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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: FREEPORT-MCMORAN COPPER & GOLD INC. DERIVATIVE LITIGATION	C.A. No. 8145-VCN **PUBLIC VERSION FILED: JULY 26, 2013**

VERIFIED SECOND AMENDED AND CONSOLIDATED DERIVATIVE ACTION COMPLAINT

Dated: July 19, 2013

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Dated: July 19, 2013

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Co-Lead Plaintiffs Dauphin County Employee Retirement Fund, Jacksonville Police and Fire Pension Fund, State-Boston Retirement System, Amalgamated Bank, Trustee for the LongView LargeCap 500 Index Fund, LongView LargeCap 500 Index VEBA Fund, LongView Quantitative LargeCap Fund, and LongView Quantitative LargeCap VEBA Fund, and City of Roseville Employees' Retirement System (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby make the following allegations for their Verified Second Amended Derivative Complaint (the "Complaint") on behalf of Freeport-McMoRan Copper & Gold Inc. ("Freeport," "FCX" or the "Company"), as the nominal defendant, against members of the Freeport Board of Directors (defendants James R. Moffett, Richard C. Adkerson, Robert J. Allison Jr., Robert A. Day, Gerald J. Ford, H. Devon Graham, Jr., Charles C. Krulak, Bobby Lee Lackey, Jon C. Madonna, Dustan E. McCoy, B.M. Rankin, Jr., Stephen H. Siegele (collectively, the "Freeport Board")), Kathleen L. Quirk, and James C. Flores (together with the Freeport Board, the "Defendants").

Plaintiffs base their allegations on actual knowledge as to their own acts and on information and belief as to all other allegations after due investigation, including without limitation: (a) review and analysis of public filings made by Freeport and other entities with the Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and other publications disseminated by certain of the Defendants and other persons; (c) review of other publicly available information concerning Freeport and other persons or entities; and (d) review and analysis of internal Company documents as well as internal documents and deposition testimony from certain Defendants and third parties

obtained in response to demands by Plaintiffs pursuant to 8 Del. C. § 220 and through expedited discovery.

I. NATURE AND SUMMARY OF THE ACTION

1. Freeport is one of the largest copper, gold, and molybdenum producers in the world and is dominated by James R. Moffett ("Moffett"), its Chairman and former CEO. Moffett is also the co-founder, Co-Chairman, President, CEO, and the largest individual shareholder of McMoRan Exploration Co. ("MMR").

2. This shareholder derivative action challenges the conflicted Freeport Board's decision to significantly overpay to acquire MMR and Plains Exploration & Production Co. ("PXP") (the "Transactions"). Defendant Moffett orchestrated the Transactions in order to bail-out his personal investment in the financially imperiled MMR. To garner support for the Transactions, Moffett gave substantial personal benefits to numerous insiders, including a majority of the Freeport Board, as well as PXP's CEO, Defendant James C. Flores ("Flores").

3. Unlike the cash-rich Freeport, which is a secure and stable mining "pure play," MMR is a cash-poor oil and gas exploration company focused on the capital intensive, high-risk and never-before-successful business of "ultra-deep" drilling in the Gulf of Mexico. PXP, another oil and gas exploration company, was MMR's largest shareholder prior to the Transactions, with a 31.3% ownership stake in that company and an absolute veto on any effort by Freeport to purchase more MMR shares.

4. By early 2012, after a series of setbacks with its chief venture, the "Davy Jones" well, MMR rapidly was running out of cash and its ability to continue to fund its

expensive ultra-deep drilling business was imperiled. The situation worsened in January 2012, when Moffett learned that PXP was looking to sell its MMR shares. PXP's potential divestiture of its MMR holdings left Moffett and the eight other Freeport directors who owned MMR shares and/or sat on MMR's board in a bind because MMR's largest shareholder giving up on MMR's prospects would further cast doubt upon the struggling company's long term viability, threatening significant declines in its share price. In addition, to the extent that PXP sold its large block of MMR shares—especially to an unfriendly buyer—Moffett's control of MMR could be at risk.

5. With MMR in jeopardy, Moffett devised a plan to use his cash-rich company, Freeport, to bail out his struggling company, MMR. Of course, Moffett had to secure PXP's cooperation—both to stop PXP from exiting MMR and because PXP could veto any Freeport acquisition of MMR. Moffett secured PXP's and its CEO's cooperation by overpaying to acquire PXP while lining the pockets of PXP's CEO, Flores, to the tune of over $200 million in cash and stock. Moffett even gave Flores a spot as Vice-Chairman of the merged company and CEO of its oil and gas business, leaving Flores as Moffett's heir-apparent for the helm of Freeport.

6. Having secured PXP and Flores' cooperation, Moffett turned to ensuring that the Freeport Board would approve the Transactions. Moffett knew from prior experience that Defendant Robert J. Allison ("Allison") would be appointed as the chairman of any special committee established to consider the Transactions. So, before even proposing the acquisitions to the Freeport Board, Moffett secured Allison's support. At a private meeting in April 2012, Allison confirmed to Moffett that he was "on board"

with the Transactions and "want[ed] to do the deal." Only afterward, on April 30, 2012, did Moffett unveil his plan to the Freeport Board, which then established a special committee to "consider" the transactions (the "Special Committee"). As expected, Allison was appointed chairman.

7. The Special Committee was a rubber stamp. At its very first meeting, instead of assessing whether to even enter the oil and gas business, much less to buy MMR and PXP, the Special Committee focused on how to structure Freeport's acquisition of MMR and PXP so as to avoid a vote by Freeport's shareholders, which abolished any pretense of the Special Committee's good faith. Indeed, the Special Committee members knew that Freeport's shareholders would never support such an illogical and value-destroying merger. Rather than do their jobs loyally, the Special Committee sought from the outset to deny the Company's shareholders any ability to reject the Transactions.

8. While the Special Committee hired outside financial advisors and consultants, none of them actually protected the interests of Freeport's shareholders. As explained below, these advisors pushed only to inflate the value placed on MMR, a perverse position coming from advisors purportedly acting for the purchaser, Freeport. Moffett also actively pressed MMR's special committee and its advisors to seek ***a higher price for MMR*** – despite being hopelessly conflicted and supposedly taking a "hands off" approach to the process.

9. The die had been cast. On December 5, 2012, the three companies announced that they had reached a deal. Freeport agreed to acquire MMR for the

outlandish price of $14.75 per share in cash—consideration on its own reaching nearly an 80% premium—plus 1.15 units of a royalty trust, potentially representing an additional $2.45 of value per share.

10. While the Transactions eliminated Moffett's and the Freeport Directors' personal MMR exposures, they did not benefit Freeport itself. Numerous investors and analysts recognized and publicly complained that the Transactions made no sense as soon as they were first announced. As one analyst put it, the MMR acquisition is "destructive" and that it "reeks of saving an oil company at the expense of FCX shareholders." Indeed, Defendant Allison himself admitted in sworn deposition testimony that the nearly 80% premium that Freeport paid for MMR was "unusual" – a striking acknowledgement by the chair of Freeport's Special Committee.

11. Freeport agreed to acquire PXP for a rich price of $25.00 in cash and 0.6531 shares of Freeport for each share of PXP. Following the announcement of the Transactions, however, Freeport's share price dropped dramatically, lessening the value of the consideration PXP shareholders were to receive. Recognizing they had to placate PXP shareholders in order for the MMR deal to go through, Moffett and Freeport's Board decided to sweeten the pot even more by permitting PXP to issue a $3 special dividend, costing Freeport approximately $390 million in cash. Freeport also issued a supplemental dividend of $1.00 per share in connection with the closing of the PXP Merger, which cost the Company another approximately $84 million to the former PXP shareholders.

12. The market's reaction to the announcement of the Transactions was overwhelmingly negative. Freeport's stock price plummeted from $38.28 at the close on December 4, 2012 to a closing price of $30.81 on December 6, 2012—a decline of over 19% on extremely heavy trading volume. This dramatic drop in Freeport's stock price demonstrated investors' attempt to run for the door, recognizing the lack of a strategic business rationale for the Transactions, the obvious conflicts involved, and the plainly unfair price paid by Freeport. Analysts were also highly critical of the Transactions—especially the fact that Defendants deprived Freeport's shareholders of the opportunity to vote on the Transactions. For example, Tony Robston of BMO Capital Markets downgraded Freeport stock, stating "Most perturbing, in our view, is the lack of opportunity for shareholders to vote on a transaction that is two-thirds the market cap of FCX, especially given management's financial interest …."

13. Plaintiffs therefore bring this stockholder derivative action to recover damages and other relief on behalf of nominal defendant Freeport against the Defendants for breach of fiduciary duty and against Flores for aiding and abetting breach of fiduciary duty related to the negotiations and decisions that led to the Transactions.

II. JURISDICTION

14. This Court has jurisdiction over this action pursuant to 10 *Del. C.* § 341.

15. As directors of a Delaware corporation, the Freeport Director Defendants and Flores have consented to the jurisdiction of this Court pursuant to 10 *Del. C.* § 3114. Likewise, as a senior officer of a Delaware corporation, Defendant Quirk has consented to the jurisdiction of this Court pursuant to 10 *Del. C.* § 3114.

16. This Court has jurisdiction over Freeport pursuant to 10 *Del. C.* § 3111.

III. PARTIES

A. CO-LEAD PLAINTIFFS

17. Co-Lead Plaintiff Dauphin County Employee Retirement Fund owns 17,985 shares of Freeport common stock and has owned shares of Freeport common stock throughout the entire relevant period, including during the time of the wrongful course of conduct by the Defendants alleged herein.

18. Co-Lead Plaintiff Jacksonville Police and Fire Pension Fund holds 37,000 shares of Freeport common stock and has owned shares of Freeport common stock throughout the entire relevant period, including during the time of the wrongful course of conduct by the Defendants alleged herein.

19. Co-Lead Plaintiff State-Boston Retirement System currently holds 61,000 shares of Freeport common stock and has owned shares of Freeport common stock during the relevant period, including during the time when Defendants committed wrongful acts alleged herein.

20. Co-Lead Plaintiff Amalgamated Bank is Trustee for the LongView LargeCap 500 Index Fund, LongView LargeCap 500 Index VEBA Fund, LongView Quantitative LargeCap Fund, and LongView Quantitative LargeCap VEBA Fund (collectively, the "Funds"). The Funds currently own 347,324 shares of Freeport stock and have owned Freeport shares throughout the entire relevant period, including during the time of the wrongful course of conduct by the Defendants alleged herein.

21. Co-Lead Plaintiff Roseville Employees' Retirement System currently holds 13,906 shares of Freeport stock and has been a shareholder throughout the entire relevant period, including during the time of the wrongful course of conduct by the Defendants alleged herein.

B. NOMINAL DEFENDANT

22. Nominal Defendant Freeport is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 333 North Central Avenue, Phoenix, Arizona. Freeport is a leading, international copper, gold and molybdenum mining company. Indeed, Freeport is the world's largest publicly traded copper producer and has a dynamic portfolio of operating, expansion and growth projects in the copper industry. Freeport is also the world's largest producer of molybdenum and a significant gold producer. Freeport's common stock trades on the New York Stock Exchange (the "NYSE") under the ticker symbol "FCX." Freeport maintains a registered agent in the State of Delaware at the following address: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808. Freeport is a party to the MMR Merger Agreement and the PXP Merger Agreement.

C. DEFENDANTS

23. Defendant Moffett has served as Chairman of the Board of Freeport since May 1992. He was Freeport's Chief Executive Officer from July 1995 through December 2003. Moffett has also served as Co-Chairman of the Board of MMR since September 1998, and President and Chief Executive Officer since May 2010. Moffett provided services to MMR through a services agreement between MMR and FM Services

Company ("FM Services"), a wholly owned subsidiary of Freeport. Moffett was the single largest individual MMR shareholder, beneficially owning approximately 8,918,206 MMR shares, or 5.39% of MMR's stock, prior to the closing of the MMR merger.

24. Defendant Richard C. Adkerson ("Adkerson") has served as Freeport's President since January 2008 and as its CEO since December 2003. Adkerson was also President of Freeport from April 1997 to March 2007, and its Chief Financial Officer ("CFO") from October 2000 to December 2003. Adkerson also served as Co-Chairman of the MMR Board from 1998 to the closing of the MMR Merger, and had been an MMR director since 1994. He was CEO of MMR and its predecessor from 1994 to 2004 and served as President from 1998 to 2004. Adkerson was considered an executive officer of MMR. He worked with Moffett and the MMR Board to set the financial and business strategy of MMR and managed its day-to-day financial and administrative affairs. Adkerson provided services to MMR through a services agreement between MMR and FM Services. Assuming conversion of Freeport's preferred shares in MMR, Adkerson beneficially owned 546,942 shares of MMR common stock and 2,375,000 shares of MMR common stock that could be acquired within sixty days upon the exercise of options and the vesting of RSUs granted pursuant to MMR's stock incentive plans.

25. Defendant B.M. Rankin, Jr. ("Rankin") is Vice Chairman of the Freeport Board and has been a director since 1995. Rankin was a director of MMR since its formation in 1994. Rankin had served as Vice Chairman of the MMR Board since 2001. He beneficially owned approximately 591,712 shares of MMR common stock and 30,375 shares of MMR common stock that could be acquired within sixty days upon the exercise

of options and the vesting of RSUs granted pursuant to MMR's stock incentive plans. Rankin and FM Services were parties to an agreement under which Rankin rendered business consulting services to MMR and Freeport relating to finance, accounting, public policy matters, and business development. FM Services provided Rankin compensation, medical coverage, and reimbursement for taxes in connection with those medical benefits. In 2011, Rankin received approximately $917,000 from FM Services, including more than $343,000 for personal use of corporate aircraft. In 2012, FM Services provided Rankin with $1,005,737 in cash and services.

26. Defendant Robert A. Day ("Day") has served as a director of Freeport since 1995. Day serves as Chairman of the Freeport Board's Audit Committee and as a member of its Nominating and Corporate Governance Committee. Day also served as a director on the MMR Board from 1994 until the closing of the MMR merger. He beneficially owned approximately 964,560 shares of MMR stock and 41,250 shares of MMR common stock that could be acquired within sixty days upon the exercise of options and the vesting of RSUs granted pursuant to MMR's stock incentive plans.

27. Defendant Gerald J. Ford ("Ford") has served as a director of Freeport since 2000 and is a member of the Freeport Board's Audit Committee and its Nominating and Corporate Governance Committee. Ford also served as a director of MMR from 1998 until the MMR merger closed. Assuming conversion of Freeport's preferred shares in MMR, Ford beneficially owned more than 2,064,018 MMR shares, and 41,250 shares of MMR common stock that could be acquired within sixty days upon the exercise of options and the vesting of RSUs granted pursuant to MMR's stock incentive plans.

28. Defendant H. Devon Graham, Jr. ("Graham") has served as a director of Freeport since 2000 and is Chairman of the Freeport Board's Corporate Personnel Committee and a member of its Audit Committee. Graham also served as director of MMR from 1999 until the MMR merger closed. Graham beneficially owned approximately 10,250 shares of MMR common stock and 41,250 shares of MMR common stock that could be acquired within sixty days upon the exercise of options and the vesting of RSUs granted pursuant to MMR's stock incentive plans.

29. Defendant Allison has served as a director of Freeport since 2001. He is a member of the Freeport Board's Corporate Personnel Committee and its Nominating and Corporate Governance Committee.

30. Defendant Charles C. Krulak ("Krulak") has served as a director of Freeport since 2007. He is a member of the Freeport Board's Corporate Personnel Committee.

31. Defendant Bobby Lee Lackey ("Lackey") has served as a director of Freeport since 1995 and is a member of the Freeport Board's Corporate Personnel Committee. He had previously been a director of MMR and Freeport's former parent company, FTX, from 1987 until Freeport was spun off from FTX in 1995. While on the FTX board, Lackey served with Defendants Adkerson, Moffett, and Rankin. He owned 10,335 MMR shares on April 26, 2013.

32. Defendant Jon C. Madonna ("Madonna") has served as a director of Freeport since 2007 and is a member of the Freeport Board's Audit Committee. Madonna owned 2,000 MMR shares on April 26, 2013.

33. Defendant Dustan E. McCoy ("McCoy") has served as a director of Freeport since 2007.

34. Defendant Stephen H. Siegele ("Siegele") has served as a director of Freeport since 2006 and is a member of the Freeport Board's Audit Committee. In light of his relationships with MMR (which are not described in Freeport's public filings), on December 4, 2012, Siegele recused himself (as did Moffett and Adkerson) from a Freeport Board meeting relating to approval of the PXP and MMR Mergers. He owned 951,612 MMR shares as of April 26, 2013.

35. Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Allison, Krulak, Lackey, Madonna, McCoy, and Siegele comprise the Freeport Board.

36. Half of the Freeport Board—Moffett, Adkerson, Rankin, Day, Ford, and Graham—comprised more than half of the eleven-person MMR Board (the "Overlapping Directors"). Adkerson (Freeport's President and CEO) was the Co-Chairman of the MMR Board, Moffett (Freeport's Chairman) was President and CEO of MMR, and Rankin (Freeport's Vice Chairman) was Co-Chairman of the MMR Board.

37. Defendant Kathleen L. Quirk ("Quirk") has served as Executive Vice President of Freeport since March 2007, CFO of Freeport since December 2003, and Treasurer of Freeport since February 2000. Quirk also served as the Senior Vice President of MMR since April 2002 and as Treasurer of MMR since January 2000. Quirk provides services to MMR through a services agreement between MMR and FM Services. Quirk has had twenty-one years of experience in the Freeport-McMoRan

organization. Quirk beneficially owned approximately 16,134 shares of MMR stock and 465,000 options/RSUs that vested upon closing of the MMR Merger.

38. Quirk and the Freeport Board are referred together to as the "Freeport Individual Defendants."

39. Nine members of the Freeport Board along with Quirk held an aggregate of nearly 10% of MMR's stock. These board members were conflicted from independently assessing any transactions involving MMR and PXP because they had monetary and reputational interests that were not aligned with the outside shareholders of Freeport. As explained below, Freeport directors and officers with MMR stock received massive windfalls in the MMR Merger. Moreover, these individuals were allowed to convert their MMR equity-based awards into Freeport equity-based awards pursuant to a windfall exchange ratio (described at ¶¶ 198-202 below). The chart below shows the merger consideration received by these individuals in the MMR Merger and number of MMR equity-based awards that were subject to the windfall conversion ratio:

Holder Name	**Freeport Position**	**MMR Position**	**Shares of MMR (excluding options or RSU exercisable as of 4/26/13)**	**Cash Value of Merger Consideration for MMR Shares**	**Royalty Trust Units**	**Exercisable Options & RSUs to be Converted to FCX Options and RSUs**	**Non-Exercisable Options & RSUs to be Converted to FCX Options & RSUs**
Moffett	Chairman	Co-Chairman, President & CEO	5,092,143	$75,109,110	5,855,964	3,825,000	500,000
Adkerson	President, CEO & director	Co-Chairman	473,870	$6,989,583	544,950	2,375,000	375,000
Rankin	Vice Chairman	Vice Chairman	597,962	$8,819,940	687,656	57,875	-
Day	Director &	Director &	970,810	$14,319,448	1,116,432	68,750	-

Holder Name	Freeport Position	MMR Position	Shares of MMR (excluding options or RSU exercisable as of 4/26/13)	Cash Value of Merger Consideration for MMR Shares	Royalty Trust Units	Exercisable Options & RSUs to be Converted to FCX Options and RSUs	Non-Exercisable Options & RSUs to be Converted to FCX Options & RSUs
	Chair of the Audit Committee	Chair of the Audit Committee					
Ford	Director	Director	1,924,123	$28,380,814	2,212,742	68,750	-
Graham	Director	Director	16,500	$243,375	18,975	68,750	-
Lackey	Director		10,335	$152,441	11,885	-	-
Madonna	Director		2,000	$29,500	2,300	-	-
Siegele	Director		951,612	$14,036,277	109,4354	-	-
Quirk	EVP, CFO & Treasurer	Executive Officer	19,539	$288,200	22,470	485,000	75,000
TOTAL			10,058,894	$148,368,688	11,567,728	6,949,125	950,000

40. Defendant Flores was Chairman, President and CEO of PXP. He had been Chairman and CEO of PXP since December 2002, and President since March 2004. Flores had also served as PXP's designee to the MMR Board since 2010. Upon consummation of the Transactions, Flores was appointed Vice Chairman of the Freeport Board and President and CEO of Freeport's oil and gas operations. Flores beneficially owned approximately 1,202,358 shares of PXP and 8,672 shares of MMR. In addition, Flores received change-in-control benefits worth more than $200 million when PXP merged with Freeport.

D. OTHER RELEVANT ENTITIES AND INDIVIDUALS

41. PXP was a Delaware corporation with its principal place of business in Houston, Texas. PXP was an independent oil and gas company engaged in acquiring, developing, exploring and producing oil and gas properties primarily in the United States.

PXP owned oil and gas properties with principal operations in: Onshore California; Offshore California; the Gulf Coast Region, including Eagle Ford Shale and Haynesville Shale; the Gulf of Mexico; and the Rocky Mountains. PXP was a party to the PXP Merger Agreement. PXP owned approximately 31.3% of MMR common stock and could nominate two persons to the MMR Board. The MMR Board members nominated by PXP were Flores, PXP's President and CEO, and John F. Wombwell ("Wombwell"), PXP's Executive Vice President, General Counsel and Secretary.

42. MMR was a Delaware corporation with its principal place of business in New Orleans, Louisiana. MMR historically engaged in the exploration, development, and production of oil and natural gas in the shallow waters (less than 500 feet deep) of the Gulf of Mexico and onshore in the Gulf Coast area of the United States. MMR had one of the largest acreage positions in the shallow waters of the Gulf of Mexico and Gulf Coast areas, and had primarily focused its technological and operational resources in these areas. MMR's more recent exploration strategy focused on "deep gas play," drilling to depths of 15,000 to 25,000 feet in the shallow waters of the Gulf of Mexico and Gulf Coast area to target large structures in the Deep Miocene, and on the "ultra-deep gas play" below 25,000 feet. MMR was a party to the MMR Merger Agreement. The MMR Board was comprised of the following eleven individuals: Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, and Flores, and non-parties John F. Wombwell, A. Peyton Bush III ("Bush"), William P. Carmichael ("Carmichael"), and Suzanne T. Mestayer.

43. FM Services is a Delaware Corporation and a wholly owned subsidiary of Freeport. FM Services provides "back office" services to both Freeport and MMR including executive, technical, administrative, tax, accounting, financial and other services. As a result, there is overlap of virtually every senior officer and many directors in the two corporations:

Name	**Freeport Position**	**MMR Position**
James R. Moffett	Chairman	Co-Chairman, President & CEO (services provided through FM Services Company)
Richard C. Adkerson	President, CEO & director	Co-Chairman (services provided through FM Services Company)
B. M. Rankin, Jr.	Vice Chairman	Vice Chairman
Robert A. Day	Director & Chair of the Audit Committee	Director & Chair of the Audit Committee
Gerald J. Ford	Director	Director
H. Devon Graham, Jr.	Director	Director
John G. Amato	Executive of FM Services (wholly-owned subsidiary of Freeport)	General Counsel
Gabrielle Kirk McDonald	Special Counsel on Human Rights & Advisory Director	Advisory Director
J. Taylor Wharton	Advisory Director	Advisory Director
Kathleen L. Quirk	EVP, CFO & Treasurer	Executive Officer (services provided through FM Services Company)
Nancy D. Parmelee	Controller of Operations	SVP, CFO & Secretary (services provided through FM Services Company)
Dean T. Falgoust	Chief Compliance Officer	VP
C. Donald Whitmire, Jr.	Principal Accounting Officer	Principal Accounting Officer

Freeport and MMR management also utilized the same office space, had the same phone number, and communicated on the same Internet domain, "@fmi.com."

44. Michael Madden ("Madden") is Managing Partner of Blackeagle Partners ("Blackeagle") and Chairman of the Board of Hanover Capital L.L.C.

45. Hanover Advisors LLC ("Hanover"), of which Madden is the principal, was hired by Freeport management to provide financial consulting services with respect to Freeport's potential acquisitions of PXP and MMR.

46. Credit Suisse Securities (USA) LLC ("Credit Suisse") was hired by the Freeport Special Committee to be its financial advisor in connection with the Transactions.

47. RPS Group ("RPS") is an oil and gas engineering consultant that was hired by the Freeport Special Committee to perform a review and analysis of the reserves and resource potential of each of MMR and PXP.

48. Evercore Group L.L.C. ("Evercore") was hired by the MMR Special Committee as its financial advisor. William Hiltz ("Hiltz") was the lead Evercore banker working on the MMR Merger.

49. Wachtell, Lipton, Rosen & Katz ("Wachtell Lipton") was retained by the Freeport Special Committee as its independent legal counsel in connection with the Transactions.

IV. SUBSTANTIVE ALLEGATIONS

A. BACKGROUND

1. Moffett's History of Influence Over the Freeport-McMoRan Family of Companies

50. Moffett controls Freeport-McMoRan and is the ultimate authority over all the related entities bearing that moniker or a version of it. He routinely, and to serve his own interests, reorganizes the companies, combining and separating them to enrich himself and other insiders, using public shareholders' equity to finance his schemes.

51. Moffett maintains control over the Freeport-McMoRan family through, among other things, FM Services, which provides virtually all of the executive functions to the Freeport-McMoRan entities, including Freeport and MMR. As a result, Freeport and MMR overlap at virtually every senior management position. In addition, the family of companies has maintained substantial overlap amongst the membership of their boards of directors. This interrelated governance structure permits Moffett to dominate and exercise control over both Freeport and MMR. Further, Freeport and MMR routinely held coordinated board meetings, including joint dinners held at Moffett's private home. Indeed, as described below, Freeport and MMR held a joint board dinner at Moffett's home in Austin, Texas on December 3, 2012—the evening ***before*** the Freeport Board approved the Transaction.

52. The interrelated history of Freeport and MMR, and how they came to exist in their current form, demonstrates Moffett's dominance. In 1969, Defendant Moffett, together with Defendant Rankin and Ken McWilliams, Jr., founded McMoRan Exploration – the company name combining a portion of each founders' surname (*i.e.*, McWilliams, Moffett, and Rankin combine to spell "McMoRan"). McMoRan Exploration initially provided consulting services for oil and gas exploration, but later expanded to handle entire projects.

53. In 1981, Moffett merged McMoRan Exploration subsidiary McMoRan Oil & Gas Co. with Freeport Minerals Co., creating Freeport-McMoRan, Inc. ("FMI"). FMI and its predecessors engaged in oil and gas exploration, development and production activities, and were among the most active drillers in the Gulf of Mexico during the

1980s. Moffett and Defendants Day, Lackey and Rankin served on FMI's board of directors (with Moffett serving as Chairman and CEO), while Defendant Adkerson served as FMI's CFO.

54. Freeport was formed as a subsidiary of FMI in 1987 and focused on copper and other metals mining. In 1992, while Moffett was CEO and Chairman of FMI, he became Chairman of Freeport, and from 1995 to 2003 also served as Freeport's CEO.

55. In the mid-1990s, however, the inefficiency and lack of synergies of combining a metals mining business with an oil and gas exploration business became clear. Accordingly, in 1995, Moffett caused FMI to reorganize, spinning off Freeport as an independent company.

56. Since then, Freeport has become one of the world's largest copper, gold and molybdenum mining companies. The Company's portfolio of mining assets includes the Grasberg mineral district in Indonesia—which is the largest copper and gold mine in the world in terms of recoverable reserves—significant mining operations in North and South America and mining operations in the Democratic Republic of Congo. As noted above, Defendant Moffett has been Chairman of Freeport's Board since 1992. Moffett also served as Freeport's CEO from July 1995 through December 2003.

57. At around the same time as the Freeport spin-off, Moffett caused FMI to spin off MMR's predecessors, McMoRan Oil & Gas Co. in 1994, and Freeport-McMoRan Sulphur Inc. in 1997. Following the spin-off, Moffett assumed the role of McMoRan Oil & Gas Co.'s Co-Chairman, and explained that the purpose of the spin-off

was to allow McMoRan Oil & Gas Co. to rebuild, albeit with essentially the same management and exploration team.

58. MMR was created on November 17, 1998, pursuant to a merger between McMoRan Oil & Gas Co., and Freeport-McMoRan Sulphur Inc. Defendant Moffett has been Co-Chairman of MMR's Board since its inception in November 1998, and has been MMR's President and CEO since May 2010.

59. During the past few years, MMR has embarked in a high-risk exploration strategy focused on the "deep gas play" (*i.e.*, wells with depths of 15,000 – 25,000 feet) and the "ultra-deep gas play" (*i.e.*, wells with depths beyond 25,000 feet) in the Gulf of Mexico. MMR is one of very few companies drilling in the ultra-deep of the Gulf of Mexico.

2. Freeport and PXP's Substantial Investments In MMR

60. On December 30, 2010, Freeport and PXP entered into separate, but simultaneous, transactions involving MMR.

61. First, MMR agreed to acquire PXP's shallow water (less than 500 feet of water) Gulf of Mexico shelf assets for a combination of 51 million shares of MMR common stock and $75 million in cash (the "MMR-PXP Acquisition"). Upon consummation of the MMR-PXP Acquisition, MMR and PXP entered into a stockholder agreement, effective December 30, 2010 (the "PXP Stockholder Agreement"), pursuant to which, among other things, the size of MMR's board of directors was increased from 9 to 11 members and PXP was granted the right to nominate two individuals to serve on MMR's board of directors. PXP nominated its CEO, Flores, and its Executive Vice

President, Wombwell, both of whom continued to serve on the MMR Board as PXP's designees.

62. Also on December 30, 2010, upon completion of, and as a condition to, the MMR-PXP Acquisition, and in order to fund its expanding drilling program, MMR raised $900 million through the issuance of convertible securities to Freeport. MMR issued 500,000 shares of MMR convertible preferred stock to Freeport-McMoRan Preferred LLC ("Freeport Preferred"), a Delaware limited liability company and wholly owned subsidiary of Freeport. The 500,000 preferred shares were convertible into 16.1% of MMR stock.

63. Freeport's investment provided MMR (and Moffett) with a majority of the cash it needed to carry out its acquisition of the PXP Gulf Shelf. MMR entered into a stockholder agreement with both Freeport and Freeport Preferred pursuant to which, among other things, Freeport had the right to nominate two individuals to serve on MMR's board of directors.

64. As a result of the December 2010 transactions, Freeport beneficially owned 31,250,000 MMR shares, or approximately 16.1% of MMR's common stock on an as-converted basis, and PXP beneficially owned 51,000,000 MMR shares or approximately 31.3% of MMR's common stock.

65. PXP, in addition to controlling approximately one-third of MMR's common stock and having two representatives on its Board, held significant influence over MMR by virtue of the fact that MMR's Composite Certificate of Incorporation (the "MMR Charter") required approval by a supermajority (75%) of MMR's stockholders for

any transaction involving any "Interested Stockholder" holding more than 15% of MMR's stock. As result of this supermajority approval requirement, PXP could veto any purchase of additional MMR shares by Freeport.

B. MOFFETT USES FREEPORT TO BAIL OUT MMR TO PROTECT HIS PERSONAL INTERESTS

66. Moffett's pursuit of an expensive, high-risk, ultra-deep gas drilling strategy resulted in significant losses. In addition, the company suffered crippling delays on its major projects. Thus, by early 2012, MMR found itself in a precarious and worsening financial position. Moffett recognized that the imperiled MMR would quickly run out of cash to fund its exploration activities. Adding to his troubles was the fact that MMR's shareholders were becoming vocally critical of his leadership, creating a real risk that they might seek his ouster. Accordingly, Defendant Moffett—MMR's co-founder, Chairman, President, CEO and largest individual shareholder—orchestrated a bailout of MMR by the cash-rich Freeport.

1. MMR's Drilling Projects Fail and It Starts to Run Out of Cash

67. MMR's focus on the "ultra-deep gas play" is highly speculative and extremely capital intensive. Over the past few years, MMR has found itself under increasing financial stress due to exploding expenses, the industry-wide negative effects of the April 2010 Deepwater Horizon/Macondo oil spill in the Gulf, increased competition from fracking (the hydraulic fracturing of deep underground rock formations to extract shale oil and natural gas), and weak natural gas prices.

68. MMR's financial position has been further imperiled by the fact that it has obtained little or no returns on its ultra-deep natural gas wells. MMR's highest profile

well—the so-called "Davy Jones" well—experienced significant operational difficulties since MMR started installing its production facilities in September 2011, and the well had not demonstrated that any of its resources were commercially viable and/or recoverable.

69. By mid-2011, MMR was in dire financial straits. For example, on July 19, 2011, MMR announced dismal second quarter results, reflecting the company's expenses skyrocketing against minimal returns. MMR reported a 71% increase in total costs, including a quadrupling of exploration expenses from the same quarter in the prior year. MMR also reported increasing losses, including a net loss of $39.9 million, or 32-cent loss per share, for the quarter—more than double its loss of $16.5 million over the same period in 2010. Further, the company reported a $37.9 million loss from its continuing operations, which more than doubled the $15.0 million loss MMR reported during the same period in the prior year.

70. On October 17, 2011, MMR announced its third quarter 2011 results, which were punctuated by a new loss of almost $10 million, an amount that would have been three times greater if not for $23 million in insurance proceeds the Company received for losses from Hurricane Ike in 2008.

71. By the end of 2011, MMR was rapidly running out of cash. On December 31, 2010, the company reported cash (or cash equivalents) of over $905 million. Yet, by December 31, 2011, MMR's reported cash and cash equivalents had been dramatically reduced to $568.7 million. Moreover, as of December 31, 2011, MMR had approximately $265.5 million of working capital—less than half of the $628.6 million it had at the end of 2010.

72. On January 23, 2012, an analyst at JPMorgan downgraded MMR stock to "Underweight" and cut its price target from $8.50 per share to $6.50, "based on valuation and our increased concern about the risks with the Davy Jones flow test and subsequent production." The JPMorgan report stated that MMR's "[v]aluation [is] not attractive," noted that "many of MMR's plays are uneconomic" and concluded that "the stock has no equity value."

73. MMR's financial condition worsened even as Defendants negotiated the Transaction. Indeed, around the time the Transactions were announced at the end of 2012, MMR's stock was trading near its 52-week low, and MMR was soon going to run out of cash, leaving it with grim future prospects. For example, as of December 31, 2012, MMR reported cash and cash equivalents of merely $114.9 million, a small fraction of the nearly $1 billion in cash that MMR had at the start of 2011. Defendant Adkerson, an executive of both Freeport and MMR, publicly acknowledged "McMoRan's [poor] balance sheet, its need for capital, and the recent focus on the inability to get a successful production test from the Davy Jones well." By the end of 2012, MMR required an immediate and substantial cash infusion to survive. Indeed, Adkerson conceded in sworn deposition testimony that certain of MMR's own internal models showed that, absent intervention, MMR would run out of cash in 2013.

74. With MMR in trouble, Moffett's more than 5.3% stake in the company and his control over the company's business were in jeopardy. Accordingly, in early 2012, Defendant Moffett began orchestrating a bailout of MMR by the cash-rich Freeport.

2. Moffett Ensures PXP's Cooperation in Freeport's Bailout of MMR

75. Also in early 2012, Flores, on behalf of PXP, raised with Moffett the prospect of PXP selling a portion of its shares of MMR common stock, which would have required MMR to file a registration statement.

76. Because PXP had such a large stake in MMR, if PXP divested its MMR shares, the consequences would be devastating (1) to MMR, as it would signal one of MMR's largest investors giving up on the company's viability, wreaking havoc on MMR's already faltering share price; and (2) to Moffett personally, given that PXP's exit from MMR would not only hurt his massive MMR holdings, but would also be embarrassing for him and put at risk his reign over the MMR business. Accordingly, Moffett did not want PXP to sell its MMR shares. Indeed, Moffett himself admitted in sworn deposition testimony that he was "concerned" that PXP might sell its MMR shares and that PXP's strategy for the MMR shares was "pretty important" to him.

77. Flores wanted to sell PXP's MMR shares in part because PXP needed to improve its own credit metrics and cash flow. A PXP presentation sent confidentially to credit agencies in February 2012 demonstrated that PXP's liquidity was highly dependent on the value of its MMR shares—and disclosed to the agencies PXP's plan to begin selling off its MMR holdings. Specifically, the presentation identified PXP's planned sale of 25.5 million MMR shares—half of its position—as a "key assumption" in PXP's financial forecasts, through which it would reap approximately $357 million (based on MMR's closing price of $13.84/share on February 17, 2012).

78. Given that Moffett did not want PXP to further imperil MMR by selling its MMR holdings and in light of PXP's need for cash, Moffett began to discuss with Flores the prospect of Freeport acquiring MMR and PXP through a merger. Moffett also knew that PXP's existing 31.3% ownership stake in MMR, along with the provision in MMR's Charter that would require approval of 75% of MMR stockholders (excluding Freeport and its subsidiaries), gave PXP a veto over any move by Freeport to support MMR. Thus, Moffett's plan to use Freeport to bail-out MMR depended on PXP's and Flores's cooperation. Notably, the Freeport Board was not even considering a PXP or MMR deal before PXP disclosed its desire to sell its MMR stock.

79. With Flores using PXP's stake in MMR as leverage over the desperate Moffett, the two executives worked out a deal whereby Freeport would acquire both MMR and PXP. As a personal enticement to cooperate with the deal, Flores would be provided with, among other things, change-of-control payments worth $200 million in cash and stock, as well as the opportunity to become Moffett's heir apparent in the Freeport command structure.

80. Moffett's enticement of Flores was successful. Following these conversations, Flores took steps to ensure that Moffett's plan to combine the three companies would come to fruition. For instance, on April 3, 2012, after planning the transactions with Moffett for more than two months—and well before the formation of any special committee—Flores informed the PXP Board about the proposed transactions. Subsequent to the April 3 meeting, representatives of PXP contacted representatives of Barclays about the potential combination of Freeport and PXP.

81. Notwithstanding that the PXP Board continued to express interest in registering and selling its MMR shares, Flores made it clear to PXP's Chief Financial Officer Winston Talbert ("Talbert") that based on his talks with Moffett, Flores favored the Transactions. Ultimately, PXP never registered the MMR shares it owned and Moffett's plan came to fruition.

3. Moffett Ensures That the Freeport Special Committee Is "On Board" With the Transactions before It Is Even Created

82. In light of the obvious conflicts between these sister companies, Moffett knew that Freeport's acquisition of MMR and PXP would require the imprimatur of impartiality. Thus, before the Transactions were even presented to the Freeport Board, Moffett took steps to ensure that the inevitable special committee of the Board appointed to review the deal on behalf of Freeport would approve the Transactions.

(a) Moffett Installs His Close Friend Madden as an Advisor to Freeport

83. Moffett caused Freeport to hire Madden of Blackeagle Partners to help facilitate the analysis and negotiation of the Transactions. Madden is an old friend of Moffett's and the two men had worked together for decades on "six or seven big deals," including the 2010 PXP-MMR Acquisition and Freeport's 2007 sale of a wire and cable business. As Moffett explained at his deposition, "Mike Madden [] has done deals for me since the 80s." Madden and Moffett also share a connection through their involvement in Stratus Properties, Inc. (formerly known as FM Properties), which purchases administrative, accounting, financial and other services from FM Services. Madden has

been a board member of Stratus Properties since 1992, while Moffett was previously a director of Stratus Properties and currently has a 7.7% ownership interest in the company.

84. Madden's involvement in the Transactions helped ensure that the process was steered towards Moffett's desired end—a bailout of MMR. Moffett knew that Madden would advance Moffett's interests at every turn, and that Madden's participation was crucial to Moffett's planned acquisition of MMR and the complexities that would come with also acquiring PXP.

85. Despite not being formally retained until April, Madden was strategizing with Freeport management to accomplish the merger transactions as early as March 2, 2012, and likely before that date. Indeed in March 2012, Madden was already meeting with Allison about the proposed transactions (notwithstanding that they had yet to be proposed to the Board, let alone that no Special Committee had yet been formed to consider them), as confirmed by Madden's email to Quirk dated March 27, 2012 stating, "I realize everyone has been focused on Davey [sic] Jones so I held off calling you last week. I did speak with Bob Allison and wondered if you had made any progress with lawyers/engineering firm [sic]?"

86. Madden's formal retention agreement (dated April 13, 2012 between Freeport and Hanover) states that Madden was retained for purposes of Freeport's "potential acquisition of certain oil and gas assets"—yet the only targets ever reviewed by Freeport were MMR and PXP. Adkerson admitted in sworn testimony that "a decision had been reached to engage Mr. Madden to represent FCX in the consideration of the combination of FCX, MMR and Plains."

(b) Moffett and Madden Ensure the Support of the Special Committee's Chairman – Allison – Before the Special Committee Is Even Formed

87. Based on his prior experience, Moffett expected that the Board would appoint Defendant Allison to chair the Special Committee. Indeed, Moffett's expectation that Allison would lead any Freeport special committee is confirmed by a May 22, 2012 email from Moffett's assistant, through whom Moffett routinely communicates, to Allison's assistant regarding the formation of the Freeport Special Committee, which states openly that "Mr. Allison will be anxious to start this process since ***he will more than likely lead the FCX [i.e., Freeport] Special Committee again.***" (Emphasis added). In response, Mr. Allison's assistant confirmed that Mr. Allison was "anxious to get the ball rolling." Further, as noted above, Madden was communicating with Allison about the proposed transactions as early as March. Accordingly, before ever presenting the Transactions to the Freeport Board, Moffett and Madden each met with Allison to secure his support for the deal.

88. Madden also has a long-time business relationship with Allison, which extends back to the 1980s when Madden was a financial advisor and investment banker who serviced Panhandle Eastern, a company of which Allison was a board member, and Anadarko Petroleum, where Allison had previously been CEO.

89. On April 27, 2012, Moffett met with Allison at an All-American Wildcatters function. Following this meeting, Moffett (via his assistant) emailed Madden, reporting that Moffett "had a good meeting with Allison" and confirming that "***Allison is on board and wants to do the deal***." (Emphasis added). Madden responded

"good." Allison himself testified that he "certainly was on board and wanting to do the deal…around the time of that informal meeting in the end of April."

90. Other members of the Special Committee similarly demonstrated their predetermination of the Transactions, and their unwavering loyalty to Moffett. For example, on April 12, 2012, Moffett sent a memo ***to the Freeport Board*** attempting to minimize and explain away the fact that MMR's stock price had recently dropped due to delays at the Davy Jones well. That same day, Charles Krulak, a Freeport director and later member of the Special Committee, responded by email to Moffett's memo, stating "Thanks for the update. I don't worry about the stock price…we ALL know what will happen when we start to flow." Notably, Krulak's reference to "we" ***already included MMR*** despite the fact that he was not on MMR's Board. Krulak also closed his email with the phrase "semper fidelis" —Latin for "always faithful" —confirming loyalty to Moffett. Krulak used that phrase only twice in correspondence produced in this litigation: this time and in a congratulatory note to Moffett, Adkerson and Flores after the Transactions were announced.

91. To ensure that the various parties were committed to the Transactions, Madden proposed a "simultaneous diligence process" whereby Freeport management would evaluate the Transactions at the same time as the Special Committee and its advisors. According to Madden, this process "will yield dividends in shortening the execution process," "add[] a sense of 'mission' to all parties," and "keep[] PXP close to us."

4. With the Deal In the Bag, Moffett Unveils His Plan to the Freeport Board

92. Moffett had all of the key pieces in place to effectuate his plan. As discussed above, he had convinced Flores, PXP's CEO, not to dump PXP's interest in MMR on the open market, and secured Defendant Allison's express confirmation that he was "on board."

93. Accordingly, Moffett finally disclosed the Transactions to the boards of both Freeport and MMR at a joint board dinner on the evening of April 30, 2012. Madden also attended the dinner. The Freeport Board met the next day, May 1, 2012, with Madden again in attendance, to discuss the deal.

94. On May 24, 2012, nearly one month after Moffett had had informed the Board of the negotiations with PXP and MMR, the Freeport Board finally formed a special committee to "consider" the Transactions and to make a recommendation to the Board. The Freeport Special Committee duly appointed Allison as Chair, just as expected. Defendants Krulak, Lackey, Madonna and McCoy were also appointed to the Freeport Special Committee.

95. The Special Committee's actions and analyses show that Freeport's acquisition of MMR and PXP was not driven by a strategic shift or diversification. Rather, the Transactions were pursued due to Moffett's plan to bail out MMR. Indeed, the Special Committee gave no meaningful consideration to any alternative oil and gas acquisition other than MMR and PXP. In fact, the Special Committee's mandate was limited to evaluating transactions with MMR and PXP. Pursuant to the Board resolutions adopted at the May 24, 2012 Freeport meeting, the Freeport Special Committee was

given the authority to, among other things evaluate a "Possible Transaction," which was defined in the resolutions as "a potential transaction between [Freeport] and one or more of McMoRan Exploration Co. ('MMR') and Plains Exploration & Production Company ('Plains')."

5. Moffett Controls the Flow of Information and Advice to the Special Committee by Having His Friend Madden Select the Special Committee's Advisors

96. Madden, with the blessing of the Freeport Special Committee, vetted each of the potential financial advisors to be interviewed by the Special Committee in advance. Indeed, he assured Moffett that he had "vetted all [the candidates] directly"— part of which included ensuring that they "[a]ll worked for me at some point." Madden also advised Moffett that Quirk, Freeport's Executive Vice President, CFO and Treasurer, had been very helpful in the process of selecting the Special Committee's bankers and that Madden would provide Moffett with "live updates" of his interviews.

97. Allison, who knew that Madden had been "hired by FCX," understood Madden's involvement in the Special Committee's selection of purportedly independent advisors was improper. In deposition testimony, Allison testified that Madden "played no role whatsoever in interviewing" the potential advisors for the special committee. Yet, when confronted with evidence showing Madden's role including Allison's own notes in which he wrote that Madden "would be happy" with the final two candidates for the financial advisor role, Allison retreated. Ultimately, Allison testified that he had "no way of knowing" of Madden's "purpose" in participating in the interview process, but admitted that Madden "played a role" in selecting the advisors to the Special Committee.

98. Nevertheless, Allison could not recall the Freeport Special Committee ever approving Madden's role or even discussing it. Nor did Allison take any steps to prevent Madden from continuing to communicate with Credit Suisse after its retention at Moffett's behest, outside the purview of the Special Committee. By permitting Madden, Moffett's close friend and advisor, an active and central role in the appointment of the Special Committee's advisors and then unsupervised consultation with them, Allison disregarded any pretense of separation of the Special Committee from Freeport management.

99. Credit Suisse was retained as Freeport's financial advisor on terms that provided it with significant incentive to ensure that the Transactions were completed. Whereas Credit Suisse was to be paid just $1.5 million and $2 million for providing an opinion on the acquisitions of MMR and PXP, respectively, Credit Suisse would receive an additional $8 million and $22.5 million in fees, respectively, contingent on the Transactions ultimately closing.

100. With respect to the Special Committee's legal counsel, Freeport management, in conjunction with Madden, determined that the Special Committee should engage Wachtell Lipton to act as counsel for the yet to be formed special committee. Wachtell Lipton had historically acted as corporate counsel for Freeport. As Moffett testified, Wachtell Lipton "represents us on a continuous basis as one of our special law firms." When asked to clarify who "us" is, Moffett stated that "I'm talking about our companies…We have used Wachtell Lipton at FCX, and we may have used Wachtell Lipton at MMR if it was—if it was business legal advice that was used." Indeed,

Wachtell attended the first meeting of the Special Committee as preordained by management and Madden. The Special Committee dutifully retained that firm without exploring any alternative, more independent counsel.

101. The Freeport Special Committee also retained RPS, a specialized oil and gas consulting firm, to advise it with respect to MMR's reserves and the resources "volumetrically and classification-wise." Significantly, RPS would not: (1) guarantee that the resources and reserves were there; (2) review MMR's capital expenditures; or (3) issue a formal opinion concerning whether MMR could extract any gas or oil from the ground or do so in a commercially viable manner consistent with MMR's business plan.

6. The Freeport Special Committee's First Priority Was to Deprive Freeport Shareholders from Voting on the Transactions

102. Abandoning any semblance of impartiality, one of the very first actions the Freeport Special Committee took was to ensure that Freeport's shareholders would not be given the opportunity to vote for or against the Transactions.

103. The Freeport Special Committee held its first meeting on June 28, 2012. At this meeting, Credit Suisse presented its initial views of the Transactions and its presentation focused on how to structure the Transactions to avoid a vote by Freeport shareholders.

104. A genuinely independent committee would first assess whether doing any oil and gas deal made sense for Freeport and its shareholders, and then would consider in greater depth whether MMR, PXP, or other alternatives, were the best oil and gas options consistent with that strategy. Yet, the Freeport Special Committee did not even pretend

to care for or protect the Company's shareholders. Indeed, Credit Suisse's presentation suggests that Credit Suisse understood from the beginning that the Special Committee wished to avoid a Freeport stockholder vote regarding the Transactions.

7. Moffett Controlled the Flow of Information to the Special Committee

105. The Special Committee's work was systematically shared with and influenced by conflicted fiduciaries. For example, as Quirk received information from Credit Suisse, she analyzed it and passed it along to Moffett, Adkerson, and Madden and in many instances sought Moffett's approval.

106. Moffett and others also received updates through Madden, Allison and others as to the status of the Special Committee's due diligence. For example, despite the fact that Moffett was required to be scrupulously "hands off" of the diligence process because he was hopelessly conflicted, Moffett was involved in numerous inappropriate communications regarding the deal, including those set forth below.

- On May 30, 2012, Madden reported to Moffett (via Moffett's assistant) on the status of the Special Committee's diligence, asking if Moffett "wanted a live update."

- A few hours after the June 28, 2012 meeting ended, Allison (through his assistant) informed the members of the Freeport Special Committee that Moffett scheduled an off the record meeting with them on Monday, July 2 at his Austin, Texas office. Four of the five members of the Freeport Special Committee attended this meeting: Defendants Allison, Lackey, McCoy, and Madonna. For these members, private jets were dispatched at Freeport's expense. The day of the meeting, Moffett met with Allison first, followed by a meeting with the other members of the Freeport Special Committee. Moffett testified that the July 2, 2012 Freeport Special Committee meeting included a discussion of the potential structure of management going forward, with himself, Flores and Adkerson as the senior executives of the combined entity.

- On July 9, 2012, MMR's CFO (Nancy Parmalee) emailed Moffett (via his assistant) the "MMR Success Case Model" reflecting MMR's "financial projections" for Moffett's "***approval*** or other comment before we proceed." (Emphasis added).

- On July 15, 2012, Madden confirmed in an email to Moffett's assistant that he "did speak with [Moffett] Last [sic] evening" regarding the process of the diligence process and that Moffett "seemed cool with everything."

- On August 15, 2012, Moffett held a meeting regarding the valuation of MMR, which was attended by representatives of Evercore, MMR's financial advisor, and RPS, Freeport's valuation consultant. According to an August 7, 2012 email confirming the details of the meeting from Quirk to Moffett's assistant, the focus of the meeting was on MMR's "Ultra Deep and ***upside*** story." (Emphasis added).

- On October 9, 2012, Quirk emailed to Moffett (via his assistant) "our preliminary financial analysis on a 3 way combination [*i.e.*, of Freeport, MMR and PXP] and an overview of [PXP]."

- On October 24, 2012, Moffett personally met with Freeport's Special Committee at a Sheraton Hotel in Houston, Texas to push the Special Committee to proceed with the deal at all costs – notwithstanding PXP's attempt to terminate discussions regarding the Transactions following its acquisition of BP's assets, which is described in greater detail below.

- On November 2, 2012, Moffett had his assistant fax to Allison a document in which one of MMR largest shareholders self-interestedly promoted MMR. Moffett suggested that Allison "share [the article] with the Special Committee."

- Also on November 2, 2012, Quirk emailed Moffett's assistant regarding the fact that "RPS has assigned much more conservative probabilities of success than Evercore has" for MMR. In this email, Quirk asked Moffett's assistant to "Please let me know who JRM [*i.e.*, Moffett] would like us to handle."

- According to sworn testimony from the lead Evercore banker working on the MMR Merger (Hiltz), in November 2012, Moffett pushed the MMR Special Committee and its advisors to "try and get a higher price" for MMR.

107. In addition, while the diligence process was underway, Moffett, Adkerson, and Quirk were fending off potential suitors interested in strategic combinations with Freeport that might have provided Freeport stockholders more value than a combination with MMR and PXP. However, Moffett, *et al.*, did not even inform the Special Committee about these alternatives to the Transactions.

108. For example, contemporaneous emails between Adkerson and [redacted] the President and CEO of [redacted] show that [redacted] was interested in a potential combination between [redacted] and Freeport. Adkerson, however, shut down this inquiry, explaining that he had spoken with Moffett and Quirk about it, and "do not see how this would work for us." Thus, the decision not to consider [redacted] advances was made not by the Freeport Special Committee in consultation with their advisors, who were not even informed, but by Moffett and his associates.

8. In The Midst of the Negotiations, PXP Purports to Terminate the Deal to Extract a Higher Premium

109. On September 10, 2012 PXP purchased the deep water Gulf of Mexico assets from

110. Exploration & Production Inc., BP America Production Company and Shell Offshore Inc. (the "BP Deal")—a deal that loaded PXP with debt.

111. PXP announced the BP Deal for total consideration of approximately $6.1 billion on September 10, 2012. At a lunch following the announcement of the BP Deal, Flores told Adkerson that PXP "had paid an aggressive price for the BP assets." Adkerson relayed this information to Moffett (though not to the Freeport Special Committee). Flores was able to overpay for the BP assets because he was working with a

blank check written by Moffett but funded by Freeport's shareholders. Indeed, Flores understood that Moffett would make certain that Freeport would absorb PXP, at a premium, and take the debt off Flores's hands. If not, Moffett's plan to bail out MMR could be vetoed by PXP, which Moffett was never going to risk. Indeed, when, on October 23, 2012, PXP completed the placement of $3 billion of debt, up from the originally planned $2 billion, Freeport management understood the implication—Freeport was expected to absorb the entire cost of this overpriced deal as part of the merger agreement. Madden crassly remarked that PXP's running up additional debt "looks like peeing in the tent a little."

112. On September 12, 2012, Flores informed Moffett that PXP was terminating discussions about a potential combination. This placed Moffett's plans in peril, particularly given that PXP would, without the Freeport acquisition, be required to fund the BP Deal by selling its significant MMR stock holdings. Yet, demonstrating that the "termination" was never real, and that Allison and Moffett understood that the only effect of the BP acquisition on the proposed merger was to increase the likely cost of acquiring PXP, the Special Committee and its advisors continued to push ahead to get the Transactions done. For example, on the day of the announcement of the BP Deal, Credit Suisse informed RPS—the engineering consultant hired by the Special Committee—that the Transactions were "still on" and instructed it to continue working on its evaluation. Indeed, Allison even admitted that "they continued to evaluate data" and work toward a potential deal with PXP in part because of his "long conversations" with Flores and his

"feeling that he [meaning Flores] would be interested" in returning to the bargaining table after the "quiet period" between the closing and financing of the BP Deal.

113. A month after PXP purportedly "terminated" discussions, at an October 24, 2012 meeting, the Special Committee, along with representatives from its outside advisors, discussed the status of the Transactions. Despite the significant increase in cost to Freeport in acquiring PXP caused by the BP Deal, Moffett was undeterred and inappropriately intervened in the process by pressing the Freeport Special Committee to pursue the deal anyway—regardless of the cost. Notably, rather than allow any possibility that the Special Committee would independently assess the BP Deal, Moffett made his self-interested pitch to the Special Committee directly, and outside the presence of the Special Committee's legal or financial advisors. As confirmed by Defendant Allison's notes from the October 24, 2012 Special Committee meeting, the Freeport Special Committee, rather than seeking to negotiate lower prices, was focused on justifying offers that would get the deal done and then "selling the deal" publicly.

114. Following the October 24 Freeport Special Committee meeting, Moffett met with Flores at his home. Three days later, Flores called Allison and confirmed that, as expected, the deal was still on. Flores indicated that PXP's appetite to re-engage depended strictly upon increasing the purchase price for PXP and that a substantial portion of the consideration be paid in Freeport stock. Conversely, in his role as MMR director, Flores was satisfied with cash merger consideration.

9. Credit Suisse Pushes for Higher Valuations of MMR and PXP and Improperly Pressures RPS to Follow Suit

115. Rather than ensure the most favorable outcome reasonably achievable for Freeport—the Special Committee's advisors pushed for a higher value to be placed on MMR's assets.

116. As noted above, the Freeport Special Committee retained Credit Suisse to provide it with financial advice in connection with the Transactions, yet it provided Credit Suisse with a substantial financial incentive to push for the completion of the Transactions regardless of the price. It is one thing for a target banker to receive more money if a higher sale price is achieved. Incentivizing a buy-side banker to push the board to pay whatever it takes to close a particular deal, without providing similar consideration if the Special Committee determines to effect an alternative transaction, defeats the purpose of seeking independent financial advice in the first place.

117. On September 20, 2012, at a meeting of the Freeport Special Committee, representatives of RPS discussed RPS's ongoing engineering review of PXP and MMR's exploration prospects and production assets. RPS made several observations. Among other things, according to RPS, MMR was overly optimistic about its ultra-deep resources, the likelihood of establishing commercial production, drilling success rates, well drilling speed, and well drilling costs. By honestly questioning MMR's projections, RPS became the proverbial "canary in the coal mine." RPS's concerns, however, were marginalized and suppressed by the Special Committee, its advisors, and Moffett's management team.

118. As set forth in an "MMR Success Case Model," prepared by MMR's management, the struggling company relied upon several outlandish assumptions, including that the Davy Jones well would commence production in the fourth quarter of 2012, and that a second Davy Jones well would commence production in mid-2013. Moreover, MMR's model was premised on the assumption that the company would achieve a 100% success rate on its exploration wells—an obviously impossible assumption with no basis in reality.

119. By contrast, RPS's independent estimates of reserves and its risking of those resources (*i.e.*, probability of successful exploitation of resources) showed the unfairness of the deal price. As of September 20, 2012, RPS had determined that MMR's ultra-deep reserves had only 15.2 Tcfe of "Unrisked Resources" (compared to MMR's estimate of 63.5 Tcfe) and that MMR thus had only 1.52 Tcfe of "Risked Resources" based on a 10% probability of success.

120. In oil and gas exploration parlance, "3P" refers to the three generally accepted classifications of reserves: Proven, Probable, and Possible.

121. Unsatisfied by RPS's estimates, Credit Suisse and others prodded RPS to revise its view of the value of MMR's assets in order to justify payment of a higher price for MMR. When RPS refused, they marginalized RPS's role in the valuation process. For perspective, none of MMR's ultra-deep gas resources fall into any of the 3P categories. All fall into a more extreme category of speculative resources.

122. RPS faced the same pressure with respect to its valuation of PXP. For PXP, RPS estimated that 26% of the total 3P reserves for PXP's California assets might

not be present, that the current portfolio exploration geological probability of success ("GPoS") was 16% for its Deep Water Gulf of Mexico Prospects, that total reserves were overstated by 28% for its Eagle Ford assets, and that total reserves were overstated by 27% for its Haynesville assets. On September 24, 2012, RPS met with PXP to discuss, among other things, PXP's California and newly acquired Gulf of Mexico assets. In advance of the meeting, Credit Suisse told RPS that "this is our last access to [PXP] so we should make the best use of this."

123. Following the September 24 meeting, RPS requested from Credit Suisse whether they could get a copy of a 3P report on the BP Deal. Credit Suisse instead restricted RPS's review of documents and urged RPS to rely solely on self-interested management projections as opposed to independent sources.

124. By October 3, 2012, RPS's frustration was clear. In an email complaining about the lack of information they were getting regarding PXP's assets, RPS said that it was "difficult to risk the resources with the small sketches in the Investor Presentation without seeing some real data" and that "in other deep water GOM fields, similar exploitation sands could have virtually no risk and some have been found to be extremely risky."

125. In fact, despite expressly asking to do so, RPS was never permitted to and was never asked to perform a bottom-up analysis of PXP or, crucially, any analysis of the price paid for reserves and resources in the BP Deal. Of course, Credit Suisse did nothing of the sort. Indeed, in its own valuations of PXP, Credit Suisse inflated the value

of PXP by crediting its own windfall from Freeport's payment of a wildly above market price for MMR.

126. By October 5, emails between Credit Suisse and RPS indicate that Quirk, on behalf of management, had been brought into the loop, and that Madden was resisting RPS's assessment of PXP. Credit Suisse's email shows that Quirk demanded "individual risking for the top 8-10 prospects as well as a high range for the portfolio." RPS noted that to perform that analysis it would need additional due diligence. "When we have the next phase of due diligence, I can measure areas, thickness, amplitude strength, migration pathways, etc. and actually calculate an independent volume and resource number." Quirk refused to deliver to RPS the information it requested.

127. An email sent by RPS to Credit Suisse on October 9, 2012, illustrates that the risking assumptions the two firms were making were drastically different—to the point that Credit Suisse told RPS that it would "rather not have these discussions on email please." Ultimately, this dispute led to a phone call with Quirk, RPS, and Credit Suisse on risking, during which a full-court press was put on RPS to try to change its conclusions. Following the call, Quirk informed Madden and Quinn that RPS had raised concerns about PXP assets and felt they lacked information.

128. On October 16, 2012, representatives of RPS and Credit Suisse met with representatives of Evercore (MMR's valuation consultant) in Houston to conduct a further review of MMR's operations, including risking and resource potential estimates. Credit Suisse requested the meeting because Credit Suisse wanted Evercore to attempt to convince RPS to increase their risking assumptions—notwithstanding the fact that Credit

Suisse was representing the buyer of assets. Indeed, Weinberger (Credit Suisse's lead banker) asked Evercore to push RPS to accept MMR's valuation.

129. The next day, on October 17, 2012, RPS emailed Credit Suisse a spreadsheet with their risking assumptions for MMR. RPS objected that they did not have proper due diligence to confirm their assumptions. Continuing its full-court press on RPS, on October 19, 2012, Credit Suisse forwarded MMR's Q3 2012 results and a presentation from its conference call to RPS. Credit Suisse wanted to know "if any of these updates changes your view on key events that would derisk M's ultra-deep resource potential." RPS did not take the bait.

130. RPS's risking concerns continued to persist well into November. For example, on November 1, 2012, the same day that Allison made his initial offers to MMR and PXP, Evercore and Quirk were discussing RPS's risking assumptions. Evercore forwarded Quirk an RPS spreadsheet showing RPS's comments regarding risk of the various prospects and asked to discuss these assumptions "with the [MMR] team or find out if they had supporting information to challenge any of these assumptions." Quirk forwarded this message to Moffett's assistant, noting that "RPS has assigned much more conservative probabilities of success than Evercore has." As throughout, the common Freeport/MMR management pushed to increase the valuation of MMR at Freeport's expense.

131. Throughout its engagement, RPS was denied the due diligence it felt it needed. Thus, for example, on November 9, 2012, RPS again asked for extensive due diligence of PXP in order to "give a more accurate assessment and reduce uncertainty"

and stated that "this due diligence phase should not be a brief review, but a multi-day or multi-week detailed analysis." Credit Suisse denied RPS's request, telling them instead to come up with "2-3 key items that you need."

132. On November 10, 2012, again trying to cajole RPS into revising its view of MMR's recoverable resources, Credit Suisse emailed RPS stating: "Please see below M's response to the risking spreadsheet that you sent across for the ultra-deep resource potential. Would this revise your views on the risking used? Let us know your thoughts." On November 23, 2012, Credit Suisse emailed RPS and stated: "After you review the document, can we quickly chat. We understand your position, but wanted to see whether some of these arguments are useful. If possible today."

133. On November 26, 2012, Credit Suisse forwarded to RPS MMR's challenges to RPS's risking assumptions, asking RPS again to revise their projections.

134. The next day, in response to this constant pressure from Credit Suisse, RPS finally relented marginally (and with reservations). On November 27, 2012, RPS sent materials to Credit Suisse with several changes. The email stated that RPS now "***maximized***" its risking assumptions. (Emphasis added). It was wildly inappropriate for RPS—an advisor to the ***purchaser***—to be "maximizing" its valuation of MMR. For its part, even though Credit Suisse ***knew*** these "maximized" figures were inflated, it incorporated only these "maximized" figures into its base case valuations of PXP and MMR.

10. The Freeport Special Committee Relied on Inaccurate and Inflated Values for MMR

135. The Freeport Special Committee members depended upon Allison's acumen to understand and interpret the advisors' evaluations. Allison, who touts himself as "very competent" in reviewing financial valuations, steered the rest of the Special Committee away from relying on RPS's original (and untainted) analyses. Allison disregarded RPS's concerns without undertaking any of the analysis and due diligence that the Special Committee paid RPS to do. Rather, Allison's opinions were based on his general views about both companies' assets, which, in turn, were shaped by Moffett.

136. Allison's cynicism about RPS's analysis, an opinion he spread to the Freeport Special Committee, was also based on a fundamentally flawed premise. Allison believed that some of MMR's ultra-deep prospects were producing. They were not. Allison repeatedly testified that MMR's track record with respect to its ultra-deep prospects had been 100%, which led him to conclude that the chance of success regarding MMR's ultra-deep wells, wells that were not producing at that point—including Davy Jones—was "probable," rather than speculative resources. Allison's assumptions were factually wrong, corrupting both his and the Freeport Special Committee's judgment.

137. Through the process, Moffett continued to influence the Special Committee's activities through Allison. On November 13, 2012, Moffett's assistant emailed Allison's assistant an article about a private equity firm investing in the Gulf of Mexico, adding that Moffett thought Allison "might be interested." The next day, Moffett's assistant (on behalf of Allison) forwarded the same article along with a note

from Allison to the Freeport Special Committee. Allison's note described the article and added that "Maine [MMR] is way ahead of these people and much more valuable."

11. Allison Opened Negotiations at Excessive Prices

138. At a telephonic meeting on October 30, 2012, the Freeport Special Committee authorized Allison to discuss a potential transaction with PXP at a price of up to $47 per share, with the consideration of half cash and half Freeport common stock, and to discuss a potential transaction with MMR at a price of up to $15 per share in cash. PXP's closing price on October 26, 2012 was $35.87 per share, and its closing price on October 31, 2012 was $35.66 per share. MMR's closing price on October 26, 2012 was $11.48 per share, and its closing price on October 31, 2012 was $11.93 per share. In short, Freeport's opening bids were already over valued.

139. On November 1, 2012, Allison conveyed the MMR offer to MMR's Special Committee member Bush. The $15 per share in cash offer came as a surprise even to the MMR Special Committee and its advisors. The all-cash offer was far better than Evercore, advisor to the MMR Special Committee, had expected, having previously speculated to Bush that Allison would offer cash or stock "with a value at or more likely below the current MMR stock price plus additional contingent consideration," such as warrants on Freeport stock.

140. Taking advantage of the Freeport Special Committee's Moffett-driven determination to buy MMR, the MMR Special Committee responded to the Freeport Special Committee with a counterproposal that would give MMR shareholders the option of receiving (a) $17.50 per share in cash, or (b) $16.00 per share in cash and one unit of a

trust that would hold a 4% overriding royalty interest in MMR's ultra-deep exploration prospects (the "royalty trust"), which the MMR Special Committee valued at $1.50 per unit.

141. Allison also conveyed the PXP offer to Flores on November 1, 2012, and let him know that Freeport wanted to retain PXP's entire management team.

142. On November 9, 2012, Flores indicated that PXP would potentially be interested in a transaction at $55 per share, with one-third of the consideration in the form of cash and two-thirds in the form of Freeport common stock. Notably, between August 2012 and the announcement of the Transactions, PXP stock had fallen from $42 per share to $36 per share.

143. Negotiations continued over the next several weeks, with the Freeport Special Committee responding to each counterproposal with an ***increase*** in the already over-inflated amount of consideration it wanted to pay for MMR and PXP. Hiltz, Evercore's lead banker, testified that despite the large premium being offered by Freeport, Moffett consistently encouraged the MMR Special Committee and its advisors to demand ever higher prices for MMR.

12. MMR's Stock Tanks on News of Davy Jones's Continued Problems, but Moffett's Scheme Presses Forward

144. On November 26, 2012, MMR issued a press release providing an update on its Gulf of Mexico exploration and development activities, including delays in completing a production test and the need for additional work to be conducted on the Davy Jones well. That day alone, MMR's stock price dropped approximately 22%.

Undaunted by the Davy Jones debacle and committed to bailing out MMR, Allison, Moffett and management pressed forward to seal the Transactions.

145. The next day, in the wake of the Davy Jones announcement and related stock drop, Allison and Moffett held an off-the-record meeting, during which they discussed MMR's stock price and the structure of the MMR Merger.

146. On November 29, 2012, the Freeport Special Committee held a telephonic meeting, attended by representatives of Credit Suisse and Wachtell Lipton, and discussed, among other things, recent trading activity in shares of MMR common stock. Allison's notes indicate that one of the concerns discussed during the meeting was: "Where do we go now? How do we put this back together?" Tellingly, it demonstrates the Special Committee Members' prisoner's mindset. Regardless of what setbacks MMR experienced, and what they revealed as to the actual value of its assets, they knew a deal had to happen and it was their job to justify it one way or another.

147. The members of the Special Committee were cognizant that their obligations as directors required that they ensure that Freeport would not and should not overpay as contemplated. Nevertheless, the Special Committee acquiesced and willingly pressed forward with the inflated price. Notwithstanding the massive decline in MMR's stock price, the Freeport Special Committee authorized Allison to discuss a potential transaction with Bush that ***actually increased*** the overall consideration with $14 per share in cash and one unit of a 4% royalty trust. Using the $1.50 value that the MMR Special Committee gave the royalty trust units, this revised offer was effectively $15.50—fifty cents ***more*** than the Freeport Special Committee's original November 1, 2012 offer.

148. The MMR Special Committee countered by demanding $14.75 per share in cash and one unit of a 6% royalty trust, which the MMR special committee valued at $2.25 per unit, or $17.00 total—the same price Freeport had offered on November 18, just before the MMR stock price drop.

149. Then, on November 30, 2012, the MMR Special Committee revised its demand ***upward***, authorizing Evercore to seek $14.75 per share in cash and 1.15 units of a 5% royalty trust, which the MMR Special Committee valued at approximately $2.45 per 1.15 units. Incredibly, the new ask was effectively $17.20—higher than before.

150. Later that day, MMR (via Bush) informed Allison of the MMR Special Committee's demand. After consulting with the Freeport Special Committee, Allison told Bush that he believed that the Freeport Special Committee was likely to accept MMR's aggressive demands, agreeing to an effective price of $17.20 per share.

151. On December 3, 2012, the Freeport Special Committee met. Moffett, Adkerson, and Flores also attended. The group discussed the roles that each of them would play in the combined company after the Transactions. Moffett would continue to serve as the Chairman of Freeport, Adkerson would continue to serve as President and CEO of Freeport and would also be appointed Vice Chairman, and Flores would be appointed both Vice Chairman of Freeport and CEO of Freeport's oil and gas operations. Three PXP directors, including Flores, would be on the board of the new company. The two directors other than Flores would be chosen by the Freeport governance committee.

152. After speaking with Moffett, Adkerson, and Flores, the Freeport Special Committee decided to recommend to the Freeport Board that the Transactions with PXP and MMR be approved.

153. During the evening, on December 3, 2012, the Freeport and MMR Boards held a joint board dinner at Moffett's private home in Austin, Texas. Notably, the Freeport Board had not yet met to approve the MMR Merger, again belying any notion that these were arms-length negotiations.

C. THE VALUE-DESTROYING TRANSACTIONS ARE APPROVED AND ANNOUNCED

154. On December 4, 2012, the Freeport Board and Freeport Special Committee met. The Freeport Board then voted to approve the Merger Agreements. Knowing that the fix was in and the Transactions would be approved, Defendants Adkerson, Moffett and Siegele recused themselves from the vote. The other Overlapping Directors, Defendants Rankin, Day, Ford, and Graham, however, did not recuse themselves. Had all the Overlapping Directors recused themselves as they should have, the Freeport Board would not have been able to establish a quorum under Freeport's Amended and Restated By-Laws, Article VII.3.

155. Notably, RPS did not make any presentation to the Freeport Special Committee or Board regarding its findings. Indeed, RPS met with the Special Committee only once during the course of the process, on September 20, 2012. After September 20, 2012, the other advisors and conflicted management realized that RPS was a fly in the ointment and RPS was never allowed direct access to the Special Committee again.

Likewise, Allison's Special Committee never sought direct access to RPS. All subsequent information from RPS was filtered through Credit Suisse.

156. The same day, the MMR Special Committee determined to accept the Freeport Special Committee's proposal. Subsequently, on December 5, 2012, the MMR board approved and adopted the MMR Merger Agreement. Notably, Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham, all of whom are directors of both Freeport and MMR, participated and voted in favor of approving the Transactions.

157. On the morning of December 5, 2012, the PXP Board approved the merger agreement with Freeport and the related transactions. Flores and Wombwell participated in this meeting and did not recuse themselves.

158. Later that day, the Merger Agreements and related transaction documents were executed by the parties. Freeport, PXP and MMR issued a joint press release announcing that Freeport had signed definitive agreements to acquire PXP for $6.9 billion in cash and stock and MMR for $3.4 billion in cash, plus assumption of debt.

159. Freeport received $9.5 billion of financing commitments from JPMorgan Bank, N.A. to fund the cash portion of the merger consideration for both Transactions and to repay the debt outstanding under PXP's existing term loans and revolver. After giving effect to the Transactions, estimated pro forma total debt as of September 30, 2012 was approximately $20.0 billion (or approximately $16.3 billion net of cash) compared to Freeport's $0.2 billion positive net cash position prior to the Transaction.

1. The MMR Merger

160. The agreement for the MMR Merger provided that Freeport had agreed to acquire MMR for per-share consideration consisting of $14.75 in cash and 1.15 units of a royalty trust, which would hold a 5% gross overriding royalty interest in hydrocarbons produced from certain MMR shallow water, ultra-deep Gulf of Mexico prospects. Not even counting the royalty trust units, the cash consideration of $14.75 per share represented a 74% premium to the stock's close on the day before the Transactions were announced. a The MMR Merger was subject to approval by MMR shareholders but not Freeport stockholders.

161. The MMR Merger included an amendment to the MMR Charter ("MMR Charter Amendment") which also required the approval of MMR shareholders.

162. The MMR Charter Amendment exempted Freeport from the MMR Charter's definition of "Interested Stockholder," thereby eliminating the requirement of a supermajority approval for the MMR merger. The MMR Charter previously required approval by a 75% supermajority of MMR's outstanding stock for any transaction with an "Interested Stockholder," which included Freeport. Conflicted management and the MMR special committee were concerned that the 75% threshold might not be achieved because MMR had had historically low voter turnouts because of broker non-votes.

163. With the approval of the MMR Charter Amendment, consummation of the MMR Merger was subject to approval by only a simple majority of the outstanding shares of MMR common stock, excluding shares owned by Freeport and its subsidiaries.

164. PXP executed a Voting and Support Agreement wherein PXP agreed to, among other things, vote its 31.5% of MMR's shares in favor of both the MMR Merger and the MMR Charter Amendment. Similarly, PXP agreed to vote its MMR shares against any competing action or agreement that would impede the MMR Merger

165. On July 3, 2013, the MMR stockholders approved the MMR Merger and the MMR Merger closed the same day.

2. THE PXP Merger

166. The PXP Merger Agreement provided that Freeport would acquire PXP for per-share consideration consisting of 0.6531 shares of Freeport common stock and $25.00 in cash, which was equivalent to total consideration of $50.00 per PXP share, based on the closing price of Freeport stock on December 4, 2012. This represented an approximate 39% premium to the price of PXP's shares prior to the announcement of the Transactions. The agreement also provided for three of PXP's board members to join the Freeport Board.

167. The PXP Merger was subject to the approval of PXP's shareholders but not Freeport shareholders.

168. The day that PXP's stockholders were scheduled to vote on the PXP Merger, PXP's board declared a special dividend of $3 per share, which was conditioned upon completion of the PXP Merger. The Freeport Board also declared that it would pay a supplemental $1 per share dividend to its stockholders (including what would then be former PXP stockholders) following the close of the PXP Merger. Pursuant to the PXP Merger Agreement, both dividends required the consent of Freeport. According to the

May 20, 2013 press release announcing the special dividends, the Freeport Special Committee approved the dividends. With this added consideration to sweeten the deal, the PXP shareholders approved the PXP Merger.

169. On May 31, 2013, the PXP Merger closed. Flores, along with two other PXP directors, Alan R. Buckwalter, III and Thomas A. Fry, III, were added to the Freeport Board.

D. THE TRANSACTIONS WERE HARMFUL TO FREEPORT AND CONFERRED AN UNFAIR BENEFIT ON INSIDERS

170. The Transactions approved by the Freeport Board were unfair to Freeport and its shareholders. Freeport paid an inflated price for both MMR and PXP, in the process bailing out a majority of the Freeport Board's failed investments in MMR. Recognizing that shareholders would never approve the Transactions, the Board structured them so as to deny Freeport shareholders an opportunity to vote. In addition, the Transactions conferred a windfall on those defendants who held MMR options and restricted stock units, including Defendants Moffett, Adkerson, Rankin, Day, Ford, and Graham, at the expense of Freeport shareholders. Not surprisingly, when the Transactions were announced, the investment community and many Freeport shareholders reacted with outrage.

1. Freeport Overpaid for MMR

171. Freeport paid far more for MMR than is it was worth. The MMR Merger valued MMR's enterprise value as equal to 44 times EBITDA on a trailing 12-month basis. The cash Freeport paid pursuant to the MMR Merger—not including the value of the royalty trusts—represented a 74% premium for the struggling company. Allison

himself admitted in sworn testimony that an approximately 80% premium in a merger transaction was "unusual." Hiltz, the lead Evercore banker working on the MMR Merger, acknowledged that in his experience the premium was "quite high" and in the high end of those he has seen. Yet Freeport was willing to pay this astronomical premium for a company that JPMorgan had recently described as having "no equity value." It is inexplicable that a company that was rapidly losing the ability to fund its risky drilling projects would command such a high premium to market.

172. Indeed MMR's high risk assets comprised the bulk of its holdings. Evercore recognized that based on NYMEX Strip pricing for oil and natural gas, MMR's 1P, 2P, and 3P reserves were worth, on a discounted basis, just $975 million to $1.087 billion. Using this figure as a starting point, the remaining $3+ billion of assets that Freeport purchased was derived from MMR's purely speculative ultra-deep water leaseholds. These assets are entirely unproven and may well produce nothing at all. The wells were also extremely expensive to drill. By the end of 2012, MMR had already poured nearly $1 billion into the Davy Jones well—and had yet to see any results. In acquiring MMR, Freeport was purchasing a number such potentially costly enterprises. Even if Freeport succeeds in extracting gas from MMR's wells, it is entirely possible that the expenses associated with operating the costly wells will exceed the value their production. Despite that, the consideration paid for MMR shares was overwhelmingly in non-speculative cash (or for insiders, manipulated options) and not contingent royalty trust units.

173. Freeport justified the high price it paid by relying on Credit Suisse's

inflated valuation. The dispute over MMR's valuation primarily relates to the valuation placed on MMR's speculative ultra-deep resources. MMR's management—meaning Moffett and Adkerson—argued that the ultra-deep resources should be valued at 30% of their implied value. Even Adkerson admitted, however, that this risking level could not be supported. Although Adkerson could not or would not say what percentage the ultra-deep wells should have been risked at, he stated that it would have been less than the 25% risk assigned by Ryder Scott Company L.P. to Possible Reserves, the riskiest of the 3Ps. Adkerson also stated that "valuing MMR's assets was challenging" because MMR's "business plan" was a "work in progress."

174. RPS, tasked with providing an independent valuation of these assets, initially pegged risked the ultra-deep resources at 10% of their implied value. Under intense pressure from Credit Suisse, however, they instead produced a "maximized" risking scenario of 13% of the ultra-deep resources implied value. This increased valuation allowed Credit Suisse in turn to increase its own valuation of MMR.

175. On November 9, 2012, Credit Suisse estimated MMR's Net Asset Value ("NAV") as $9.71 per share. On December 3, 2012, relying on RPS's maximized risking for its low end case, Credit Suisse's estimated NAV for MMR skyrocketed to $14.68 and $17.26 per share-an increase of nearly 80% at the high end. Absent RPS's revisions Credit Suisse would have been unable to construct an NAV analysis that would justify the proposed MMR Merger consideration, an amount that was approximately twice the then current trading value of MMR shares.

176. MMR had in the meantime announced yet another setback with the Davy Jones well. Credit Suisse nonetheless relied on the development plan for the Davy Jones discovery in its justification for the increased MMR NAV and never asked RPS to evaluate the effect of the failure of the Davy Jones's flow test on its resource or risking estimates.

177. Credit Suisse's valuation work inappropriately skewed the value of MMR upward. In all their NAV analyses, Credit Suisse did not present any separate valuation of MMR based only on a 3P basis, nor could they and still achieve their goal of justifying the purchase price. Instead, all of Credit Suisse's NAV scenarios valued the 3P reserves together with the speculative ultra-deep scenarios, the inclusion of which exponentially increased the valuation of MMR. Thus, Credit Suisse's valuation was infected by the purely speculative aspects of MMR's business, driven by Moffett and other Freeport insiders that had an interest in MMR.

178. In addition to its manipulation of the NAV valuation, Credit Suisse also drew incredible conclusions of value based on market approaches to valuation, which were wholly unsupported by its own data. Credit Suisse also omitted JP Morgan's analysts' views of MMR from its presentations to the Freeport Special Committee as a negative outlier, when in fact JP Morgan's dire predictions for MMR were spot on.

179. The analyses prepared by Credit Suisse for the Freeport Special Committee demonstrated the fundamental weaknesses of MMR compared to its peers. Indeed, analysis of companies comparable to MMR revealed that even after the Freeport Special Committee reduced its offering price in response to the negative Davy Jones

news, it was still overpriced compared to peers in terms of projected EBITDA and cash flow for the next two fiscal years, and because of serious flaws in methodology, that should have been obvious to Allison and the other members of the Special Committee, the range of value showing that disparity was itself inflated. For example:

- Credit Suisse opined in the Selected Companies Analysis in its MMR fairness opinion presentation that the implied value of MMR was $7.23 per share to $14.71 per share, which range was below the MMR proposed transaction price and therefore did not support that price as fair. Moreover, Credit Suisse derived MMR's implied value range of $7.23 per share to $14.71 per share by relying on companies that were very different than MMR. Specifically, many of the "Global Explorer" companies analyzed by Credit Suisse were development companies, meaning they had no proved resources, production, or earnings reported. The remaining "Global Explorer" companies relied on by Credit Suisse had proved reserves that largely consisted of oil rather than natural gas, resulting in a higher value because oil prices are higher than BTU equivalent natural gas prices.

- Credit Suisse's Selected Companies Analysis in its MMR fairness opinion presentation was further flawed in that although the median Enterprise Value/Proved Reserves multiple for Gulf of Mexico Independent E&P companies was $2.79, Credit Suisse nonetheless selected an Enterprise Value/Proved Reserves range of $9.00 to $13.00, indicating that Credit Suisse essentially ignored the valuation multiples for the Gulf of Mexico Independent E&P companies.

- Also in Credit Suisse's Selected Companies Analysis in its MMR fairness opinion presentation, Credit Suisse implied a 2012 EV/EBITDAX multiple for MMR of 14.3 (assuming an MMR stock price of $8.53 per share), which multiple was over 3 times higher than the median 2012 EV/EBITDAX multiple of 4.4 for Gulf of Mexico Independent E&P companies, and almost double the median 2012 EV/EBITDAX multiple of 7.6 for "Global Explorer" companies. Given that a transaction price of $14.75 per MMR share was almost double the $8.53 assumed price per MMR share used by Credit Suisse in its analysis, the result was an even higher EV/EBITDAX multiple for MMR, which should have been a glaring red flag to Allison and the Freeport Special Committee.

- Credit Suisse opined in the Selected Companies Analysis in its PXP fairness opinion presentation that the implied value of PXP was $29.71 per share to $44.18 per share, which range was below the $50 per share PXP proposed

> transaction price and therefore did not support that price as fair. In addition, in calculating the implied value range of PXP of $29.71 per share to $44.18 per share, Credit Suisse utilized an Enterprise Value/Proved Reserves range of 25.00 to $30.00. However, the median Enterprise Value/Proved Reserves multiple was $20.58, implying that Credit Suisse chose an above median multiple.

180. Credit Suisse also erred in its presentation of its Illustrative Pro Forma Financial Impact Analysis in its MMR fairness opinion presentation. The presentation showed dilution of 1.4% in 2013 as a result of the Proposed Transactions. Pursuant to the analysis, Freeport would need to repurchase 20 million shares to shrink the share base enough in order for the Proposed Transactions to be non-dilutive on an earnings basis. However, while Credit Suisse purported to show a positive 2013 cash flow per share, this calculation did not account for use of cash to repurchase shares.

181. MMR was also a poor investment for Freeport because its existing assets were overwhelmingly concentrated in natural gas, which is substantially less valuable, on an energy equivalent basis, than oil. 95% of MMR's assets, both proved and unproved, are made up of natural gas. Since 2008, the price of natural gas has largely been on the decline. According to the U.S. Energy Information Administration, the average price for natural gas was $8.86/million BTUs. By 2012, the average price had dropped to $2.75. The low price of natural gas contributes to the likelihood that the Davy Jones well and MMR's other ultra-deep properties will not be worth the expense.

182. In sum, Freeport paid a huge premium for risky, potentially worthless assets and relied upon Credit Suisse's fundamentally flawed valuation to justify the price it paid.

2. Freeport Overpaid for PXP

183. The price paid for PXP was also significantly above fair value. Freeport paid a significant premium for a company that was suffering from disappointing financial results and declining stock price prior to the announcement of the Transactions.

184. For example, on November 1, 2012, PXP announced its financial results for the third quarter ended September 30, 2012, reporting net loss attributable to common stockholders of $53.1 million, or $0.41 per diluted share.

185. PXP was also suffering from the declining price of natural gas. Indeed, PXP was running one of its largest properties basically for neutral cash flow because gas prices were so low. Additionally, PXP and MMR had joint ventures together since the early 2000s, these investments were also suffering from declining prices in natural gas.

186. PXP's recent acquisition of certain assets from BP also made Freeport's acquisition of MMR a worse deal. In November 2012, PXP completed the BP Deal taking on $8 billion of new debt to finance the acquisition. As noted, Flores admitted to Moffett that PXP paid a rich price for the BP asset. These Gulf of Mexico assets comprised a substantial portion of PXP's combined production. The average price paid for Gulf of Mexico proven reserves is $22 per barrel. PXP's costs were $48 per barrel—over twice the average. Freeport, therefore, paid a premium on top of the huge premium that PXP admittedly paid in the BP Deal.

187. Adkerson himself testified that "the consideration for Plains, taking into account their current share price plus any premium, would be substantially in excess of the value of their proved reserves."

188. The unfairness of the price paid for PXP was exacerbated by two special dividends declared in the days leading up to the Plains shareholder vote that were meant to sway the vote in favor of the merger. One special dividend which was approved by the Freeport Special Committee paid PXP shareholders $3 per share on the day the PXP transaction was approved. This special dividend alone cost Freeport an additional $388 million in merger consideration. The second special dividend, paid immediately after closing of the PXP deal, paid all Freeport shareholders $1. Because PXP shareholders received 0.6531 shares of Freeport per PXP share in merger consideration, this second special dividend cost Freeport an additional $84 million in merger consideration to former PXP shareholders. These special dividends, combined with the value that Freeport was already offering, added up to too high a price to pay for struggling PXP.

3. The Common Freeport/MMR Directors and Management Knew MMR was Running Out of Money and in Peril

189. The full Freeport Board approved the Transactions. Because half the Freeport Board also sat on the MMR Board, these Overlapping Directors, as well as common management, were well aware that Freeport was paying too much for MMR.

190. The MMR Board, including the Overlapping Directors, knew that MMR would likely run out of cash by the first quarter of 2013, rendering management's plan for drilling unachievable. The MMR Board also knew that MMR was projected to have a $500 million shortfall for 2013. By the end of 2014, it expected this shortfall to reach $700 million. Without more cash, MMR would be unable to continue to fund its costly ultra-deep drilling.

191. Further, MMR considered options for financing as a standalone company, but was unable to come up with any viable alternative to a rescue by Freeport. For example, MMR proposed transactions with Royal Dutch Shell and Chevron, but neither of these companies was interested. Moffett had conversations with a foreign energy company, [redacted], regarding [redacted] potentially acquiring 25% of MMR's interest in all of its ultra-deep prospects and properties. Evercore told the MMR Special Committee, however, that the terms Moffett presented to [redacted] reflected Moffett's own valuation of the ultra-deep properties—not what the market or a third party would think the properties were worth. Evercore believed it unlikely for Moffett could get what he sought from [redacted]. Indeed, [redacted] did not respond to Moffett's overture, further showing the Overlapping Directors that MMR was not worth what Moffett wanted Freeport to pay.

192. Evercore advised the MMR Special Committee that it would be very difficult and expensive to get bank financing because of the failures of Davy Jones, the two-year drain of cash it had caused, and the lack of proved reserves against which banks traditionally lend. On November 29, 2012, Evercore told Quirk that MMR was facing distressed sales of its assets to raise money, information that Quirk related to Moffett (via his assistant) and Adkerson, but not to the Freeport Special Committee. Although MMR had sold off some of its conventional assets to raise money, selling too many would hurt MMR long-term since these conventional assets were its only source of current revenue.

193. Ultimately, the only alternatives left for MMR were massive common stock offerings, which would have had the effect of diluting existing common

shareholders, including the nine directors on the Freeport Board who owned MMR stock, or some form of asset sale or farm-out agreement for the ultra-deep prospects. Given MMR's precarious financial situation, any independent acquiring corporation would have purchased MMR for a bargain price. Yet Freeport paid an unusually high premium to acquire MMR, despite the fact that the Overlapping Directors also sat on the MMR Board and had actual knowledge of its distressed financial state.

4. Defendants Ensure that Freeport Stockholders Have No Vote on the Transactions

194. The Freeport Board members acted disloyally and in bad faith by deliberately structuring the Transactions so as to deny Freeport stockholders the opportunity to vote on them. Specifically, from the outset the Board decided to pay out enough of Freeport's cash so as to avoid triggering the NYSE's requirement that a shareholder vote be held when a listed company offers more than 20% of its shares in an acquisition. Freeport paid a staggering amount of cash and stock to acquire MMR and PXP and took on a huge amount of debt. In essence, a company with a $32 billion market capitalization engaged in a speculative, synergy-free and conflicted $20 billion acquisition.

195. Freeport's directors gamed the rules fully aware that Freeport shareholders would not support the Transactions. Adkerson testified that shareholders had in the past expressed concerns about Freeport investing in the oil and gas business. Adkerson also anticipated that Freeport stockholders would object to (1) the fact that they did not get to vote on the Transactions; (2) the "related party aspects of the transaction with

McMoRan"; and (3) the fact that the Transactions suggested Freeport was bailing out MMR.

196. Upon learning that they would not be entitled to vote on the Transactions, Freeport's shareholders did indeed react with outrage. For example, during a December 5, 2012 analyst call, a Blackrock representative stated that it would be "be only fair" for shareholders to vote on the Transactions rather than "hide behind" a technical rule:

> One other thing, before we finish, is that I know you justified earlier on, on the call it was only an 8% did dilution [sic] on an equity basis. When you take your market cap today of $30 billion, and you talk about a $20 billion transaction, the math doesn't really add up to 8%. So I think it would be only fair on your shareholders to give them a chance to vote rather than to hide behind the rule that you outlined earlier on.
>
> * * *
>
> [W]ouldn't it be fair to have the shareholders be able to vote on this, given that you're mixing $30 billion of market cap today at Freeport and $20 billion of enterprise value with this transaction? That would be a fair thing to our investors to be involved in this rather than just to be told this is what to expect.

197. Despite shareholder complaints, the Freeport directors, serving only Moffett's and the Overlapping Directors' interests, forged ahead with the Transactions without affording shareholders an opportunity to vote on them.

5. The MMR Merger Agreement Gave Defendants an Extra Windfall

198. Section 2.4 of the MMR Merger Agreement entitled Equity-Based Awards and conferred enormous special benefits on MMR insiders, including Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham and Quirk, by allowing them to convert their MMR stock options, restricted stock units, and other stock-based awards at an extremely favorable exchange rate. The exchange rate was calculated using the price of

MMR and Freeport ***after the announcement of the transactions***, without any cap on the exchange rate, meaning that the rate would favor MMR holders if, as actually occurred, the value of MMR's stock price rose or the price of Freeport's stock price declined. Specifically, MMR insiders were entitled to receive the number of their MMR options multiplied by the ratio of MMR's price five days prior to the MMR Merger effective date divided by Freeport's price five days prior to the MMR Merger effective date. The option strike price was adjusted by the same price ratio.

199. To illustrate the value bonanza created by Section 2.4: the December 4, 2012 per-share trading prices of MMR and Freeport were $8.46 and $38.28, respectively, creating an adjustment ratio of 0.221. On December 5, 2012, MMR's stock price skyrocketed to $15.82 per share and Freeport's stock price plummeted to $32.16 per share (and further dropped from there), creating an adjustment 0.492 ratio. Whereas a holder of 100 MMR options with a strike price of $20 would have been entitled to only 22 Freeport options (100 x 0.221) at a strike price of $90 ($20/0.221) on December 4, 2012, that figure jumped under the 0.492 ratio of December 5 to 49 Freeport options (100 x .0492) at a strike price of only $40 ($20/0.492).

200. The primary beneficiaries of this conversion ratio were Moffett and Adkerson, who each held millions of stock-based awards. Freeport directors Rankin, Day, Ford and Graham also benefitted, as did Quirk and Parmelee.

201. The Freeport Special Committee was entirely aware that this structure would confer a benefit upon MMR Insiders. Allison testified that the exchange ratio provided MMR stock option holders a benefit to the extent that MMR stock prices rose

and Freeport stock prices fell. The Freeport Special Committee also anticipated that Freeport's stock price would fall in response to the Transactions.

202. The Freeport Directors who stood to profit from this ratio were also well aware of its likely effect. Moffett was aware that this sort of movement in the Freeport and MMR share prices would increase the number of Freeport options he would have after converting his MMR stock options. Adkerson similarly testified that he expected Freeport's stock price to fall upon the announcement of the Transactions. The Freeport Directors were thus aware that they were conferring a windfall upon insiders through the stock option conversion ratio.

6. The Market Also Condemned the Transactions

203. Following the announcement of the Transactions, both the market and analysts panned the proposed change. Freeport's share price collapsed upon the announcement of the Transactions. On December 4, 2012, Freeport closed at $38.28. By December 6, 2012, it plummeted nearly 20%, closing at $30.81. Since the announcement and as of July 19, 2013, Freeport's closing stock price has averaged $31.95 per share, approximately 17% lower than the 30-day average price of Freeport stock before the Transactions were announced which was $38.53 per share.

204. Not surprisingly, analyst reaction to the news of the Transactions was swift and negative. The day after the announcement of the Transactions, Goldman Sachs, Deutsche Bank, BMO Capital Markets and RBC Capital Markets all downgraded Freeport based on the merits of the deal.

205. Analysts and Freeport shareholders enumerated a host of reasons why the Transactions hurt Freeport shareholders. First, analysts criticized the absence of a shareholder vote and the erosion of shareholder trust. For example, Tony Robson, the Freeport analyst for BMO Capital Markets, made the following comment in his downgrade note: "Most perturbing, in our view, is the lack of opportunity for stockholders 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."

206. Second, analysts criticized the absence of a strategic rationale for combining a successful copper mining business with a struggling oil and gas company. Kuni Chen, an analyst at CRT Capital Group LLC in Stamford, Connecticut, observed that the combination of the two business would not result in any "synergies" or confer any obvious economies of scale, stating, "Clearly the synergies between putting a mining company and an oil exploration and production company together remain to be seen." Citigroup's Brian Yu agreed, noting that there was little or no strategic fit or rationale for the transactions. A Dahlman Rose & Co. analyst predicted that Freeport's decision to purchase two oil-exploration companies is "likely be seen as a negative among mining-focused shareholders."

207. Analysts also criticized the ostensible rationale for the Transactions, diversification. Citigroup's Yu questioned the merger decision, asking, "Can you help us understand what [Freeport] is achieving here that investors can't replicate on their own, whether it's a valuation step-up from diversification, insights in the [PXP] assets, partial asset sales to bring out purchase price."

208. Analyst Dan Rohr of Morningstar Inc. stated, "Investors could have cashed in just as easily themselves as buying stock in Plains [without a merger], and you don't have to pay a premium to do it."

209. In a research note, a Goldman Sachs analyst wrote, "We 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." Goldman Sachs also stated, after the December 5 Analyst Call that:

> We attended an analyst meeting hosted by FCX management to discuss the PXP/MMR acquisitions . . . the meeting did not answer all the concerns that we have heard from investors regarding the strategic rationale behind the acquisitions and the process that the Freeport's Board ran to assess the assets and company trajectory. We continue to expect the stock to remain pressured and trade range bound for some time.

210. Third, analysts complained that Freeport could not afford the transactions. As a result of the Transactions, Freeport ***took its net cash position from $0.2 billion to a net debt position of $16 billion***. As noted by a Nomura analyst, the high debt load in the transactions would make a special dividend less likely and erode any takeover premium in Freeport's stock. Following news of the Transactions, Standard & Poor's ("S&P") cut its rating outlook on Freeport to negative from stable. According to S&P, "The negative outlook on Freeport reflects the leveraged nature of the proposed acquisitions, as well as risks associated with integrating the targeted companies." Stifel Nicolaus removed Freeport from its Select List as it believed the Transactions would dilute Freeport's copper exposure and significantly lower its earnings per share.

211. Fourth, analysts were so shocked by the obvious conflicts that motivated the transactions that they took the time to email Adkerson personally to register their disgust. For example, an analyst from [redacted] emailed Quirk and Adkerson on December 5, 2012, stating that he was "extremely disappointed" with the deal, calling it "destructive" and that "it reeks of saving an oil company at the expense of FCX shareholders." Another analyst from [redacted] emailed Adkerson that the transaction "looks pretty concerning from a corporate governance perspective" and asked why it was in Freeport's stockholders interest to use Freeport's "balance sheet to bail out a struggling oil company."

212. Freeport's investors were also opposed to the Transactions. For example, [redacted], Joint Chief Investment Officer of [redacted], sent Adkerson several emails protesting the Transactions. On December 5, 2012, [redacted] first emailed Adkerson stating that he had heard rumors regarding the Transactions, which "filled [redacted] with horror" and, if true, would "likely to be the end of [redacted] being involved with FCX" due to (a) "FCX [] going into the oil business" and (b) "doing it via related parties." Hearing nothing from Adkerson, [redacted] wrote to Quirk and Adkerson, telling them that, with more time to think, "[r]ather than my anger cooling it has intensified." After the announcement of the Transactions went public, [redacted] emailed Adkerson and Quick a third time, stating, "Having seen the announcement I am now even more disgusted than I feared I would be" and noting that he would "be engaging with [redacted] corporate governance immediately." Separately, also on December 5, 2012, [redacted] forwarded an email

announcing the Transactions to [redacted] at [redacted] (who then forwarded [redacted] email to Adkerson), stating: "It is worse than I feared. In fact it is a near total disaster." In the public forum, alluding to the lack of a shareholder vote on Freeport's decision to enter the oil and gas business, [redacted] opposed the Transactions noting, "Investors, obviously have the freedom to diversify their own portfolios by commodity and by geography. And [they] don't need management teams to do it for them."

213. Further, during the December 5 Analyst Call, [redacted] questioned the conflicted context of the deal: "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? . . . I presume that everybody on the call from your side is conflicted because of the various different roles. . . . I haven't heard anything on this call that in any way justifies why these companies should be put together."

214. Other Freeport investor emails had similarly negative reactions. One Freeport investor (and former MMR investor) emailed Freeport's Investor Relations, stating:

> I'm a shareholder in FCX, the price action premarket this morning is already indicating that Mr. Moffett's intentions to buy MMR are misplaced. I see MMR is up 50% while our stock is tanking which is hurting all investors in FCX. This has all the appearance of Mr. Moffett using the good company to bail out the bad company.
>
> Why are shareholders of FCX being needlessly damaged by Mr. Moffett's actions. The MMR investors took their risk, and now when it looks like they're going to lose it all with failures of a $1 billion well that may have to be abandoned, Mr. Moffett wants to drag the innocent investors of FCX who didn't take that risk into the middle of it. I used to own MMR, but sold out a year or more ago when I could see that the ultra-deep was going

> to be to [sic] costly and risky. This is unfair to the core, and I'm hopeful that if this deal is done that the shareholders of FCX will seek all rights and legal remedies afforded to them under the applicable laws governing their rights. *From my perspective as a FCX shareholder this is a travesty and possible [sic] the worst abuse of corporate power that I've seen in over 35 years of investing*. (Emphasis added).

215. This investor, as well as the various market analysts, was merely pointing out what was obvious to anyone who examined the Transactions: The Transactions resulted from breaches of duty that harmed Freeport.

E. DEMAND IS FUTILE IN THIS DERIVATIVE ACTION

216. Co-Lead Plaintiffs bring this action derivatively to redress injuries suffered by the Company as a direct result of the breaches of fiduciary duties by the Defendants.

217. Co-Lead Plaintiffs have owned and continue to hold Freeport stock continuously since before and throughout the time of the wrongful course of conduct by the Defendants alleged herein.

218. Co-Lead Plaintiffs will adequately and fairly represent the interests of Freeport and its stockholders in enforcing and prosecuting its rights and has retained counsel competent and experienced in shareholder derivative litigation.

219. Co-Lead Plaintiffs have not made a demand on the Board to bring suit asserting the claims set forth herein because pre-suit demand would have been futile and, thus, is excused as a matter of law.

220. A majority of the Freeport Board is conflicted because they stand on both sides of the Transactions, and the Board is therefore incapable of independently and

disinterestedly considering a demand to commence and vigorously prosecute Plaintiffs' claims relating to the Transactions.

221. Further, the challenged transactions are subject to the heightened entire fairness standard of review. Because the challenged Transactions are not entirely fair to the Company in terms of both price and process, they are not a valid exercise of business judgment, and demand is excused as a matter of law.

222. Moreover, a majority of the Board faces a substantial likelihood of liability for orchestrating and approving the Transactions. As a result of Defendants' bad faith conduct in this regard, Defendants face a substantial likelihood of personal liability and thus are unlikely to thoroughly investigate or prosecute the claims alleged herein.

1. The Freeport Board and Executive Officers Are Fraught With Conflicts

(a) A Majority of the Board Is Interested in the Challenged Transactions

223. A majority of the Freeport Board suffered and continues to suffer from conflicts of interest and divided loyalties that precluded them from disinterested assessment of any shareholder demand to investigate of pursue the claims alleged herein.

224. The Freeport Board consists of the following twelve individuals: Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Allison, Krulak, Lackey, Madonna, McCoy, and Siegele. Each of these defendants owe the Company fiduciary duties in connection with their service as a director or officer.

225. Six of Freeport's twelve Directors also sit on the Board of MMR: Moffett, Adkerson, Day, Ford, Graham, and Rankin. These Directors have divided loyalties and

thus are incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute Plaintiffs' claims asserting that the MMR Merger unduly benefitted MMR investors at Freeport's expense. This fact alone is sufficient to show that a demand on the Freeport Board to pursue the claims alleged herein would be futile and is excused. Indeed, four of these Overlapping Directors did not recuse themselves from the Board vote approving the MMR Merger, thereby providing the necessary quorum.

226. Further, nine of Freeport's twelve Directors own stock in MMR: Moffett, Adkerson, Day, Ford, Graham, Rankin, Lackey, Madonna, and Siegele. In addition, Moffett, Adkerson, Day, Ford, Graham, and Rankin can convert their outstanding options and restricted stock units in MMR into Freeport options based on the windfall conversion ratios they approved in the Transactions. These nine Directors—a majority of the Freeport Board—stand to profit personally from this transaction. These directors therefore had a direct and pecuniary interest in Freeport's acquisition of MMR, and also in Freeport's acquisition of Plains, which was a de facto prerequisite to an MMR acquisition. Thus, they are incapable of disinterestedly considering a demand.

227. Two of the Directors who own MMR stock, Lackey and Madonna, were also selected by the Board to sit on the Special Committee that approved the Transactions. The Freeport Board has thus demonstrated that it is incapable of segregating its interested members in contemplation of a potentially conflicted transaction, and thus similarly unlikely to make a disinterested consideration of a demand to investigate and prosecute the claims alleged herein.

228. Additionally, Defendants Moffett, Adkerson, Rankin, Day, Lackey and Ford have served on the boards of Freeport and MMR and their predecessors over approximately the last twenty years. Given their long-time association with one another and with the overlapping and interconnected Freeport-McMoRan entities, Moffett, Adkerson, Rankin, Day, Lackey, and Ford, who make up half of the Freeport Board are not able to legitimately consider a demand.

229. Further, as described above, through the FM Services structure, the senior executive staffs of Freeport and MMR have nearly complete overlap. As of April 18, 2012, the overlapping board members and executive officers beneficially owned approximately 16.4 million shares or about 9.7% of MMR's common stock.

(b) The Conflicting Incentives for a Majority of the Freeport Directors and Officers are Substantial

230. Many Freeport Board members stood to recognize significant financial benefits from the MMR Merger, further evincing a conflict of interest. MMR had been struggling considerably due to delays at MMR's Davy Jones site in the Gulf of Mexico. MMR had spent a billion dollars trying to complete and tap the Davy Jones well and have been unable able to do so. The delays in establishing the viability of the Davy Jones site cost MMR considerably, and MMR was running out of cash.

231. A majority of the Freeport directors and officers own shares of MMR, and following the 32% decline in MMR's stock price in November 2012, these Overlapping Directors had significant paper losses to their MMR stock. Moffett, alone, had paper losses of nearly $20 million. The purchase of MMR by Freeport gave each of the Overlapping Directors, including Moffett and co-founder Rankin, a financial lifeline for

their MMR shares and options. MMR, as a stand-alone company was financially strapped, but the Transactions rescued Defendants' disastrous investments with Freeport's money.

232. The six Overlapping Directors were also highly motivated to cooperate with Moffett's plan to use the cash-rich Freeport to bail-out the floundering and cash-poor MMR in order to protect their respective reputations and avoid the potential for bankruptcy proceedings. For example, if MMR were to fail and be forced into bankruptcy proceedings, a bankruptcy trustee could aggressively pursue direct claims against MMR directors, including the Overlapping Directors. Further, the Overlapping Directors would suffer significant reputational harms from being associated with a failed company that could affect the rest of their careers as corporate directors.

233. For a number of Freeport directors, the gain they stood to receive for their MMR shares in any sale far surpassed any loss they would have expected in their Freeport holdings as a result of the market's disappointment with the deal. Put simply, the direct benefit to MMR of a bailout transaction was surely more dramatic than the expected harm to Freeport's likely stock drop. For example, without even taking into account the windfall conversion of MMR options into Freeport options, Moffett personally received roughly $75 million cash (plus over 5.8 million Royalty Trust Units) for his MMR stock, virtually all of which would have been lost without a Freeport rescue. This far surpasses the approximately $25 million decline that Moffett suffered in the value of his Freeport stock upon announcement of the Transactions. So too for Ford, who earned roughly $28.3 million cash (plus over 2.2 million Royalty Trust Units) for

his MMR shares, which without the Transactions would have been virtually worthless—whereas he lost under $700,000 on his Freeport equity upon news of the deal. The same is true for Day, who received $14.3 million (plus over 1.1 million Royalty Trust Units) for his MMR equity, while he took a loss of roughly $7.8 million on his Freeport holdings. Thus, even Freeport directors with a higher nominal investment in Freeport than in MMR still had a strong financial incentive to favor an ill-advised purchase of MMR despite the damage to Freeport.

234. To this point, a December 7, 2012 Seeking Alpha article, entitled "Whose Interests Were Put First in Freeport-McMoRan's Acquisition of McMoRan?" stated:

> The truth is that this transaction looks an awful lot like a bailout of McMoRan. It looks like that because the Co-Chairman of Freeport-McMoRan just also happens to be the CEO and Chairman of McMoRan Jim Bob Moffett. Jim Bob is the single largest individual shareholder of McMoRan, and Mr. Moffett is just one of many individuals with interests in both companies.

235. The Transactions reversed the paper losses of Defendants and provided them with significant monetary benefits for their shares, as well as a windfall for their equity-based awards based on the favorable conversion rate mechanism for MMR options and RSUs set forth by Section 2.4 of the MMR Merger Agreement, which rewarded them for the drop in Freeport's share price. In particular, Moffett and Adkerson had 2,675,000 and 1,500,000 equity-based awards respectively to convert to Freeport stock.

236. The Freeport Board also suffers from disabling conflicts because of their close ties to PXP's management. A December 5, 2012 Benzinga article, entitled "Freeport Buying McMoRan Exploration and Plains Exploration: Too Close to Home" observed, "[T]here are 22 separate relationships between the boards of Plains and

Freeport alone. As stated, the overlap of McMoRan and Freeport's boards is expected but this relationship raises questions as to the merits of the acquisitions. Nevertheless, there are 20 cases of board members for all three companies being intertwined through the boards."

2. The Challenged Transactions are Not a Valid Exercise of Business Judgment

237. The challenged Transactions are plainly interested transactions and are not entirely fair to the Company—in terms of both price and process.

238. Each of the Freeport directors faced a substantial likelihood of liability when this action was initiated that undermined their ability to adequately consider a shareholder demand, which also excuses demand. The directors' potential liability was not simply the product of this action, but also other potential securities actions arising from the marked drop in Freeport's share price upon announcement of the Transactions.

239. Further, various Freeport directors owned significant amounts of MMR stock, and the investigation of the claims alleged herein could have possibly implicated insider trading activity that would also expose individual directors to criminal and civil liability.

240. Because the majority of the Freeport Board had a direct and pecuniary interest in the Transactions, they are potentially liable for breaches of loyalty for which they might not be indemnified, and would therefore be subject to astronomical personal liability.

241. A majority of the Freeport Board suffered from conflicts of interest and divided loyalties that precluded them from exercising independent business judgment. Because, as alleged above, the majority of the Freeport Board stood on both sides of the challenged Transactions, the Transactions are subject to the heightened scrutiny of entire fairness review and the business judgment rule is not applicable.

242. The Freeport Special Committee did nothing to lessen the conflicts from which the Freeport Board suffered because Allison, the Committee's chair, was incapable of evaluating the Transactions independent from Moffett's views and because Moffett was able to manipulate the Committee from behind the scenes.

243. Indeed, as alleged in greater detail above, before Moffett even proposed the Transactions to the entire Board, he first explained them to Allison, who was likely to head any special committee, to sway him in favor of the Transactions. After hearing Moffett's proposal, without considering any possible competing proposals or financial analysis, Allison confirmed that he was "on board" with the Transactions.

244. Allison, who has known Moffett for more than thirty years, has repeatedly demonstrated his inability, even prior to the contemplation of the Transactions, to serve as an effective independent voice from Moffett. The nationally recognized proxy advisory firm Glass Lewis & Co. ("Glass Lewis") has recommended that Freeport shareholders withhold votes from Allison at both the 2011 and 2012 annual meeting of Freeport shareholders. Glass Lewis has criticized Allison in his role as chairman of the nominating and corporate governance committee for refusing to embrace a governance structure that includes an independent chairman or an independent lead or presiding

director. Such a change to corporate governance would reduce Moffett's influence over Freeport.

245. Allison's disloyalty in connection with the Transactions is demonstrably evident in his handling of the negotiations. As described above, Allison was aware of, or recklessly disregarded, numerous flaws in Credit Suisse's financial analyses, but did not bring these flaws to the Special Committee's attention. For instance:

- With respect to Credit Suisse's Selected Transactions Analysis in its MMR fairness opinion presentation, Allison noted that: (i) the mean proved reserve for selected corporate transactions was $4.44 and the median proved reserve for selected corporate transactions was $3.55; (ii) the mean proved reserve for selected Gulf of Mexico asset transactions was $4.42 and the median proved reserve for selected Gulf of Mexico asset transactions was $3.40; but nonetheless, (iii) Credit Suisse used a selected proved reserve range of $13.00 to $16.00 for MMR (which was dramatically higher than the mean and median numbers). Allison admitted that he did not understand how Credit Suisse justified the $13.00 to $16.00 proved reserve estimate.

- Allison further noted that Credit Suisse's MMR fairness opinion presentation that: (i) the mean daily production for selected corporate transactions was $19,655 and the median daily production for selected corporate transactions was $14,087; and (ii) the mean daily production for selected Gulf of Mexico asset transactions was $10,068 and the median daily production for selected Gulf of Mexico asset transactions was $8,045 even though Credit Suisse used a selected 2012E daily production range for MMR of $18,000 to $23,000. Allison could not recall any discussion amongst the Special Committee as to the basis for Credit Suisse's daily production range of $18,000 to $23,000.

- Allison testified that Credit Suisse incorporated an approximate three to one range of value of unrisked resource estimates, between MMR's estimates and those of RPS—a large range he had previously noted was "unusual" to use in a valuation—into the implied enterprise value range derived from the Selected Transactions Analysis in its MMR fairness opinion presentation.

- Also with respect to Credit Suisse's Selected Transactions Analysis in its MMR fairness opinion presentation, Allison admitted that none of the selected companies were particularly comparable to MMR, because "you're trying to compare an exploration company with a number of prospects to long-established producing properties, apples and oranges."

246. In addition, Allison was aware that MMR had a liquidity problem. While Allison stated that MMR could "sell down" assets to combat its liquidity problem, he admitted that reducing the assets of MMR would reduce the company's value. And, in any event, as Evercore had conceded, MMR had virtually nothing of value left to sell. Nonetheless, despite the effect this problem had on MMR's negotiating leverage, the Freeport Special Committee concluded that it was appropriate to make MMR an 80-100% premium offer, one that Allison himself characterized as "unusual."

247. Finally, Allison's handwritten notes leave no question that he believed the MMR Merger was a sweetheart deal for MMR's shareholders. Thus, Allison asked the question, "with this size premium, why," which he later explained by expressly stating, "[A]s big as the premium was, we felt that they ought to be willing to give some on some of these issues." However, in further explaining the context of his question, Allison made clear that he sought to use the excessive premium as leverage only to obtain provisions that would facilitate approval of the transaction, including allowing PXP to vote as an unaffiliated stockholder, rather than simply seeking to negotiate a more reasonable price.

248. As alleged above, throughout the negotiation of the Transactions, Allison steered the Special Committee towards purchasing both MMR and PXP at inflated prices. Most notably, Allison urged the Special Committee to accept an aggressive valuation of MMR's risky ultra-deep resources, a decision that helped to justify a sky-high price for MMR. Allison's prejudgment of the Transaction tainted the Special Committee and rendered its decision to purchase MMR and PXP lacking in independence.

249. Moffett also manipulated Allison and the Transactions from behind the scenes. Through Madden, his longstanding financial advisor, Moffett influenced whom the Special Committee would choose as advisors. He also engaged in repeated and inappropriate communications with Allison about the Transactions throughout the negotiation process, pushing Allison to ensure that the Transactions went through. Moffett's behind-the-scenes influence, as well as Allison's domination by Moffett, demonstrates that the Freeport Special Committee was not independent and did not engage a decision-making process that was separate from the conflicted Freeport Board.

250. The exacting standard of "entire fairness" that applies here involves a two part inquiry: (1) whether a corporate transaction is the result of a fair process; and (2) whether it results in a fair price. The initial burden of establishing a fair process and fair price rests with the directors defending the transaction. For the detailed reasons set forth above, it is clear that the Transactions at issue here constituted improper self-dealing and were not entirely fair to the Company—in terms of either price or process.

251. Because the Proposed Transactions were not entirely fair to the Company, the Proposed Transactions cannot be deemed a product of the valid exercise of business judgment and demand is excused as a matter of law.

COUNT I

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY (AGAINST THE FREEPORT INDIVIDUAL DEFENDANTS)

252. Co-Lead Plaintiffs incorporate by reference all preceding and subsequent paragraphs as though they were fully set forth herein.

253. By virtue of their positions as officers and directors of Freeport, the Freeport Individual Defendants owe fiduciary duties of care and loyalty to Freeport and its stockholders. The Freeport Individual Defendants did not exercise independence or due care in approving the Transactions, which unfairly enriched Moffett and the other interested Freeport directors, Adkerson, Rankin, Day, Ford and Graham, at the unfair expense of Freeport and its public stockholders, whose shares will be diluted and devalued. The Freeport Individual Defendants must, but cannot, show that the Transactions are entirely fair to Freeport and the public Freeport stockholders.

254. The Freeport Individual Defendants breached their fiduciary duties by failing to fairly evaluate the Transactions and approving the Transactions at an excessive and inequitable price.

255. In contemplating, planning, and/or affecting the foregoing conduct, the Freeport Individual Defendants were not acting in good faith toward the Company and breached their fiduciary duties.

256. As a result of these actions of the Freeport Individual Defendants, the Company has been damaged.

257. The Freeport Individual Defendants' breaches of their fiduciary duty directly and proximately caused substantial losses to the Company in an amount to be proven at trial.

258. The Freeport Individual Defendants are liable to the Company as a result of the acts alleged herein.

259. The Freeport Individual Defendants that are officers of both Freeport and MMR, including Moffett, Adkerson and Quirk, used those offices to abuse their fiduciary duties to Freeport in favor of MMR and PXP to enrich themselves and follow insiders in pursing and executing the Transactions. Moffett, Adkerson and Quirk disloyally and carelessly breached their fiduciary duties as officers of Freeport, the liability for which conduct cannot be exculpated under Delaware law.

COUNT II

DERIVATIVE CLAIM FOR BREACH OF FIDUCIARY DUTY OF LOYALTY (AGAINST DEFENDANTS MOFFETT, ADKERSON, RANKIN, DAY, FORD, GRAHAM, LACKEY, MADONNA, SIEGELE AND QUIRK)

260. Co-Lead Plaintiffs incorporate by reference all preceding and subsequent paragraphs as though they were fully set forth herein.

261. By virtue of their positions as directors and/or officers of Freeport, Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Lackey, Madonna, Siegele, and Quirk owe fiduciary duties of care and loyalty to Freeport and its stockholders. Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Lackey, Madonna, Siegele, and Quirk have violated their fiduciary duties of loyalty and entire fairness owed to Freeport and its public shareholders by placing their personal interests ahead of the interests of Freeport.

262. Moffett, along with the other conflicted director and officer Defendants, manufactured the Transactions to serve personal interests at the expense of Freeport.

263. Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Lackey, Madonna, Siegele, and Quirk are stockholders of MMR and will benefit substantially

from the Transactions. They will receive grossly excessive value for their stock ownership in MMR and, further, will convert their MMR stock options and restricted stock units into Freeport stock options and restricted stock units on terms providing enormous special unfair benefits to them.

264. Four of the Overlapping Directors, Rankin, Ford, Day and Graham, refused to recuse themselves from the vote of the Freeport Board on the MMR Merger. Their disloyal act of voting on the Transactions in which they were interested allowed the Board to achieve a quorum to enable adoption of the MMR Merger Agreement.

265. Thus, they supported and encouraged the Transactions in breach of their fiduciary duties of loyalty and entire fairness owed to Freeport and the Freeport public shareholders, whose shares were diluted.

266. As a result of the actions of Defendants Moffett, Adkerson, Rankin, Day, Ford, Graham, Lackey, Madonna, Siegele, and Quirk, including self-dealing, the Company has been and will continue to be damaged.

COUNT III

AIDING AND ABETTING BREACH OF FIDUCIARY DUTIES (AGAINST DEFENDANT FLORES)

267. Co-Lead Plaintiffs incorporate by reference all preceding and subsequent paragraphs as though they were fully set forth herein.

268. As alleged herein, the Freeport Individual Defendants have breached their fiduciary duties to Freeport and its stockholders.

269. Flores, as Chairman and CEO of PXP, and a director of MMR, aided and abetted the Freeport Individual Defendants in their breaches of fiduciary duty.

270. While Flores had an obligation to PXP to obtain the best consideration for PXP and its shareholders, that cannot excuse knowing participation in fiduciary duty breaches committed by Moffett and others. Because of Flores' close personal relationship with Moffett and the close, overlapping relationships among Freeport, MMR and PXP, Flores knew that special committees would be required in the negotiation process for Freeport and MMR. Despite that understanding, Flores actively participated in structuring and negotiating the Transaction directly with Moffett long before any such independent committees were formed.

271. Moffett planned the Transactions from day one, and, with Flores' help, killed two birds with one stone: the rescue of PXP from its exposure to MMR's failed business and the ability for Moffett to save his investment in MMR, his reputation, his face (along with a hefty pay day) and his control of MMR. Flores was an active and knowing participant in the scheme that he and Moffett launched together.

272. With PXP's ownership of 31.3% of MMR's shares and contractual veto rights, PXP was a substantial roadblock to any deal involving MMR and Freeport. Flores's approval was thus a necessity for the MMR bailout to close. While Moffett and Freeport Board members with interests in MMR were opportunistically enriching themselves to the detriment of Freeport and its public stockholders, PXP was also being bailed out of its deleterious stake in MMR, at premium prices far above what those shares could have fetched in the market. Additionally PXP and its stockholders were given the option to continue their investment in the combined companies, thereby diluting the interests of the Freeport stockholders.

273. Flores personally benefitted and profited from the Transactions. Upon completion of the Transactions, Flores will become Vice Chairman of Freeport and CEO of Freeport's oil and gas operations, with sole oversight of the oil and gas businesses and operations of Freeport and is well positioned as Moffett's heir apparent. Flores will also initially be appointed (and thereafter be nominated) to serve as a member of the Freeport Board and will receive an annual base salary of at least $2,500,000.

274. Additionally, Flores received consideration worth more than $200 million from the Transactions. This is in part because Flores's PXP employment contract had a change-of-control clause. Pursuant to the Letter Agreement, dated as of December 5, 2012, by and among Flores, PXP and Freeport, Flores's 2,627,250 PXP stock-settled equity-based awards immediately vested upon the closing of the PXP merger and was paid in shares of Freeport common stock, allowing Flores to participate in the future financial success of the combined company on a greater basis, and further diluting the interests of Freeport's stockholders. These restricted stock units were valued at $137 million before the Transactions closed. Flores also received an additional payment of approximately $20 million to cover excise taxes and the related excise tax gross-up.

275. As a participant in the Transactions, pursuant to which PXP will be selling itself, including its 31.5% ownership of MMR, to Freeport, Flores was aware of the Defendants', particularly Defendant Moffett's, breaches of fiduciary duties and in fact actively and knowingly encouraged and participated in said breaches in order to obtain the substantial financial benefits to PXP, including bailing PXP out of its deleterious

stake in MMR, that the Transactions would provide at the expense of Freeport and its stockholders.

276. Flores, by virtue of his positions and holdings in PXP and MMR, was financially motivated to facilitate the breaches of fiduciary duty. Flores knowingly participated with one or more of the Freeport Individual Defendants, including Moffett, in the creation and approval of the Transactions. Flores will become CEO of Freeport's oil and gas operation and he will receive substantial consideration.

277. As a direct and proximate cause of Flores' and PXP's conduct, Freeport has sustained and continues to sustain significant damages.

WHEREFORE, Plaintiffs pray for judgment, as follows:

A. for an order deeming this action to be a proper derivative action and Co-Lead Plaintiffs to be proper and adequate derivative Plaintiffs;

B. for an order declaring that the Transactions are not entirely fair and are in breach of the fiduciary duties of the Freeport Individuals Defendants, aided and abetted by Flores, and, therefore, any agreement arising therefrom is unlawful and unenforceable;

C. for an order rescinding the Transactions and/or awarding damages to the Company;

D. for an order directing that Defendants account to Co-Lead Plaintiffs and Freeport for all damages caused to Freeport and account for and disgorge all profits and any special benefits obtained by Defendants as a result of their unlawful conduct;

E. for an order imposing corporate governance reform on the Freeport Board including, without limitation, reformation of Board membership; altering the composition

of and charge of Freeport's pertinent Board committees; prohibiting consulting agreements with standing directors; and creation of appropriate measures to protect against future unfair self-dealing;

F. for an order awarding the Company pre- and post-judgment interest at the statutory rate;

G. for an order awarding to Co-Lead Plaintiffs the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of Co-Lead Plaintiffs' attorneys and experts; and

H. for an order granting such other and further relief as the Court deems appropriate.

DATED: July 19, 2013

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