IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ANTHONY NEWMAN, Plaintiff, v. JAMES R. MOFFETT, RICHARD C. ADKERSON, B.M. RANKIN, JR., ROBERT A. DAY, GERALD J. FORD, H. DEVON GRAHAM, JR., ROBERT J. ALLISON, JR., CHARLES C. KRULAK, BOBBY LEE LACKEY, JON C. MADONNA, DUSTAN E. MCCOY, STEPHEN H. SIEGELE, MCMORAN EXPLORATION CO., PLAINS EXPLORATION & PRODUCTION COMPANY, and JAMES C. FLORES, Defendants, -and- FREEPORT-MCMORAN COPPER & GOLD INC., Nominal Defendant.	C.A. No. _____

VERIFIED DERIVATIVE COMPLAINT

Plaintiff Anthony Newman ("Plaintiff"), by and through his undersigned counsel, alleges upon knowledge as to his own acts and upon information and belief as to all other matters as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action as a derivative action on behalf of and for the benefit of Nominal Defendant Freeport-McMoRan Copper & Gold Inc. ("Freeport" or the "Company") against certain of its officers and directors (collectively, the "Individual Defendants"), arising from the Individual Defendants' decision to enter into definitive agreements to acquire both McMoRan Exploration Co. ("McMoRan") and Plains Exploration & Production Company

("Plains") for a combined price of approximately $20 billion (collectively, the "Acquisitions"), in breach of their fiduciary duties owed to Freeport and its shareholders.

2. Freeport engages in the international exploration, mining, and production of mineral resources internationally, primarily exploring copper, gold, and molybdenum. Freeport is one of the world's largest copper, gold and molybdenum mining companies in terms of reserves and production and leads the North America metals industry in the production of copper and molybdenum.

3. On December 5, 2012, Freeport shocked the market by announcing that it had entered into an agreement and plan of merger to acquire oil and gas company McMoRan, in a deal valued at approximately $2.1 billion, and an agreement and plan of merger to acquire oil and gas company Plains, in a deal valued at approximately $6.9 billion. In addition, the Acquisitions collectively require Freeport to assume approximately $11 billion in debt.

4. Under the terms of the McMoRan acquisition, McMoRan shareholders will receive $14.75 in cash and 1.15 shares of a royalty trust, which will hold a 5% royalty interest in future production from McMoRan's existing ultra-deep exploration properties, for each share of McMoRan stock owned. The cash-component of the McMoRan acquisition alone represented an astounding 74% premium over the December 4, 2012 closing price of McMoRan stock.

5. Under the terms of the Plains acquisition, Plains' shareholders will have the right to receive $25.00 in cash and 0.6531 shares of Freeport common stock, for each share of McMoRan stock owned. Based on the closing price of Freeport common stock on December 4, 2012, Plains shareholders would receive the equivalent to total consideration of $50.00 per share of Plains stock owned. Freeport's acquisition of Plains represented a 39% premium over the December 4, 2012 closing price of Plains stock.

6. Both Acquisitions were approved by the Individual Defendants and are expected to close during the second quarter of 2013. To the detriment of Freeport and its shareholders, the Acquisitions are not subject to any vote or approval by Freeport's shareholders.

7. According to Freeport's corporate website, Freeport's approach to business conduct is "based on the overarching values" set forth in Freeport's Principles of Business Conduct as follows:

> We have an obligation to each other, our shareholders and our business partners to make all business decisions solely on the basis of our sound business judgment. A conflict of interest may occur if we have a bias or personal interest that interferes with our ability to make an objective business decision in the best interest of the Company. We should avoid any actions or relationships that create, or even appear to create, a conflict of interest.

8. The decision by the Individual Defendants to enter into the Acquisitions was the product of personal self-dealing in violation of Freeport's stated obligations to avoid conflicts of interest and in breach of their fiduciary duties owed to Freeport and its shareholders. Despite 20 separate relationships existing among the boards of all three companies, including six of the 12 members of Freeport's board of directors standing on both sides of the Acquisitions and six of the 11 members of McMoRan's board standing on both sides of the Acquisitions, the Individual Defendants approved the Acquisitions that, as detailed below, analysts have found to lack "any reasonable logic," contain "no compelling rationale to explain," and were carried out by "too many self-interested and overlapping insiders to convince anyone that this is an arms-length deal."

9. During the conference call hosted by the Company on December 5, 2012 to discuss its announcement of the Acquisitions (the "Investor Call"), Evy Hambro, investment manager of BlackRock Inc.'s $12 billion World Mining Fund, and one of Freeport's largest shareholders holding 3.1% of Freeport stock, emphasized the lack of logic behind the

Acquisitions, declaring "[c]ongratulations on making one of the worst teleconferences I've ever heard to justify a deal. … I haven't heard anything on this call that in any way justifies why these companies should be put together."

10. Tellingly, upon announcement of the Acquisitions, McMoRan stock skyrocketed in value by 85% and Plains stock soared 27% in value. In contrast, the value of Freeport stock dropped 17% in value.

11. In approving the Acquisitions, the Individual Defendants were motivated by self-interests adverse to the best interests of Freeport and its shareholders. As a direct and proximate cause of the Individual Defendants' misconduct, alleged herein, Freeport has suffered significant harm to its business, reputation, and shareholder value.

12. This action seeks to redress Individual Defendants' breaches of fiduciary duties and waste of corporate assets by seeking an injunction permanently restraining, enjoining or otherwise prohibiting the consummation of the Acquisitions, recovering for Freeport the damages caused by the Individual Defendants' improper and self-dealing conducts, and disgorgement of all profits personally reaped by the Individual Defendants through the Acquisitions.

PARTIES

13. Plaintiff, as set forth in the accompanying certification incorporated by reference herein, is and at all relevant times has been a shareholder of Freeport.

14. Nominal Defendant Freeport is a corporation organized under the laws of Delaware with its corporate headquarters located at 333 North Central Avenue, Phoenix, Arizona 85004. Freeport's common stock trades on the New York Stock Exchange under the ticker symbol "FCX".

15. Defendant James R. Moffett ("Moffett") has served as Chairman of Freeport's Board of Directors (the "Board") since 1992 and had served as Freeport's Chief Executive Officer ("CEO") from 1995 to 2003. He also currently serves as President and CEO of McMoRan and Co-Chairman of McMoRan's board of directors. Defendant Moffett has served on McMoRan's board of directors since 1994. Defendant Moffett is a co-founder of McMoRan.

16. Defendant Richard C. Adkerson ("Adkerson") has served as Freeport's CEO since 2003, as Freeport's President since 2008, and as a director on Freeport's Board since 2006. He is one of the founders of Freeport. He has also served as Co-Chairman of the McMoRan's board of directors with Defendant Moffett since 1998, as a director of McMoRan since 1994, and as McMoRan's CEO and President from 1998 to 2004.

17. According to the Proxy Statement filed by McMoRan with the Securities and Exchange Commission ("SEC") on April 27, 2012, McMoRan "is managed jointly by Mr. Moffett, who serves as our co-chairmen of the board, president and chief executive officer, and Mr. Adkerson, who serves as co-chairman of the board."

18. Defendant B.M. Rankin, Jr. ("Rankin") has served as Vice Chairman of the Board since 2001 and has served as a director since 1995. Defendant Rankin has also served as Vice Chairman of McMoRan's board of directors since 2001. Defendant Rankin is a co-founder of McMoRan with Defendant Moffett.

19. Defendant Robert A. Day ("Day") is a member of the Board and has served as a director since 1995. He is also a member of McMoRan's board of directors and has served as a director since 1994.

20. Defendant Gerald J. Ford ("Ford") is a member of the Board and has served as a director since 2000. He is also a member of McMoRan's board of directors and has served as a director since 1998.

21. Defendant H. Devon Graham, Jr. ("Graham") is a member of the Board and has served as a director since 2000. He is also a member of McMoRan's board of directors and has served as a director since 1999.

22. Defendant Robert J. Allison, Jr. ("Allison") is a member of the Board and has served as a director since 2001.

23. Defendant Charles C. Krulak ("Krulak") is a member of the Board and has served as a director since 2007.

24. Defendant Bobby Lee Lackey ("Lackey") is a member of the Board and has served as a director since 1995.

25. Defendant Jon C. Madonna ("Madonna") is a member of the Board and has served as a director since 2007.

26. Defendant Dustan E. McCoy ("McCoy") is a member of the Board and has served as a director since 2007.

27. Defendant Stephen H. Siegele ("Siegele") is a member of the Board and has served as a director since 2006.

28. Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Allison, Krulak, Lackey, Madonna, McCoy, and Siegele are collectively referred to hereinafter as the "Individual Defendants."

29. By reason of their positions as directors serving on the Board during the Relevant Period, each of the Individual Defendants directly participated in the decision making to enter into and approve the Acquisitions.

30. Nonparty J. Taylor Wharton ("Wharton") serves as both an advisory director of Freeport and as an advisory director of McMoran.

31. Nonparty Gabrielle K. McDonald ("McDonald") serves as both an advisory director of Freeport and as an advisory director of McMoran with Wharton. McDonald and Wharton comprised two of the three advisory directors to McMoRan's board of directors.

32. Nonparty J. Stapleton Roy serves an advisory director of Freeport.

33. Nonparty J. Bennett Johnston serves an advisory director of Freeport.

34. Nonparties Wharton, McDonald, Roy, and Johnston are collectively referred to hereinafter as the "Advisory Directors." Freeport's four Advisory Directors were appointed to those positions by the Board, effective June 9, 2012.

35. According to the Proxy Statement filed by Freeport with the SEC on April 27, 2012:

> Advisory directors provide general policy advice to our board as determined from time to time by our board. Advisory directors, upon the invitation of the board, have the privilege to receive notice of and to attend regular meetings of our board or any board committee for which the advisory director has been appointed to serve as an advisor or consultant. Advisory directors serve at the pleasure of the board, are not entitled to vote on any matter brought before the board or any board committee and are not considered a director of the company for any purpose. Compensation paid to advisory directors is determined from time to time by the board, and advisory directors may have consulting agreements with the company.

36. Defendant McMoRan is an oil and gas company organized under the laws of Delaware with its corporate headquarters located in New Orleans, Louisiana. McMoRan engages in the exploration, development and production of oil and natural gas in the shallow

waters (less than 500 feet of water) of the Gulf of Mexico and onshore in the Gulf Coast area of the United States. McMoRan common stock trades on the New York Stock Exchange under the ticker symbol "MMR".

37. Defendant Plains is an oil and gas company organized under the laws of Delaware with its corporate headquarters located in Houston, Texas. Plains primarily engages in acquiring, developing, exploring, and producing oil and gas properties in the United States. It owns oil and gas properties with principal operations in onshore California, offshore California, the Gulf Coast region, the Gulf of Mexico, and the Rocky Mountains. Defendant Plains owns approximately 31.5% of shares of McMoRan's stock. Plains common stock trades on the New York Stock Exchange under the ticker symbol "PXP".

38. Defendant James C. Flores ("Flores") has served as Plains' President, CEO, and Chairman of its board of directors since 2002. Since 2010, Defendant Flores has also served as a director on McMoRan's board of directors with Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham.

DUTIES OF THE INDIVIDUAL DEFENDANTS

39. By reason of their positions as officers, directors, and fiduciaries of Freeport and because of their ability to control the business and corporate affairs of Freeport, each of the Individual Defendants owed Freeport and its shareholders fiduciary duties of care and loyalty in the management and administration of the Company's affairs, as well as in the use of preservation of the Company's property and assets. As such, the Individual Defendants are required to act in furtherance of the best interests of Freeport and its shareholders and are prohibited from engaging in self-dealing as well as unlawful corporate conduct, such as violations of the laws, rules and regulations applicable to Freeport and its business.

40. To discharge their duties, the officers and directors of Freeport were required to adhere to Freeport's corporate Principles of Business Conduct. According to Freeport's corporate website, Freeport's approach to business conduct is "based on the overarching values" detailed in its Principles of Business Conduct. The section of the Principles of Business Conduct titled "Conflicts of Interest" describes the following obligations of the Individual Defendants:

> We have an obligation to each other, our shareholders and our business partners to make all business decisions solely on the basis of our sound business judgment. A conflict of interest may occur if we have a bias or personal interest that interferes with our ability to make an objective business decision in the best interest of the Company. We should avoid any actions or relationships that create, or even appear to create, a conflict of interest.

41. Freeport's Principles of Business Conduct also mandates that "[e]ach one of us must be careful that our investments, or those of our close relatives, do not impair our ability to make objective decisions on behalf of our Company." It further advises that "[a] conflict of interest may exist if a close relative or friends buys, sells or leases any kind of property or equipment from or to the Company, provides services to the Company or if we direct Company purchases or sales to or through a close relative or friend."

42. Moreover, with respect to pursuing corporate opportunities, the Principles of Business Conduct instructs that "[w]e should not benefit personally from business opportunities that are discovered through the use of Company property, information or position. Similarly, we should not take personal advantage of information learned as a result of our position with [Freeport]."

43. The misconduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and/or officers of Freeport, the absence of good faith on their part, and a reckless disregard for their fiduciary duties owed to the

Company and its shareholders, which the Individual Defendants were aware or should have been aware posed a risk of serious injury to the Company.

44. The Individual Defendants, because of their positions of control and authority as directors and/or officers of Freeport, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Freeport, each of the Individual Defendants directly participated in the decision to approve the Acquisitions.

45. The Individual Defendants breached their duties of loyalty and good faith by causing directly or indirectly Freeport to approve Acquisitions that were motivated by irreconcilable conflicts of interests and personal benefits gained by Individual Defendants, which were adverse to the best interests of Freeport and its shareholders, and by failing to prevent the Board from taking such actions.

SUBSTANTIVE ALLEGATIONS

The Acquisitions

46. On December 5, 2012, Freeport entered into an Agreement and Plan of Merger by and among McMoRan and INAVN Corp. ("INAVN"), a Delaware corporation and wholly owned subsidiary of Freeport, pursuant to which INAVN will merge with and into McMoRan, with McMoRan surviving the merger as a wholly owned subsidiary of Freeport (the "McMoRan Acquisition").

47. Under the terms of the McMoRan Acquisition, McMoRan shareholders will receive $14.75 in cash and 1.15 units of a royalty trust to be created prior to the closing of the McMoRan Acquisition that will be entitled to a 5% gross overriding royalty interest in hydrocarbons produced from certain McMoRan shallow water, ultra deep Gulf of Mexico

prospects. No fractional royalty trust units will be issued in the McMoRan Acquisition, and McMoRan's shareholders will receive cash in lieu of fractional units, if any.

48. The cash-component of the McMoRan Acquisition represented an astounding 74% premium over the December 4, 2012 closing price of McMoRan stock. Upon news of Freeport's acquisition of McMoRan, shares of McMoRan stock skyrocketed 85% in value, from a December 4, 2012 closing price of $8.46 per share to a December 5, 2012 trading high of $15.97 per share.

49. Consummation of the McMoRan Acquisition is subject to certain termination rights for both Freeport and McMoRan, including, but not limited to, in the event that: (i) the McMoRan Acquisition is not consummated by June 5, 2013 (subject to extension by either party up to September 5, 2013 if all conditions other than those related to regulatory approvals and the absence of injunctions have been satisfied), (ii) shareholder approval for the McMoRan Acquisition is not obtained, (iii) an injunction permanently restraining, enjoining or otherwise prohibiting the consummation of the McMoRan Acquisition becomes final and nonappealable, (iv) either party breaches its obligations or representations in a manner that cannot be cured by the termination date of the merger agreement, or (v) McMoRan changes its recommendation to its shareholders to adopt the merger agreement.

50. The McMoRan Acquisition has been approved by both McMoRan's board of directors and Freeport's Board, including the Individual Defendants.

51. In addition, Freeport, McMoRan, and Plains entered into a Voting and Support Agreement with respect to the McMoRan Acquisition, which generally requires that Plains, in its capacity as the largest shareholder of McMoRan (owning 31.5% of McMoRan stock), votes all of its shares of McMoRan common stock in favor of the McMoRan Acquisition and generally

prohibits Plains from transferring its shares of McMoRan common stock prior to the consummation of the McMoRan Acquisition.

52. On December 5, 2012, Freeport entered into an Agreement and Plan of Merger by and among Plains, Freeport, and IMONC LLC ("IMONC"), a Delaware limited liability company and wholly owned subsidiary of Freeport, pursuant to which Plains will merge with and into IMONC, with IMONC surviving the merger as a wholly owned subsidiary of Freeport (the "Plains Acquisition").

53. Under the terms of the Plains Acquisition, Plains shareholders will have the right to receive $25.00 in cash and 0.6531 shares of Freeport common stock, for each share of McMoRan stock owned. Based on the closing price of Freeport common stock on December 4, 2012, Plains shareholders would receive the equivalent to total consideration of $50.00 per share of Plains stock owned. Plains shareholders may elect to receive cash or stock consideration, subject to proration in the event of oversubscription, with the value of the cash and stock per-share consideration to be equalized at closing. Based on the closing price of Freeport common stock on December 4, 2012, Plains shareholders would receive the equivalent to total consideration of $50.00 per share of Plains stock owned.

54. Consummation of the Plains Acquisition is subject to certain termination rights for both Freeport and Plains, including, but not limited to, in the event that (i) the Plains Acquisition is not consummated by June 5, 2013 (subject to extension by either party up to September 5, 2013 if all conditions other than those related to regulatory approvals and the absence of injunctions have been satisfied), (ii) shareholder approval for the Plains Acquisition is not obtained, (iii) an injunction permanently restraining, enjoining or otherwise prohibiting the consummation of the Plains Acquisition becomes final and nonappealable, (iv) either party

breaches its obligations or representations in a manner that cannot be cured by the termination date of the merger agreement, or (v) Plains changes its recommendation to shareholders to adopt the merger agreement or breaches its agreement not to solicit alternative transactions.

55. Upon closing of the Plain Acquisition, Defendant Flores will serve as Vice-Chairman of Freeport and CEO of the oil and gas business of Freeport, with sole oversight of the oil and gas business and operations of Freeport. Defendant Moffett will continue serving as Chairman of the Board and Defendant Rankin will remain Vice Chairman of the Board with Defendant Flores. Defendant Adkerson will remain serving as CEO of Freeport and will also be appointed Vice Chairman of the Board.

56. Freeport's acquisition of Plains represented a 39% premium over the December 4, 2012 closing price of Plains stock. Upon news of the Freeport Acquisition, shares of Plains increased 27% in value, from a December 4, 2012 closing price of $36.05 per share to a December 5, 2012 trading high of $45.71 per share.

57. The Plains Acquisition has been approved by both Plains' board of directors and Freeport's Board, including the Individual Defendants.

58. To the detriment of Freeport's shareholders, consummation of each of the Acquisitions is not subject to any vote or approval by Freeport's shareholders. As Evy Hambro from BackRock noted, "it would be fair to give your shareholders the chance to vote rather than hide. That would be a fair thing to have investors be involved in this, rather than just be told what to expect. As Tony Robson, the Freeport analyst for BMO Capital Markets, remarked in his note to investors downgrading Freeport stock, "[m]ost perturbing, in our view, is the lack of opportunity for shareholders to vote on a transaction that is two-thirds the market cap of [Freeport], especially given management's financial interest in one of the targets."

59. However, because of the manner in which the Individual Defendants structured the Acquisitions, having Plains and McMoRan merge with subsidiaries of Freeport and issuing less than 20% of Freeport's shares to fund the Acquisitions, no vote by Freeport shareholders is required.

The Individual Defendants' Conflicts of Interest and Self-Dealing

60. In entering into the Acquisitions, the Individual Defendants were influenced by personal interests adverse to the best interests of Freeport, Freeport's business and reputation as the premier coal producer in North America, and Freeport's shareholders. The Individual Defendants' decision to approve the Acquisitions in spite of irreconcilable conflicts was motivated by self-dealing and could not have been the product of a valid exercise of business judgment.

61. Prior to Freeport's decision to approve the Acquisitions, Freeport had boasted about the strength of its financial position attributable to its copper, gold, and molybdenum business and how Freeport's continued growth in these minerals would generate increased shareholder value. Freeport and the Individual Defendants conveyed a clear strategy of copper expansion for generating future business growth and shareholder value. In a letter to the Company's shareholders contained in the Company's 2011 Annual Report, Defendants Moffett and Adkerson described Freeport's theme as follows:

> This year's annual report theme, "Connecting the Future," signifies the role of Freeport-McMoRan Copper & Gold Inc. in supplying vital metals to the world's economies. Copper has been an essential material to mankind for thousands of years. Its properties of conductivity, malleability and connectivity have made copper a critical component of the breakthroughs that have advanced societies. The generation and transmission of electricity, our means of communications and transportation, and the infrastructure that surrounds us all depend on the metals we produce. As we look to the future, copper will continue to be key in these basic uses while contributing significantly to new technologies for energy efficiencies, advancing communications and enhancing public health. Our

> position as one of the industry's largest producers, with an attractive portfolio of long-lived assets and a growing production profile, will enable us to play an increasing role in supplying the materials necessary to sustain and expand the world's economies and in "Connecting the Future."
>
> * * *
>
> The markets for our products – copper, gold and molybdenum – are currently strong and their outlook is positive. While we may encounter volatile conditions in 2012, the long-term fundamentals for our markets, particularly for copper, are very favorable.
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> * * *
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> Market fundamentals support long-term copper prices, enhance the prospective values of our assets and cause growth prospects to be highly attractive.
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> * * *
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> We are positive about our plans to advance our projects for future growth, expand our resource base through our exploration programs and achieve continued success with our aggressive cost management efforts.

62. The 2011 Annual Report further claimed that "[a]s a global mining leader with long-lived, geographically diverse reserves of copper, gold and molybdenum, we are connecting the future for our shareholders, employees and local communities." In addition, "[a]lready the North American industry leader in the production of copper and molybdenum, we are investing in future growth through production capacity increases and exploration."

63. In turn, as a multitude of analysts and investors explained, prior to the Acquisitions, investors bought Freeport stock because they wanted exposure to copper. According to Shawn Reynolds, portfolio manager at Van Eck Global Hard Fund, "[w]e've known the company intimately for over 12 years and we're not happy. We certainly didn't own Freeport because we thought it was going into the oil and gas industry."

64. As a December 7, 2012 *Seeking Alpha* article entitled "Whose Interests Were Put First In Freeport McMoRan's Acquisition of McMoRan" explained:

> This transaction doesn't look right and likely isn't right. Shareholders who invested their hard earned money in Freeport-McMoRan did so because they wanted to invest in a world class mining company with a defined strategy. They didn't invest in Freeport-McMoRan because they expected the company to radically change its strategy to help out a small oil and gas explorer that had bitten off more than it could chew.

65. Similarly, as a December 7, 2012 *MSN Money* Article entitled "Why The Freeport McMoRan deal stinks" pointed out, the Acquisitions "lessen[] one of the reasons that many investors -- myself included -- had for owning Freeport, which is that it was one of the biggest pure plays on copper." Shawn Reynolds, portfolio manager at Van Eck Global Hard Fund, likewise asserted that "[w]e've known the company intimately for over 12 years and we're not happy. We certainly didn't own Freeport because we thought it was going into the oil and gas industry."

66. In downgrading Freeport from Buy to Hold and calling the Acquisitions a "surprising and unpopular move," Deutsche Bank analyst Jorge Beristain wrote in a note to clients that "[w]e are not supportive of this deal, as we believe Freeport shareholders would rather maintain exposure to copper (or at least mining), receive higher dividends and there are few synergies and greater complexity."

67. However, on December 5, 2012, the Individual Defendants blindsided shareholders and analysts alike with news that Freeport would be spending $20 billion to dilute its prominent copper business in order to purchase two companies that engage exclusively in oil and gas exploration.

68. According to Rick de los Reyes, portfolio manager at T. Rowe Price Global Metals and Mining Funds, "[Freeport] never really indicated they had an interest in diversifying into other metals, much less into oil and gas."

69. As many analysts have noted, there is no strategic fit or business rationale to explain or justify Freeport's decision to acquire both McMoRan and Plains, particularly at the purchase price premiums Freeport paid and the amount of debt Freeport must assume.

70. Tellingly, during the Investor Call, Defendants Moffett and Adkerson failed to provide investors and analysts with any adequate basis for believing that the Acquisitions were the product of a valid business decision that was made in the best interests of Freeport and its shareholders. As explained in a December 7, 2012 *MSN Money* article entitled "Why the Freeport McMoRan deal stinks":

> In the call, Moffett couldn't offer synergies from combining a mining company and two oil and gas companies to justify the premium in the deal. His explanation in the call that money is cheap and that Freeport would be paying very little for the debt that it would use to finance the cash portion of the deal isn't a justification for doing this particular deal.
>
> His explanation that U.S. natural gas cheap right now -- with its implication that Freeport will profit from a rise in natural gas prices -- doesn't explain why the deal targets companies that are oil heavy. After its purchase of assets from BP, 89% of production at Plains Exploration will be liquids rather than natural gas.

71. During the Investor Call, Evy Hambro of BlackRock condemned the Acquisitions for their lack of business logic, proclaiming, "[c]ongratulations on making one of the worst teleconferences I've ever heard to justify a deal. … I haven't heard anything on this call that in any way justifies why these companies should be put together."

72. Likewise, with respect to Freeport's abrupt shift in focus from copper to enter into the oil and gas industry, BMO Capital Markets analyst Tony Robson stated, "[t]he company's presentation on the transaction release this morning contains no compelling rationale to explain the shift in focus." Brian Yu of Citi similarly commented that "[w]e see little if any synergies between the copper mining and oil and gas drilling business to offset the premium valuation

paid." Mr. Yu further claimed that "[i]nvestors can get the same diversification in their portfolio at a much lower cost." As Evy Hambro informed Defendants Moffett and Adkerson during the Investor Call, "[i]nvestors obviously have the freedom to diversify their own portfolios by commodity and by geography and don't need management teams to do it for them."

73. According to a December 14, 2012 *Energy & Capital* article entitled "Oil Industry's $3.4 Billion Bailout," Freeport is paying around $40 a barrel for McMoRan's assets. As the article explained "[w]hy should Freeport buy Gulf of Mexico oil and gas reserves for $40 a barrel, when it could own much less risky onshore oil and gas for around $60 a barrel? Not only would Freeport have avoided the steep decline in its own share price, but it might also have avoided the slew of investor lawsuits the deal has prompted."

74. A December 5, 2012 article by *The New York Times* entitled "Freeport's Deals Epitomize Industry's Conflicts of Interest" summed up the lack of business justification for Freeport's approval of the Acquisitions, finding that the Acquisitions lack "any reasonable logic" and "there are no obvious synergies between excavating Indonesian gold and American oil and gas."

75. The lack of business judgment exercised by the Individual Defendants in paying a 74% premium on McMoRan shares while assuming billions of dollars in debt is further highlighted when considering the deteriorating state of McMoRan's business at the time the Acquisitions were approved.

76. The Acquisitions were announced shortly after McMoRan's November 26, 2012 announcement that it had once again failed to achieve a flow test that would certify it could produce commercial quantities of natural gas from its Davy Jones No. 1 ultra-deep Gulf of

Mexico well.[1] This news cleaved a third of the value off of McMoRan's shares and opened the possibility that the much-ballyhooed Davy Jones project, in which the company has sunk almost $1 billion, is a dud. Indeed, one industry geologist who has studied the near-shore gulf geological formation tapped by Davy Jones well believes McMoRan's inability to get a conclusive flow test is indicative that the well will never produce.

77. As the above-mentioned *MSN Money* article entitled "Why the Freeport McMoRan deal stinks" noted, McMoRan "is a risky ultra deep-water driller in the Gulf of Mexico that has experienced problems with flow tests as its Davy Jones discovery. Revenue at [McMoRan] has been in decline in recent quarters and [McMoRan] has struggled to prove its belief that the Davy Jones find could be one of the largest in the Gulf of Mexico in decades."

78. Reacting to news about further complications with the Davy Jones well, on November 27, 2012, RBC Capital downgraded McMoRan and JPMorgan announced that McMoRan has "***zero equity value***" given uncertainty about the commercial viability of the Davy Jones field.

79. Thus, as Leo Mariani, an analyst at RBC Capital Markets, declared, McMoRan shareholders should be "thrilled" by the acquisition, because "[a]t the end of the day, [McMoRan] has yet to produce any gas from the ultra-deep shelf or prove that they can."

80. Further evidencing that Freeport is grossly overpaying in the Acquisitions, McMoRan stock has not traded at the $14.75 per share cash component price Freeport is paying for McMoRan in a year, since trading at $15.40 per share on December 13, 2011.

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[1] Complications have repeatedly delayed the Davy Jones well project since late 2011. During its November 26, 2012 announcement, McMoRan revealed that a test to determine the productive capacity of the Davy Jones well where drilling began in June 2009 proved inconclusive as McMoRan has been unable to unclog the well to allow for a flow test to determine viability.

81. The Acquisitions, both lacking any reasonable business justification, were negotiated and approved by the Individual Defendants who suffered from irreconcilable conflicts of interest and received personal benefits from approving the Acquisitions not shared by Freeport or its shareholders.

82. As the abovementioned *MSN Money* article entitled "Why the Freeport McMoRan deal stinks" reported, Freeport, McMoRan, and Plains "have just too many self-interested and overlapping insiders to convince anyone that this is an arms-length deal."

83. During the Investor Call, Evy Hambro confronted Defendants Moffett and Adkerson about the obvious conflicts of interest underlying the Acquisitions, asking "before I ask my question, would it be possible to find out if anybody on the call from your side is not conflicted in answering the question I want to ask?" When Defendant Adkerson inquired as to the nature of Hambro's question, Hambro responded, "[w]ell it's a question relating to the transaction, I presume that everybody on the call from your side is conflicted because of the various different roles?"

84. Indeed, a story written by Mathew Kanterman at *Benzinga*, entitled "Freeport Buying McMoRan Exploration and Plains Exploration: Too Close to Home," identified 20 separate relationships within all three boards of Freeport, McMoRan, and Plains and found that such an intertwined relationship "raises questions as to the merits of the acquisitions." The article concluded that "the acquisition here is another example of companies with intertwined boards making acquisitions that may not be the most beneficial to shareholders in the near term but may further the collective boards' interests. Many of these board members of Plains and McMoRan are set to profit handedly from the acquisition while Freeport shareholders have seen more than 10 percent of market value eroded today following the announcement."

85. Specifically, six of the Individual Defendants – Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham – stood directly on both sides of the McMoRan Acquisition at the time they approved the Acquisitions.

86. At the time of the Board's decision to approve the Acquisitions, Defendant Moffett served as both Chairman of Freeport's Board and as Co-Chairman of McMoRan's board of directors. During that time, Defendant Moffett also served as President and CEO of McMoRan.

87. At the time of the Board's decision to approve the Acquisitions, Defendant Adkerson served as both a director on Freeport's Board and as Co-Chairman of McMoRan's board of directors with Defendant Moffett.

88. The Proxy Statement filed by McMoRan with the SEC on April 27, 2012 acknowledged that McMoRan was "managed jointly" by Defendants Moffett and Adkerson, the two biggest orchestrators of the Board's decision to approve the Acquisitions.

89. In addition, at the time of the Board's decision to approve the Acquisitions, Defendant Rankin, who co-founded McMoRan with Defendant Moffett, served as Vice Chairman of both Freeport's Board and McMoRan's board of directors.

90. At the time of the Board's decision to approve the Acquisitions, Defendants Day, Ford, and Graham also served as directors on both Freeport's Board and McMoRan's board of directors.

91. At the time of the Board's decision to approve the Acquisitions, Advisory Directors Wharton and McDonald were serving as advisors to both Freeport's Board and McMoRan's board of directors.

92. Furthermore, at the time of the Board's decision to approve the Acquisitions, Defendant Flores served as Chairman of Plains' board of directors and as a director on McMoRan's board of directors along with Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham. Defendant Flores signed the Voting and Support Agreement executed with respect to the McMoRan Acquisition, assuring that Plains would vote all 31.5% of its shares of McMoRan stock in favor of the McMoRan Acquisition. In connection with the Plains Acquisitions, Defendant Flores signed a letter agreement with Freeport, agreeing that following the closing of the Plans Acquisition, Defendant Flores will be appointed as the Vice-Chairman of Freeport and CEO of the oil and gas business of Freeport, with sole oversight of the oil and gas business and operations of Freeport.

93. As such, the Individual Defendants, making up six of the 12 members of the Board and six of the 11 members of McMoRan's board, stood directly on both sides of the Acquisitions. On top of which, two of Freeport's four Advisory Directors, also comprising two of the three advisory directors for McMoRan's board, stood on both sides of the Acquisitions. Moreover, the time of the Board's decision to approve the Acquisitions, Defendant Flores served on the board of directors of both Plans and McMoRan, and John F. Wombwell served as Executive Vice President, General Counsel, and Secretary of Plains as well as serving on McMoRan's board of directors.

94. With the Individual Defendants standing on both sides of the McMoRan Acquisition, certain Individual Defendants were able to obtain personal financial benefits for themselves through the Acquisitions.

95. Most notably, according a Bloomberg News analysis of Defendant Moffett's holdings, as of December 31, 2011, Defendant Moffett's stock and options in McMoRan, which

had fallen to approximately $25 million, soared to $89 million upon announcement of the Acquisitions.

96. The following table shows each Individual Defendant's ownership in McMoRan stock as of McMoRan's filing of its most recent proxy statement on April 27, 2012:

	Number of Shares Not Subject to Options	Number of Shares Subject to Exercisable Options and Vesting of RSUs(1)	Total Number of Shares Beneficially Owned(2)	Percent of Class(3)
Richard C. Adkerson(4)	419,558	2,425,000	2,844,558	1.73%
A. Peyton Bush, III	1,625	6,250	7,875	*
William P. Carmichael	3,511	6,250	9,761	*
Robert A. Day(5)	1,075,160	34,750	1,109,910	*
James C. Flores(6)	4,923	3,749	8,672	*
Gerald J. Ford(7)	2,056,387	34,750	2,091,137	1.29%
H. Devon Graham, Jr.	6,750	34,750	41,500	*
Suzanne T. Mestayer	17,127	21,500	38,627	*
James R. Moffett(8)	4,968,206	3,950,000	8,918,206	5.39%
C. Howard Murrish(9)	190,256	557,500	747,756	*
Nancy D. Parmelee	14,292	301,666	315,958	*
Kathleen L. Quirk	16,134	465,000	481,134	*
B. M. Rankin, Jr.(10)	589,212	22,875	612,087	*
John F. Wombwell(6)	312	3,749	4,061	*
Directors and executive officers as a group (13 persons)(11)	9,173,197	7,310,289	16,483,486	9.75%

* Ownership is less than 1%.

97. Upon announcement of the Acquisitions, the value of McMoRan stock increased $7.51 per share (85% in value) from a December 4, 2012 closing price of $8.46 per share to a December 5, 2012 trading high of $15.97 per share. As a result of their respective McMoRan shares owned when they directly approved the Acquisitions, Defendant Moffett personally profited approximately $37.3 million on those shares alone, Defendant Ford personally profited approximately $15.4 million, Defendant Day personally profited approximately $8.1 million,

Defendant Rankin personally profited approximately $4.4 million, Defendant Adkerson personally profited approximately $3.2 million, and Defendant Graham personally profited approximately $51,000.

98. Moreover, Defendant Flores, who serves on the boards of both Plains and McMoRan and who signed the Voting and Support Agreement in connection with the McMoRan Acquisition, stands to profit more than $150 million from consummation of the Acquisitions. Defendant Flores' employment contract with Plains has a change-in-control clause that entitles him to restricted shares currently valued at $137 million and a $20.7 million payment for excise taxes.

Harm Caused to Freeport by the Individual Defendants' Misconduct

99. As a direct and proximate result of their misconduct alleged above, the Individual Defendants have caused significant harm to Freeport and its business, reputation, and shareholder value.

100. BMO Capital Markets analysts warned that as a result of the Acquisitions, "Freeport's diversification into oil and gas arguably removes a key investment draw of the company in its copper exposure." Analysts at Dahlman Rose & Co. likewise stated that Freeport's decision to purchase two oil-exploration companies is "likely to be seen as a negative among mining-focused shareholders."

101. The abovementioned *The New York Times* article entitled "Freeport's Deals Epitomize Industry's Conflicts of Interest" warned that the Acquisitions would "dilute[] Freeport's appeal as a focused copper and gold producer, without adding the benefits of full diversification." The article further advised that "Freeport would have better off simply giving the money back to shareholders. Instead it has exposed a litany of conflicts and bad decisions."

102. On top of overpaying Plains and McMoRan exorbitant and unreasonable premiums for their shares, the Individual Defendants agreed to burden Freeport with a tremendous amount of debt from the Acquisitions in the amount of approximately $11 billion. As BMO Capital Markets analyst Tony Robson pointed out, not only will Freeport's copper exposure likely get diluted by the Acquisitions, but Freeport's pro forma debt will skyrocket to roughly $16 billion, net of cash.

103. The Individual Defendants' sudden decision to burden Freeport with such substantial debt is particularly unjustified considering the Company's emphasis on reducing debt earlier this year. In the Company's Letter to Shareholders contained in its 2011 Annual Report, Defendants Moffett and Adkerson boasted to shareholders that:

> Our financial position is very strong. We ended the year with significantly more cash than debt. In February 2012, we completed a highly attractive debt refinancing that will reduce our interest costs significantly.
>
> * * *
>
> Our strong financial position enables us to maintain an attractive credit profile, support our operations, provide flexibility for financially attractive investments and provide attractive returns to our shareholders.

104. However, rather than continue properly managing Company costs and focusing Freeport's assets on strengthening its copper exposure, the Individual Defendants put Freeport's business at risk by assuming all of Plains and McMoRan's debt. Consequently, as Brian Yu of Citi warned while cutting his price target on Freeport stock from $46 to $35, Freeport's shares will continue to trade at a discount because of the massive amount of debt the company will take on, possible impacts on earnings and investor pushback. Analysts at Nomura also said the high debt load made a special dividend less likely and eroded any takeover premium in Freeport's stock. Citigroup analysts additional anticipate that the Acquisitions will dilute Freeport's 2013

earnings by 3.2%. Furthermore, Standard & Poor's cut its BBB rating on Freeport's debt to negative from stable on concerns about the extra debt that Freeport is taking on. Additionally, BMO Capital Markets analyst Tony Robson cautioned that Freeport's "significant cash outflows" in the Acquisitions would reduce the likelihood of increased returns to shareholders in the future.

105. Reacting to the news of the Individual Defendants' self-interested and illogical decision to pay such high premiums and assume such debt in the Acquisitions, a multitude of analysts downgraded Freeport, citing the long term damage the Acquisitions will have on Freeport's business, its reputation, and shareholders' trust in the Company.

106. Notably, Citigroup, Goldman Sachs, Deutsche Bank, BMO Capital Markets, Macquarie Bank Ltd., and RBC Capital Markets all downgraded FCX shares on the merits of the Acquisitions, some pointing to the loss of shareholder trust as reasons for the downgrade. Nomura and UBS also cut their price target on Freeport, Nomura from $40 to $36 and UBS from $47 to $40. In cutting its rating outlook on Freeport, Standard & Poor's stated that "[t]he negative outlook on Freeport reflects the leveraged nature of the proposed acquisitions, as well as risks associated with integrating the targeted companies."

107. On the Investor Call, Evy Hambro accused Freeport's management of breaking the trust of Freeport's shareholders, stating, "I find it incredibly disappointing that you have chosen to break the trust of investors." In downgrading Freeport to hold from buy, BMO Capital Markets analyst Tony Robson outlined some of the damage inflicted on Freeport and its shareholders by the Acquisitions, citing "possible diminished shareholder returns, unwanted diversification and self-inflicted loss of trust."

108. In response to Individual Defendants' conflicts of interests and self-dealing in overspending $20 billion, assuming massive debt, and tarnishing Freeport's reputation as the premier pure copper player, the market immediately objected to the Acquisitions. As described by a December 6, 2012 article by *The Street* entitled "Freeport's Deals Fail the Smell Test," the Acquisitions represent "gigantic overpays for certain Gulf of Mexico assets – something that the market's verifying today with a tremendous hammering of [Freeport] stock."

109. Indeed, while Plains stock McMoRan stock skyrocketed in value by 85%, providing lucrative personal financial gains to Individual Defendants, and Plains stock soared 27% in value upon news of the Acquisitions, the value of Freeport stock dropped 17% on extremely high trading volume down from a December 4, 2012 closing price of $38.28 per share down to a December 5, 2012 trading price of $31.72, Freeport's then lowest trading price in over a year. On the following day, Freeport stock reached a trading low of $30.54 per share.

110. More troubling for Freeport's shareholder value, analysts at Goldman Sachs wrote in a research note that "[w]e believe that Freeport stock will remain in the penalty box ***for the foreseeable future*** and multiples will remain depressed on the back of these acquisition announcements, given investor uncertainty on the strategic merit." (Emphasis added).

111. As the aforementioned *MSN Money* article entitled "Why the Freeport McMoRan deal stinks" surmised, "I think it's safe to say that Wall Street really, really, really hates this deal."

DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

112. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress the Individual Defendants' (a) breaches of fiduciary duties; and (b) waste of corporate assets.

113. Plaintiff is a shareholder of Freeport, held Freeport common stock at the time the Acquisitions were announced, and has continuously held Freeport common stock since that time.

114. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting its rights.

115. As a result of the facts set forth herein, Plaintiff has not made any demand on the Company's Board to institute this action against the Individual Defendants. Such demand would be a futile and useless act because: (1) the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action; and (2) the Acquisitions are so egregious on their face that Board approval cannot meet the test of business judgment.

116. First, as detailed in ¶¶ 81-98, the Individual Defendants suffered from manifest conflicts of interest and received material personal financial benefits in approving the Acquisitions. At the time the Individual Defendants approved the Acquisitions, McMoRan was being "managed jointly" by Defendants Moffett and Adkerson, the two biggest orchestrators of the Board's decision to approve the Acquisitions. At the time they approved the Acquisitions, Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham were serving as both directors on Freeport's Board and as directors of McMoRan's board of directors. As a result of approving the McMoRan Acquisition at a 74% premium to McMoRan's stock value, Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham personally gained a combined $68.5 million on their personally held shares of McMoRan stock, compared to what the value of their McMoRan shares was before the announcement of the McMoRan Acquisition.

117. The Individual Defendants' decision to enter into the Acquisitions was thus based on extraneous considerations and influences glaringly apparent by the abovementioned conflicts of interests and examples of personal self-dealing.

118. The members of the boards of Freeport, McMoRan, and Plains are all people with whom the Individual Defendants have entangling financial alliances, interests and dependencies, and therefore, they are not able to and will not vigorously prosecute any such action. The Board members participated in, approved and/or permitted the wrongs alleged herein to have occurred, and participated in efforts to conceal or disguise those wrongs from Freeport's stock holders or recklessly and/or negligently disregarded the wrongs complained of herein, and are therefore not disinterested parties.

119. Second, the Individual Defendants' decision to approve the Acquisitions is so egregious on its face that Board approval cannot meet the test of business judgment, and a substantial likelihood of director liability therefore exists. As described in ¶¶ 60-81, many analysts and investors have determined that the Acquisitions lack any reasonable logic or business rationale for Freeport, particularly in light of the conflicts of interest and acts of self-dealing by the Individual Defendants, as detailed in ¶¶ 81-98. As such, the Individual Defendants' decision to approve the Acquisitions was not made in good faith and for best interests of company and shareholders, and creates reasonable doubt that the Acquisitions were the product of a valid exercise of business judgment.

COUNT I

Breach of Fiduciary Duty
(Against the Individual Defendants)

120. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

121. As officers and/or directors of the Company, each of the Individual Defendants owed the Company and its shareholders the fiduciary obligations of loyalty and care. The Individual Defendants were and are required to act in furtherance of the best interests of the

Company and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit.

122. In approving the Acquisitions, each of the Individual Defendants breached their fiduciary duties of loyalty and care owed to the Company and its shareholders. In approving the Acquisitions despite obvious conflicts of interest, the Individual Defendants acted in self-interest and were motivated by personal interests adverse to the best interests of the Company and its shareholders. Because six of the Board members negotiated and approved the Acquisitions while simultaneously serving as officers and/or directors of McMoRan, the Individual Defendants also breached their fiduciary duty to implement the necessary oversight to insulate those Board members from improper access to and involvement in the decision-making process leading up the Board's decision to approve the Acquisitions.

123. The actions of the Individual Defendants could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

124. As a direct and proximate result of the Individual Defendants' breaches of fiduciary duties, the Company has already sustained substantial damages as a result of the Acquisitions and will continue to sustain substantial damages should the Acquisitions be consummated.

125. As a result of the foregoing, Freeport has sustained and will continue to sustain irreparable harm. Freeport has no adequate remedy at law.

COUNT II

Corporate Waste
(Against the Individual Defendants)

126. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

127. By failing to properly consider the interests of the Company and its public shareholders, the Individual Defendants have caused Freeport to waste valuable corporate assets.

128. In approving the Acquisitions, the Individual Defendants were motivated by self-interests adverse to the best interests of Freeport and its shareholders. As a consequence of the Individual Defendants' misconduct, Freeport has suffered significant harm while the Individual Defendants have received and will receive personal financial benefits at the expense of Freeport.

129. For the reasons detailed above, the Individual Defendants' decision to approve the Acquisitions was so egregious or irrational that it could not have been based on a valid assessment of the corporation's best interests. On their terms and with the presence of such conflicts of interest, no reasonable person acting in good faith could conclude that the Acquisitions were in the best interests of Freeport.

130. As a result of the foregoing, Freeport has been damaged and the Individual Defendants are liable to Freeport.

COUNT III

Aiding and Abetting Breach of Fiduciary Duty (Against Defendants McMoRan, Plains, and Flores)

131. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

132. In committing the wrongful acts alleged above, Defendants McMoRan, Plains, and Flores have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with and conspired with one another and the Individual Defendants in furtherance of their common plan or design. Defendants McMoRan, Plains, and Flores aided and abetted and/or assisted in the Individual Defendants' decision to approve the Acquisitions in breach of the Individual Defendants' fiduciary duties owed to Freeport and its shareholders.

133. In taking such actions to substantially assist the commission of the Individual Defendants' wrongdoing complained of herein, Defendants McMoRan, Plains, and Flores each acted with knowledge of the primary wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

134. As a direct and proximate result of the aiding and abetting of the Individual Defendants' breaches of fiduciary duties by Defendants McMoRan, Plains, and Flores, Freeport has sustained and will continue to sustain irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. Declaring that the Individual Defendants have violated and/or aided and abetted in the breach of their fiduciary duties to Freeport and its shareholders;

B. Permanently enjoining Individual Defendants, their agents, counsel, employees, and all persons acting in concert with them, from consummating the Acquisitions;

C. In the event the Acquisitions are consummated, rescinding them and setting them aside;

D. Ordering the Individual Defendants, and those under supervision and control, to implement and enforce policies, practices, and procedures on behalf of Freeport and its shareholders that are designed to detect and remove conflicts of interest from the Board's decision making process;

E. Awarding Freeport compensatory damages against the Individual Defendants, individually and severally, in an amount to be determined at trial, together with pre-judgment and post-judgment interest;

F. Directing the Individual Defendants to account for all damages caused by them and all profits and special benefits they have obtained as a result of their unlawful conduct, including all salaries, bonuses, fees stock awards, options and common stock proceeds and imposing a constructive trust thereon;

G. Awarding Plaintiff costs and disbursements and reasonable allowances for Plaintiff's counsel and expert's fees and expenses; and

H. Granting such other relief as this Court may deem just and proper under the circumstances.

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