees.

(b) Without further action by anyone, and subject to paragraph 10 below, upon the later of the Effective Date or the Termination Date, the Settling

Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees.

10. Notwithstanding paragraphs 9(a)–(b) above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **Bar Order** – Pursuant to the PSLRA and common law, upon the later of the Effective Date or the Termination Date, the Court hereby bars all future claims and claims over by any individual or entity against any of the Settling Defendants' Releasees, and by the Settling Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class arising out of or related to the claims or allegations asserted by Plaintiffs in the Action (the "Bar Order"). For the avoidance of doubt, nothing in this Bar Order shall release any proofs of claim that any of the Cobalt Settling Defendants has filed in the Cobalt bankruptcy, or

any claims that the Cobalt Settling Defendants may have against Cobalt's liability insurance carriers or liability insurance policies. Moreover, nothing in this Bar Order shall be construed to impair, negate, diminish, or adversely affect any rights of the Cobalt Settling Defendants or their successors or assigns under or with respect to any insurance policies, including, but without limitation, any rights to seek to recover or to recover insurance proceeds or payments under any insurance policies with respect to amounts incurred pursuant to the Settlement or incurred in connection with the Action, or any other actual or alleged loss or liability.

12. **Judgment Reduction** – Pursuant to the PSLRA and common law, any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Cobalt Settling Defendants for common damages; or (b) the amount paid by or on behalf of the Cobalt Settling Defendants to the Settlement Class or Settlement Class Members for common damages.

13. **Rule 11 Findings** – The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

14. **No Admissions** – Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto, the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading

to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable from the Settling Defendants under the Operative Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration

proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial against the Cobalt Settling Defendants;

provided, however, that the Settling Parties and the Releasees and their respective counsel may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement, or in connection with the AIG Litigation or D&O Coverage Litigation.

15. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys’ fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve a plan of allocation for the proceeds of the Settlement Fund; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Settlement.

16. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys’ fees and reimbursement of

Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

17. **Modification of the Agreement of Settlement** – Without further approval from the Court, Plaintiffs and the Cobalt Settling Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and the Cobalt Settling Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, the Judgment including (the Court's certification of the Settlement Class) shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members, and the Cobalt Settling Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation on October 11, 2018, as provided in the Stipulation.

19. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action as against the Cobalt Settling Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Accordingly, the Clerk

of the Court is expressly directed to immediately enter this final judgment as against the Cobalt Settling Defendants.

SO ORDERED this _____ day of _____, 2019.

The Honorable Nancy F. Atlas
United States District Judge

Exhibit 1

[List of Persons and Entities Excluded from the Settlement Class Pursuant to Request]

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 1:14-cv-3428 (NFA)

**JUDGMENT APPROVING CLASS ACTION SETTLEMENT BETWEEN
PLAINTIFFS AND UNDERWRITER DEFENDANTS OTHER THAN
GOLDMAN SACHS & CO. LLC**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA (the “Action”);

WHEREAS, (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; and (b) defendants Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor, Pickering, Holt & Co. Securities, Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, UBS Securities LLC, Howard Weil Incorporated, Stifel, Nicolaus & Company, Incorporated, Capital One

Southcoast, Inc., and Lazard Capital Markets LLC (the “Underwriter Settling Defendants,” together with Plaintiffs, the “Settling Parties”), have entered into a Stipulation and Agreement of Settlement Between Plaintiffs and Underwriter Defendants Other than Goldman Sachs & Co. LLC., dated November 28, 2018 (the “Stipulation”), that provides for a complete dismissal with prejudice of the claims asserted against the Underwriter Settling Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated November 29, 2018 (the “Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on February 13, 2019 (the “Settlement Hearing”) to consider, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Underwriter Settling Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on November 28, 2018; and (b) the Notice, Plan of Allocation and Summary Notice filed with the Court on November 28, 2018.

3. **Class Certification for Settlement Purposes** – The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby (the “Settlement Class”). Included within the Settlement Class are all persons and entities who purchased or otherwise acquired 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 Settlement Class are all persons and entities who purchased or otherwise acquired 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. Excluded from the Settlement 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; *provided, however*, that any Investment Vehicle¹ shall not be deemed an excluded person or entity by definition. [Also excluded from the Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which are excluded pursuant to request.]

¹ “Investment Vehicle” for purposes of this Judgment means any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds, and hedge funds, in which any of the Sponsor/GS&Co. Settling Defendants (as defined in the Notice) or Underwriter Settling Defendants have, has, or may have a direct or indirect interest, or as to which any of their respective affiliates may act as an investment advisor but of which any of the Sponsor/GS&Co. Settling Defendants or Underwriter Settling Defendants or any of their respective affiliates is not a majority owner or does not hold a majority beneficial interest. This definition of Investment Vehicle does not bring into the Settlement Class any of the Sponsor/GS&Co. Settling Defendants or Underwriter Settling Defendants themselves or any of the Sponsor Affiliated Funds, as defined in the Sponsor/GS&Co. Settlement.

4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. as Class Representatives for the Settlement Class and appointing Lead Counsel as Class Counsel for the Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement Class; and (v) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the

requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the Releases provided for therein, including the release of the Released Plaintiffs' Claims as against the Settling Defendants' Releasees; and the dismissal with prejudice of the claims asserted against the Underwriter Settling Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Settling Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. All of the claims asserted against the Underwriter Settling Defendants in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on the Underwriter Settling Defendants, Plaintiffs, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits a Claim Form or seeks or obtains a distribution from the Net Settlement

Fund), as well as their respective successors and assigns. [The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request, and are, therefore, not bound by the terms of the Stipulation or this Judgment.]

9. **Releases** – The Releases set forth in paragraphs 5 and 6 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 10 below, upon the Effective Date of the Settlement, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against the Underwriter Settling Defendants and the other Settling Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

(b) Without further action by anyone, and subject to paragraph 10 below, upon the Effective Date of the Settlement, the Underwriter Settling Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever

compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees.

10. Notwithstanding paragraphs 9(a)–(b) above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **Bar Order** – Pursuant to the PSLRA and common law, the Court hereby bars all future claims and claims over by any individual or entity against any of the Settling Defendants' Releasees, and by the Settling Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class arising out of or related to the claims or allegations asserted by Plaintiffs in the Action (the "Bar Order"). For the avoidance of doubt, nothing in this Bar Order shall release any proofs of claim that any of the Underwriter Settling Defendants has filed in the Cobalt bankruptcy or any claims that the Underwriter Settling Defendants may have against their own respective liability insurance carriers. Moreover, nothing in this Bar Order shall be construed to impair, negate, diminish, or adversely affect any rights of the Underwriter Settling Defendants or their successors or

assigns under or with respect to any insurance policies, including, but without limitation, any rights to seek to recover or to recover insurance proceeds or payments under any insurance policies with respect to amounts paid pursuant to the Settlement or incurred in connection with the Action, or any other actual or alleged loss or liability, and the Underwriter Settling Defendants expressly reserve all rights, claims, positions, arguments, contentions, and defenses with respect to such matters.

12. **Judgment Reduction** – Pursuant to the PSLRA and common law, any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Underwriter Settling Defendants for common damages; or (b) the amount paid by or on behalf of the Underwriter Settling Defendants to the Settlement Class or Settlement Class Members for common damages. In the event of a judgment against or a settlement involving any or all of the Underwriter Settling Defendants in the Action or any other action arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, the Non-Settling Underwriters' reduction shall include (to the extent not already included in the aforementioned Bar Order reduction) a judgment credit (or credit in settlement) with respect to all such actions for which the Non-Settling Underwriters may be found liable (or will pay in a settlement subsequent to the settlement memorialized in this Stipulation), in an amount that is the greatest of: (x) the dollar amount paid or contributed by the Settling Underwriter Defendants pursuant to the settlement memorialized in this Stipulation and GS&Co. in the Sponsor Settlement, (y)

the proportionate share of the Settling Underwriter Defendants' and GS&Co.'s fault in respect of common damages arising in connection with such actions as proven at trial, if applicable, or (z) the amount by which the Settling Underwriter Defendants and GS&Co. would have been required to make contribution had they not settled, under Sections 9.5 and 11.2 of any applicable Master Agreement Among Underwriters (the "MAAUs"), in respect of the final non-appealable judgment (or settlement) subsequently entered into by the Non-Settling Underwriters.

13. **Rule 11 Findings** – The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

14. **No Admissions** – Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto, the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or

could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable from the Underwriter Settling Defendants under the Operative Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial against the Underwriter Settling Defendants;

provided, however, that the Settling Parties and the Releasees and their respective counsel may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement.

15. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys’ fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve a plan of allocation for the proceeds of the Settlement Fund; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Settlement.

16. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys’ fees and reimbursement of Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

17. **Modification of the Agreement of Settlement** – Without further approval from the Court, Plaintiffs and the Underwriter Settling Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and the

Underwriter Settling Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, the Judgment including (the Court’s certification of the Settlement Class) shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members, and the Underwriter Settling Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation on November 28, 2018, as provided in the Stipulation.

19. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action as against the Underwriter Settling Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment as against the Underwriter Settling Defendants.

SO ORDERED this _____ day of _____, 2019.

The Honorable Nancy F. Atlas
United States District Judge

Exhibit 1

[List of Persons and Entities Excluded from the Settlement Class Pursuant to Request]

EXHIBIT D

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)

**[PROPOSED] ORDER APPROVING
PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

This matter came on for hearing on February 13, 2019 (the “Settlement Hearing”) on Lead Plaintiffs’ motion to determine, among other things, whether the proposed plan of allocation of the Net Settlement Fund (“Plan of Allocation”) created by the Settlements achieved in the above-captioned class action (the “Action”) should be approved and related matters. The Court having considered all matters submitted to it at the Settlement Hearing and otherwise; and it appearing that notice of the Settlement Hearing substantially in the form approved by the Court was mailed to all Settlement Class Members who or which could be identified with reasonable effort, and that a summary notice of the hearing substantially in the form approved by the Court was published in *The Wall Street Journal* and was transmitted over the *PR Newswire* pursuant to the specifications of the Court; and the Court having considered and determined the fairness and reasonableness of the proposed Plan of Allocation,

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. This Order approving the proposed Plan of Allocation incorporates by reference the definitions 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, Solely Acting 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”), and all capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulations.

2. The Court has jurisdiction to enter this Order approving the proposed Plan of Allocation, and over the subject matter of the Action and all parties to the Action, including all Settlement Class Members.

3. Notice of Lead Plaintiffs’ motion for approval of the proposed Plan of Allocation was given to all Settlement Class Members who could be identified with reasonable effort. The form and method of notifying the Settlement Class of the motion for approval of the proposed Plan of Allocation satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Private Securities Litigation Reform Act of 1995 (15 U.S.C. § 78u-4(a)(7)), due process, and all other applicable law and rules, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

4. The Court hereby finds and concludes that the formula for the calculation of the claims of Claimants as set forth in the Plan of Allocation mailed to Settlement Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net

Settlement Fund among Settlement Class Members with due consideration having been given to administrative convenience and necessity.

6. The Court hereby finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Settlement Class. Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead Plaintiffs.

7. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED this _____ day of _____, 2019.

The Honorable Nancy F. Atlas
United States District Judge