

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

IN RE WEATHERFORD INTERNATIONAL  
SECURITIES LITIGATION

11 Civ. 1646 (LAK) (JCF)

CLASS ACTION

DEMAND FOR JURY TRIAL

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
AUTHORIZATION TO NOTIFY THE SETTLEMENT CLASS OF  
PROPOSED SETTLEMENT WITH DEFENDANTS AND  
TO SCHEDULE A SETTLEMENT HEARING**

**I. PRELIMINARY STATEMENT**

Court-appointed Lead Plaintiff American Federation of Musicians and Employers' Pension Fund ("AFME") and named plaintiff Georgia Firefighters' Pension Fund ("Georgia Firefighters") (collectively, "Plaintiffs") move pursuant to Fed. R. Civ. P. 23(e) for authorization to provide notice of the proposed Settlement with Weatherford International Ltd. ("Weatherford" or the "Company), Bernard Duroc-Danner, Andrew P. Becnel, Jessica Abarca and Charles E. Geer, Jr. (the "Individual Defendants" and, together with Weatherford, "Defendants") and to schedule a hearing for consideration of approval of the proposed Settlement.<sup>1</sup> Plaintiffs respectfully request that the Court: (i) preliminarily certify the proposed Settlement Class for purposes of effectuating the proposed Settlement; (ii) approve the form and manner of providing notice of the Settlement to the Settlement Class; (iii) schedule a hearing to consider the terms of the Settlement as set forth in the Stipulation and hear from any person or entity who wishes to speak on whether the Court should grant approval of the Settlement and other related issues (the "Settlement Hearing"); and (iv) stay all deadlines and other proceedings in the Action, except for the Settlement Hearing.

Subject to Court approval, Plaintiffs have agreed to settle the claims asserted in the Action against Defendants in exchange for a cash payment of \$52,500,000. The proposed Settlement is the result of nearly three years of hard-fought litigation, which included Plaintiffs' extensive investigation into the claims; the filing of the operative Amended Complaint for Violation of the Federal Securities Laws (the "Complaint") and a detailed [Proposed] Amended Complaint for Violation of the Federal Securities Laws, along with extensive briefing on a

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<sup>1</sup> All capitalized terms that are not otherwise defined herein shall have the meanings provided in the Stipulation and Release dated as of January 28, 2014 (the "Stipulation"), which is being filed concurrently herewith. *See* Exhibit 1 hereto.

motion for leave to amend the Complaint; briefing on Defendants' motion to dismiss; briefing on Plaintiffs' motion for class certification; and extensive discovery, including briefing on seven motions to compel, receipt and review of over 2.3 million pages of documents and participation in 14 total depositions. In addition, at the time the Settlement was reached, Plaintiffs were preparing for 10 additional depositions that were scheduled to take place in January, including those of some of the most senior officers of the Company, including Weatherford's CEO, former CFO, former Vice President of Tax and two Directors of Internal Audit. In light of the risks of continued litigation, Plaintiffs respectfully submit that the Settlement is fair, reasonable and adequate, and represents a substantial recovery for the Settlement Class.

Plaintiffs respectfully request that the Court authorize issuance of the Notice pursuant to Fed. R. Civ. P. 23(e), and establish the following schedule for notice to the Settlement Class and consideration of the proposed Settlement:

<u>Event</u>	<u>Proposed Due Date</u>	<u>Date/Deadline</u> <sup>2</sup>
Deadline for mailing the Notice and Claim Form to Settlement Class Members (the "Notice Date") <sup>3</sup>	20 business days following the Court's entry of the Notice Order	March 12, 2014
Deadline for publishing the Summary Notice <sup>4</sup>	10 business days after the Notice Date	March 26, 2014
Deadline for filing of papers in support of approval of Settlement, Plan of Allocation, Lead Counsel's application for attorneys' fees and expenses, and Plaintiffs' request for reimbursement of costs and expenses directly related to their representation of the Settlement Class	45 calendar days prior to the Settlement Hearing	April 11, 2014

<sup>2</sup> The specific proposed dates are respectfully estimated assuming that the Court enters the proposed Notice Order on or about February 12, 2014. In the event that the Court does not enter the proposed Notice Order on or before that date, Lead Counsel respectfully requests that the same timing intervals between deadlines in the schedule be provided for by the Court.

<sup>3</sup> See Exhibits A-1 and A-2 to the Notice Order (Exhibit A to the Stipulation).

<sup>4</sup> See Exhibit A-3 to the Notice Order.

Deadline for receipt of exclusion requests or objections	30 calendar days prior to Settlement Hearing	April 26, 2014
Deadline for filing reply papers	7 calendar days prior to Settlement Hearing	May 19, 2014
Settlement Hearing	Approximately 100 calendar days following the Court's entry of the Notice Order	May 26, 2014
Deadline for submitting Claim Forms	120 calendar days after the Notice Date	July 10, 2014

In the event that the Court approves the Settlement, this Action will be fully resolved.

## **II. THE SETTLEMENT RESULTS FROM EXTENSIVE NEGOTIATIONS AND LITIGATION**

The Settlement is the result of arms'-length negotiations, following substantial litigation, dispositive and non-dispositive motion practice, extensive discovery, consultation with experts, and class certification proceedings. The parties' on-going settlement efforts included in-person and telephonic discussions, as well as formal mediation. In June 2013, the parties participated in an in-person mediation session under the auspices of the Hon. Daniel H. Weinstein (Ret.), a former superior court judge for the State of California and associate justice *pro tem* of the California Supreme Court and of the First District Court of Appeal, and an experienced and highly respected mediator. Prior to the mediation, the parties submitted mediation statements setting out their respective positions. While the June 2013 mediation did not result in the resolution of the Action, the discussions allowed each party to better understand the other side's position and the parties continued settlement negotiations thereafter.

As the deadline for completion of fact discovery neared, the parties again sought the assistance of Judge Weinstein in resolving this Action towards the end of 2013. In early January 2014, the parties submitted updated statements of their positions reflecting the shift in the litigation and the general securities litigation landscape since June 2013. After extensive discussions with both parties, Judge Weinstein issued a mediator's proposal that both sides

accepted, leading the parties to reach an agreement in principle to settle the Action for \$52.5 million.

**III. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE**

The Parties have stipulated to certification of the Settlement Class, which is described in the Notice.<sup>5</sup> The proposed Settlement Class consists of all Persons who purchased or otherwise acquired Weatherford common stock between April 25, 2007 and March 1, 2011, inclusive, and who were allegedly damaged thereby. Certain persons and entities are expressly excluded from the agreed-upon definition of the Settlement Class, including: Defendants and Weatherford's officers, affiliates, and directors, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which a Defendant has a controlling interest. Also excluded from the Settlement Class are any persons or entities who exclude themselves from the Settlement Class by filing a timely request for exclusion in accordance with the requirements set forth in the Notice.

The Second Circuit has long recognized that class actions may be certified for the purpose of settlement only. *See Weinberger v. Kendrick*, 698 F.2d 61, 72 (2d Cir. 1982) (“Temporary settlement classes have proved to be quite useful in resolving major class action disputes.”); *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at \*8 (S.D.N.Y. Dec. 23, 2009); *see also In re Prudential Sec. Inc. Ltd. P’ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995) (certification of a settlement class “has been recognized throughout the country

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<sup>5</sup> On April 1, 2013, Plaintiffs filed a motion for class certification which was fully briefed as of May 22, 2013. Dkt. #117-118. In responding to Plaintiffs’ motion, Defendants expressly stated they did not challenge class certification, appointment of Lead Counsel as Class Counsel, or the appointment of Georgia Firefighters as Class Representative. Dkt. #127 at 2 n.1. Plaintiffs respectfully incorporate Plaintiffs’ class certification briefing by reference, herein. Dkt. #118, 132.

as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants”).

Here, as demonstrated in Plaintiffs’ class certification briefing and below, the proposed Settlement Class readily satisfies the requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure. *See, e.g.*, Dkt. #118. First, the numerosity requirement of Rule 23(a)(1) is satisfied because the number of Settlement Class Members likely is to be in the thousands. *In re Auction Houses Antitrust Litig.*, 193 F.R.D. 162, 164 n.2 (S.D.N.Y. 2000) (Kaplan, J.) (“While most class actions have involved larger numbers, classes as small as 35 or 36 members have been held to satisfy the numerosity requirement.”). Additionally, Defendants admitted during the litigation that the putative class contains more than one hundred members and “that the class as alleged in the Amended Complaint is so numerous that joinder of all members of the purported class would be impracticable.” *See* Second Amended Answer, ¶230 (Dkt. #115); *White v. First Am. Registry*, 230 F.R.D. 365, 366 (S.D.N.Y. 2005) (Kaplan, J.). Therefore, the members of the Settlement Class are sufficiently numerous that joinder of all members would be impracticable. *See Consol. Rail Corp. v. Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995).

Second, the Rule 23(a)(2) commonality requirement also is satisfied. The claims asserted in the Action present questions of law and fact common to all Settlement Class Members, including: (i) whether Defendants violated the federal securities laws; (ii) the nature and existence of material misrepresentations and omissions as alleged in the Amended Complaint; (iii) whether Defendants publicly omitted and/or misrepresented material facts; (iv) whether the market price for Weatherford’s publicly traded common stock was artificially inflated during the class period as a result of Defendants’ allegedly wrongful conduct; (v) whether Defendants’

misrepresentations, and/or omissions caused Settlement Class Members to suffer economic losses; (vi) the extent to which members of the Settlement Class sustained damages; (vii) the proper measure of damages sustained by Settlement Class Members; and (viii) whether the Individual Defendants are liable as ‘control persons’ under Section 20(a) of the Securities and Exchange Act of 1934. *See In re Parmalat Sec. Litig.*, 2008 WL 3895539, at \*4 (S.D.N.Y. 2008) (Kaplan, J.) (commonality “requirement ‘has been applied permissively in securities fraud litigation’ and generally is satisfied ‘where putative class members have been injured by similar material misrepresentations and omissions’”) (citation omitted); *see also In re Oxford Health Plans, Inc.* 191 F.R.D. 369, 374 (S.D.N.Y. 2000) (“Where the facts as alleged show that Defendants’ course of conduct concealed material information from an entire putative class, the commonality requirement is met.”); *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011) (to satisfy commonality requirement, class members’ “claims must depend upon a common contention” and “[t]hat common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”).<sup>6</sup>

Third, the Rule 23(a)(3) typicality requirement is satisfied because “each class member’s claim arises from the same course of events and each class member makes similar legal arguments to provide defendant’s liability.” *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009) (quoting *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir.1993)); *see also In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 85 (S.D.N.Y. 2007) (typicality requirement satisfied where “the claims of the named plaintiffs arise from the same practice or course of

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<sup>6</sup> Additionally, Defendants previously have admitted that each of these eight separate questions of law or fact are common to all members of the putative class. *See* Dkt. #115 at ¶233.

conduct that gives rise to the claims of the proposed class members.” (citations omitted)); *Oxford Health Plans*, 191 F.R.D. at 375.

Fourth, the Rule 23(a)(4) adequacy requirement is satisfied because Plaintiffs’ claims do not conflict with those of other Settlement Class Members, and Lead Counsel is qualified, experienced, and generally able to conduct the litigation. *See In re NYSE Specialist Sec. Litig.*, 260 F.R.D. 55, 73 (S.D.N.Y. 2009) (“The [adequacy] analysis focuses on whether the proposed class representatives possess ‘the same interest and suffer the same injury as the class members.’” (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 625-26, 117 S. Ct. 2231, 2250-51 (1997))); *see also Marsh & McLennan*, 2009 WL 5178546, at \*10; *Oxford Health Plans*, 191 F.R.D. at 376.

Lastly, the requirements of Rule 23(b)(3) are established. As discussed above, the common issues relating to Defendants’ liability predominate over any individualized issues. *Amchem*, 521 U.S. at 623, 117 S. Ct. at 2249 (“The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.”); *see also Tsereteli v. Residential Asset Securitization Trust 2006-A8*, 283 F.R.D. 199, 210 (S.D.N.Y. 2012) (Kaplan, J.) (“Class-wide issues predominate ‘if resolution of some of the legal or factual questions that qualify each class member’s case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.’”) (quoting *UFCW Local 1776 v. Eli Lilly & Co.*, 620 F.3d 121, 131 (2d Cir. 2010)). Moreover, class certification is the superior method of litigation for the Settlement Class Members’ claims. *See Tsereteli*, 283 F.R.D. at 217 (“In general, securities suits . . . easily satisfy the superiority requirement of Rule 23”) (citation and internal quotation marks omitted); *Marsh & McLennan*, 2009 WL 5178546, at \*12 (recognizing that the

“class action is uniquely suited to resolving securities claims,” because “the prohibitive cost of instituting individual actions” in such cases gives class members “limited interest in individually controlling the prosecution or defense of separate actions”); *In re Lehman Bros. Sec. & ERISA Litig.*, 2013 WL 440622, at \*5 (S.D.N.Y. Jan. 23, 2013) (“This is not a case in which all... investors have the means to maintain separate actions and invested large sums. Nor is this a case where the harm to each investor is so highly individualized that each member has an interest in maintaining an individual action.”). Furthermore, concerns regarding Rule 23(b)(3) manageability are not an issue in a class certified for settlement purposes. *See Amchem*, 521 U.S. at 593, 117 S. Ct. at 2235 (“Whether trial would present intractable management problems . . . is not a consideration when settlement-only certification is requested”).

#### **IV. THE FORM AND MANNER OF NOTICE TO THE SETTLEMENT CLASS SHOULD BE APPROVED**

As outlined in the proposed Order Concerning Proposed Settlement (the “Notice Order”), Plaintiffs will notify Settlement Class Members of the proposed Settlement by mailing a Notice and Claim Form to all Settlement Class Members who can be identified with reasonable effort.<sup>7</sup> The Notice will advise the Settlement Class Members of, *inter alia*: (i) the pendency of the class action; (ii) the essential terms of the Settlement; and (iii) information regarding Lead Counsel’s motion for attorneys’ fees and reimbursement of Litigation Expenses. The Notice also will provide specific information regarding the date, time and place of the Settlement Hearing and will set forth the procedures and deadlines for requesting exclusion from the Settlement Class,

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<sup>7</sup> Plaintiffs respectfully request that the Court appoint The Garden City Group, Inc. (“GCG”) to issue notice to the Settlement Class and administer the Settlement. GCG has ample experience in administering settlements in securities class actions and has been approved by this Court in several other matters in which Lead Counsel has recommended its appointment, including multiple settlements in *In re Lehman Brothers Equity/Debt Securities Litigation*, No. 08-CV-5523-LAK (S.D.N.Y.).

objecting to any aspect of the Settlement, the proposed Plan of Allocation or the motion for attorneys' fees and reimbursement of Litigation Expenses and submitting a Claim Form. Accordingly, the Notice and Summary Notice "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Lomeli v. Sec. & Inv. Co. Bahr.*, 2013 WL 6170572, at \*2 (2d Cir. Nov. 26, 2013) (citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)).

The proposed Notice Order further mandates that the Summary Notice be published once in the national edition of *The Wall Street Journal* and *Investor's Business Daily* and transmitted over *PR Newswire*. Lead Counsel will also post copies of the Notice, as well as other important documents, on its firm website, [www.ktmc.com](http://www.ktmc.com), and on the website developed for this Settlement, [www.WeatherfordSecuritiesLitigationSettlement.com](http://www.WeatherfordSecuritiesLitigationSettlement.com). Further, Plaintiffs, through the assistance of the Claims Administrator, will give notice to nominee purchasers such as brokerage firms and other persons who purchased or acquired Weatherford common stock as record owners but not as beneficial owners. The form and manner of providing notice to the Settlement Class represent the best notice practicable under the circumstances and satisfy the requirements of due process, Rule 23 and the Private Securities Litigation Reform Act of 1995. See *In re Warner Chilcott Ltd. Sec. Litig.*, 2008 WL 5110904, at \*3 (S.D.N.Y. Nov. 20, 2008); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 448-49 (S.D.N.Y. 2004).

## **V. CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully request that the Court enter the proposed Notice Order which will preliminarily certify the Settlement Class for settlement purposes only, schedule a date and time for the Settlement Hearing to consider approval of the

Settlement and related matters following an opportunity for Settlement Class Members to be heard, and stay all hearings, deadlines and other proceedings in the Action, except for the Settlement Hearing.

Dated: January 29, 2014

Respectfully submitted,

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*/s/ Eli Greenstein*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 29, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 29, 2014.

*/s/ Eli Greenstein*

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ELI GREENSTEIN