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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE ROYAL DUTCH/SHELL TRANSPORT SECURITIES LITIGATION	Civ. No. 04-374 (JAP) (Consolidated Cases) Hon. Joel A. Pisano RETURN DATE: (Document electronically filed)

LEAD PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane,
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5 James Wm. Moore et al., Moore's Federal Practice § 23.25[3] (3d Ed. 2001) 20

Lead plaintiffs the Pennsylvania State Employees' Retirement System ("SERS") and the Pennsylvania Public School Employees' Retirement System ("PSERS" and, together with SERS, "Lead Plaintiff") respectfully submit this memorandum in support of their motion for an order, pursuant to Fed. R. Civ. P. 23(a), 23(b)(3), and 23(g)(1), to (1) maintain this action as a class action; (2) certify a class as defined below; (3) appoint SERS, PSERS, and Peter Wood as class representatives; and (4) appoint Bernstein Liebhard & Lifshitz, LLP as class counsel and Lynch Keefe Bartels as liaison counsel.[1]

INTRODUCTION

By this motion, Lead Plaintiff seeks certification of a class consisting of all persons who purchased or otherwise acquired the following securities of Royal Dutch and/or Shell Transport: the ordinary shares traded on overseas markets and the New York Stock Exchange (the "NYSE") and the American Depository Receipts ("ADRs") trading on the NYSE, between April 8, 1999 and March 18, 2004 (the "Class Period").[2] As shown below, Lead Plaintiff satisfies the requirements for class certification under Federal Rule of Civil Procedure 23.

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[1] Together, SERS, PSERS, and Peter Wood are referred to herein as the "Proposed Class Representatives." "Defendants" shall refer to the Royal Dutch Petroleum Company ("Royal Dutch"), The "Shell" Transport and Trading Company, PLC ("Shell Transport" and, together with Royal Dutch, "Shell" or the "Companies"), KPMG Accountants N.V. ("KMPG NV"), PricewaterhouseCoopers LLP ("PwC UK"), KPMG International ("KPMG-I"), Sir Philip Watts ("Watts"), Walter van de Vijver ("van de Vijver"), and Judith Boynton ("Boynton"). "Individual Defendants" shall refer to Watts, van de Vijver, and Boynton. "Corporate Defendants" shall refer to Royal Dutch, Shell Transport, KPMG NV, PwC UK, and KPMG-I. "Auditing Defendants" shall refer to KPMG NV, PwC UK, and KPMG-I. "Royal Dutch Defendants" shall refer to all Defendants other than the Auditing Defendants.

[2] Excluded from the Class are Defendants, members of the immediate families of each of the Individual Defendants, any parent, officer and/or director of each of the Corporate Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or that is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

Judge Bissell appointed SERS and PSERS Lead Plaintiff on June 30, 2004. On September 13, 2004, Lead Plaintiff filed the Consolidated Amended Class Action Complaint (the "First Complaint"), alleging that Defendants (and others) engaged in a scheme to deceive the markets worldwide by inflating Shell's proved hydrocarbon reserves. The First Complaint was the subject of nine separate motions to dismiss, the first of which was filed in December 2004. By an Opinion and Order dated August 9, 2005, Chief Judge Bissell denied the bulk of Defendants' motions to dismiss. *In re Royal Dutch/Shell Transport Sec. Litig.*, 380 F. Supp. 2d 509 (D.N.J.), *on reconsideration*, 404 F. Supp. 2d 605 (D.N.J. 2005). In the case of KPMG-I, Judge Bissell dismissed the First Complaint without prejudice. On September 19, 2005, Lead Plaintiff filed the Second Consolidated Amended Class Action Complaint (the "Second Complaint"), incorporating, *inter alia*, new factual allegations against KPMG-I.[3]

As the allegations of the Second Complaint make clear, this case is a prototypical class action on behalf of millions of investors who, like the Proposed Class Representatives, have been damaged by Defendants' schemes to defraud (and the materially false and misleading statements associated therewith), or other knowing or reckless misconduct, relating to the scope of the Companies' reported proved reserves and certain financial metrics. As the United States Supreme Court, the Third Circuit, and many other courts, both within and without this Circuit, have repeatedly held, securities fraud actions are properly certified as class actions.[4] That is true even when the class includes foreign members who acquired their securities or commodities

[3] The Second Complaint is the subject of a second motion to dismiss by KPMG-I, which has been fully briefed and argued.

[4] *See, e.g., Basic Inc. v. Levinson*, 485 U.S. 224 (1988); *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3d Cir. 1985) ("Class actions are a particularly appropriate and desirable means to resolve claims based on the securities laws, 'since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'") (quoting *Kahan v. Rosenstiel*, 424 F.2d 161, 169 (3d Cir. 1970)).

abroad. *See, e.g.*, *In re Nortel Networks Corp. Sec. Litig.*, No. 01 Civ. 1855(RMB), 2003 WL 22077464, at *6 (S.D.N.Y. Sept. 8, 2003).[5]

Accordingly, Lead Plaintiff respectfully requests that the Court grant its motion for class certification.

STATEMENT OF FACTS

A. Defendants' Misconduct

In a series of announcements beginning on January 9, 2004, and extending into February of 2005, Shell disclosed that it had overstated its proved hydrocarbon reserves by 5.8 billion barrels of oil equivalent ("boe"), or approximately *one third*, in violation of SEC Rule 4-10 of Regulation S-X [17 C.F.R. § 210.4-10].[6] ¶¶ 473, 480, 486, 492;[7] *see also* Exh. A to the Declaration of Jeffrey M. Haber, dated March 1, 2006 (the "Haber Declaration").[8] Shell also lowered its Reserves Replacement Ratio ("RRR") for 2003, from a previously reported value of 98% to approximately 82%. ¶ 483. RRR is a metric that expresses the rate at which an oil and gas company replaces extracted hydrocarbons with newly found proved reserves. Like proved

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[5] *See also In re Gaming Lottery Sec. Litig.*, 58 F. Supp. 2d 62, 77 (S.D.N.Y. 1999); *In re Int'l Nesmont Sec. Litig.*, No. 94-4202(WGB), slip op. at 44 (D.N.J. Dec. 2, 1996); *Frietsch v. Refco, Inc.*, No. 92 C 6844, 1994 WL 10014, at *12 (N.D. Ill. Jan. 13, 1994); *Jordan v. Global Natural Res., Inc.*, 102 F.R.D. 45 (S.D. Ohio 1984).

[6] Under Rule 4-10, proved reserves are "the estimated quantities of crude oil, natural gas, and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions, *i.e.*, prices and costs as of the date the estimate is made." ¶ 106. The Companies were required to include supplemental information regarding their proved oil and natural gas reserves in their annual reports to the SEC. Second Complaint ¶ 105 (citing Financial Accounting Standard ("FAS") 69).

[7] Citations to "¶ __" and "¶¶ __" shall refer to paragraphs in the Second Complaint.

[8] Exh. A is an article from *The New York Times* headlined "Shell Makes Another Cut in Reserves; Profit Jumps," dated February 4, 2005. All exhibits cited herein are attached to the Haber Declaration.

reserves, RRR is a key performance indicator for investors evaluating the success of companies in that industry, and is critical to forecasting their future performance. ¶¶ 109, 151, 153, 156.[9]

For a corporation with a reputation for conservatism, these announcements, which so clearly bespoke fraud, stunned investors. ¶¶ 7, 476. As former SEC chief accountant Lynn Turner concluded: "A 20% restatement of proven reserves is a humongous error. For a company like Shell to have missed its proven reserves by that much is not an oversight. *It's an intentional misapplication of the SEC's rules.*" ¶ 11 (emphasis added). Shell securities lost a net $15.7 billion in market value as a result of the alleged misconduct.

Lynn Turner's opinion was shared by, among others, Davis Polk & Wardwell ("Davis Polk"), which investigated the reclassification on behalf of Shell's Group Audit Committee (the "GAC"). In the "Report of Davis Polk & Wardwell to the Group Audit Committee of March 31, 2004" (the "GAC Report"), issued long before Shell's final downward revision, Davis Polk found that top management, including Defendants Watts and van de Vijver, not only knew of the overstated reserves, but also actively "play[ed] for time" in the hope that they would not have to publicly report the truth about the Companies' proved reserves. ¶ 15. The GAC Report was accepted in full by the GAC on April 15, 2004, and by the Supervisory Board of Royal Dutch and the non-executive Directors of Shell Transport on April 16, 2004. *Id.*

The Companies accepted responsibility for the misconduct alleged in the Second Complaint not only in the GAC Report, the Executive Summary of which was attached to a Form 6-K that was filed with the SEC on April 19, 2004, but also in Shell Transport's and Royal Dutch's Annual Reports, which were disseminated to shareholders in May 2004. In section after

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[9] For example, an RRR of 100% means that an oil and gas company is finding new proved hydrocarbon reserves at the same pace that it is extracting previously found hydrocarbons from the ground – a highly desirable situation in the oil and gas industry. ¶ 109.

section, the Companies described the overbooking as "inappropriate" and "improper," and explained that "there were deficiencies and material weaknesses in the internal controls relating to proved reserves bookings and disclosure controls that allowed volumes of oil and gas to be improperly booked and maintained as proved reserves." ¶ 16.

The reserves recategorization also adversely affected the Companies' previously issued audited financial statements. ¶ 484. On May 24, 2004, the Companies announced that they would restate certain of their financial results for 2001, 2002, and 2003. Several days later, Royal Dutch and Shell Transport issued their Annual Reports, in which KPMG NV and PwC UK provided a joint audit report confirming the necessity of the financial restatement. The report stated, "[i]n view of the inappropriate overstatement of unaudited proved reserves information, it was determined to restate the Financial Statements of the Group, and each of the Parent Companies, for prior periods (the Financial Restatement) to reflect the impact of the Reserves Restatement on those Financial Statements (as announced on April 19, 2004)." Exh. B at 52 (of each report). The report also explained that:

> [t]he effect of the restatement was to reduce net income in 2002 by $108 million (2001: $42 million), of which additional depreciation in 2002 was $166 million (2001: $84 million), and to reduce the previously reported net assets as at December 31, 2002 by $276 million.

Id. at 53 (of each report).

As discussed herein, Defendants are charged with knowingly or recklessly disseminating materially false and misleading public reports of the Companies' proved oil and natural gas reserves, overstating the Companies' RRR, and overstating certain of the Companies' financial metrics, including the standard measure of future discounted cash flows (overstated by more than one hundred billion dollars). ¶ 3. The Second Complaint sets out a detailed description of how the Royal Dutch Defendants, with the assistance and cooperation of the Auditing Defendants,

intentionally manipulated the Companies' proved reserves for more than five years to deceive investors into believing that the Companies were growing and profitable. Defendants constructed this illusion through, among other things, (a) practices that were designed to avoid compliance with applicable SEC rules and internal guidelines (which themselves were not compliant with SEC rules), (b) internal control failures, and (c) a scheme to play for time (*i.e.*, conceal the fraud) by managing reserves.

As noted, the truth about the Group's proved reserves and its effect on the Companies' reported financial results began to be disclosed on January 9, 2004, when the Companies revealed that, to comply with SEC regulations, they would be reducing previously reported proved reserves by 20%, or approximately 3.9 billion boe. ¶¶ 6, 473; *see also* Exh. B. On March 18, 2004, the end of the Class Period, the Companies announced again that they were restating downward their proved reserves because they "did not strictly follow" SEC rules. ¶ 480; *see also* Exh. C (the Companies' March 18, 2004 press release). This reclassification involved the Ormen Lange booking in Norway. The Companies also disclosed that they would have to amend the 2002 Form 20-F "to reflect the recategorisation," and that "[t]he 'Management's Discussion and Analysis of Financial Conditions and Results of Operations' section . . . [would] be amended . . . ." *Id.* By the filing of the First Complaint, Shell had reduced its proved reserves by more than 4.47 billion boe, or 23% of the Companies' reported Class Period proved reserves. ¶¶ 8, 492.

The consequences of Defendants' fraud on the investing public were devastating. The January 2004 partial disclosure triggered a dramatic decline in the trading price of the ordinary shares of both Shell Transport and Royal Dutch and the ADRs of Shell Transport (Shell Transport dropping by about 6.96% in the United States and 7.48% in London, and Royal Dutch

dropping by about 7.87% in the United States and 7.65% in Amsterdam). ¶¶ 6, 475. It also resulted in the impairment of the Group's corporate credit ratings – which determine how much companies have to pay to borrow money, and which the Companies have fiercely protected in the past (¶¶ 10, 479) – the restatement of the Group's financial statements, and the firing of Defendants Watts, van de Vijver, and Boynton from their senior executive positions with the Companies. ¶¶ 10, 477.

The adverse effect of the March 18, 2004 announcement resulted in a decline in the price of Shell Transport's ADRs and Royal Dutch's ordinary shares (in the U.S.). Shell Transport's ADRs declined $.55 per ADR, closing at $40.50 (unadjusted) on March 18th, and Royal Dutch's ordinary shares (in the U.S.) declined $.60 per share, closing at $47.71 (unadjusted) on March 18th. The price of these securities fell further on the following day: Shell Transport's ADRs declined an additional $.25 per ADR, closing at $40.25 (unadjusted) on March 19th, and Royal Dutch's ordinary shares (in the U.S.) declined an additional $.66 per share, to close at $47.05 (unadjusted) on March 19th.

The fraud also has been the subject of regulatory and internal investigations and has resulted in more than $120 million in fines paid by the Companies. In connection with these fines, the SEC issued a cease and desist order against the Companies (the "Cease and Desist Order"), in which it concluded that the Companies had violated, *inter alia*, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"); similarly, the Financial Services Authority (the "FSA"), England's market regulator, issued a Notice to Take Action directed to the Companies for the "market abuse" that it termed "particularly serious," and that required a "substantial financial penalty." ¶¶ 308, 309.

B. The Proposed Class Representatives

Lead Plaintiff moves for the appointment of three class representatives, SERS, PSERS, and Peter M. Wood.

1. SERS

SERS is a Pennsylvania agency that maintains a public pension fund for the benefit of the current and retired employees of the Commonwealth of Pennsylvania. The fund is located in Harrisburg, Pennsylvania, and, as of December 31, 2005, had assets of approximately $28.8 billion. A summary of SERS' foreign and domestic Class Period transaction data in Royal Dutch and Shell Transport common shares and ADRs is attached to the Haber Declaration as Exhibit D.

SERS purchased the securities of Royal Dutch and Shell Transport at artificially inflated prices on the NYSE and on foreign exchanges during the Class Period. In connection with these purchases, and as a direct result of the disclosures of the truth about the Companies' reported proved reserves and financial condition, SERS suffered damages. Accordingly, SERS seeks appointment as a class representative on behalf of all members of the Class – purchasers of Shell securities – regardless of where such investors lived or purchased securities.

2. PSERS

PSERS is a Pennsylvania agency that maintains a public pension fund for the benefit of the current and retired public school employees of the Commonwealth of Pennsylvania. The fund, which has more than 445,000 members, is located in Harrisburg, Pennsylvania, and had assets of approximately $54.8 billion as of December 31, 2005. A summary of PSERS' foreign and domestic Class Period transaction data in Royal Dutch and Shell Transport securities is attached to the Haber Declaration as Exhibit E.

PSERS purchased the securities of Royal Dutch and Shell Transport at artificially inflated prices on the NYSE and on foreign exchanges during the Class Period. In connection with these

purchases, and as a direct result of the disclosures of the truth about the Companies' reported proved reserves and financial condition, PSERS suffered damages. Accordingly, PSERS seeks appointment as a class representative on behalf of all members of the Class – purchasers of Shell securities – regardless of where such investors lived or purchased securities.

3. Peter M. Wood

Peter M. Wood is a British citizen and a resident and domiciliary of Andorra. Wood purchased the ordinary shares of Shell Transport at artificially inflated prices on a foreign exchange during the Class Period. In connection with these purchases, and as a direct result of the disclosures of the truth about the Companies' reported proved reserves and financial condition, Mr. Wood suffered damages. As set forth in the Declaration of Peter M. Wood, dated February 28, 2006, Mr. Wood is dedicated to serving as a fiduciary for all Class members.[10] A summary of Wood's Class Period transaction data in the ordinary shares of Shell Transport is attached to the Haber Declaration as Exhibit F.

ARGUMENT

I. THE CLASS ACTION MECHANISM IS PARTICULARLY WELL SUITED FOR THE ADJUDICATION OF SECURITIES CLAIMS

A class action affords a single forum in which the same or similar claims can be litigated, and affords an indispensable mechanism to conserve judicial resources.[11] Courts throughout the

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[10] Mr. Wood's Declaration is submitted in support of his joint motion with Lead Plaintiff, dated March 1, 2006, to intervene in this action as an additional class representative.

[11] *See, e.g.*, *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979); *Kennedy v. Tallant*, 710 F.2d 711, 718 (11th Cir. 1983) ("Separate actions by each of the class members would be repetitive, wasteful, and an extraordinary burden on the courts."); *Korn v. Franchard Corp.*, 456 F.2d 1206 (2d Cir. 1972); *Frankel v. Wyllie & Thornhill, Inc.*, 55 F.R.D. 330 (W.D. Va. 1972); *Esplin v. Hirschi*, 402 F.2d 94 (10th Cir. 1968).

country, including the Supreme Court, have endorsed the utility and necessity of the class action mechanism in adjudicating securities law claims.[12]

The Third Circuit has characterized the class action device as a "'particularly appropriate and desirable means to resolve claims based on the securities laws, since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'" *Yang v. Odom*, 392 F.3d 97, 109 (3d Cir. 2004) (quoting *Eisenberg*, 766 F.2d at 775), *cert. denied,* 125 S. Ct. 2294 (2005). "The Court of Appeals for the Third Circuit has adopted a liberal construction of Rule 23 when considering shareholder suits." *In re Regal Commc'ns Corp. Sec. Litig.*, No. 94-179, 1995 WL 550454, at *3 (E.D. Pa. Sept. 14, 1995). In a doubtful case, any error, if there is to be one, should be committed in favor of allowing a class action. *See, e.g., Yang v. Odom,* No. Civ.A. 02-5968(JAP), 2005 WL 2000156, at *3 (D.N.J. Aug. 19, 2005) (Pisano, J.) ("Any doubts should be resolved in favor of class certification, especially in securities fraud class actions, where class action treatment is the preferred method of adjudication.").[13]

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[12] *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (class actions allow the "plaintiffs to pool claims which would be uneconomical to litigate individually. . . . [M]ost of the plaintiffs would have no realistic day in Court if a class action were not available."); *Eisenberg v. Gagnon*, 766 F.2d 770, 785 (3d Cir. 1985) (class actions are a particularly appropriate and desirable means to resolve claims based on securities laws); *Blackie v. Barrack*, 524 F.2d 891, 903 (9th Cir. 1975) (the class action device is especially appropriate to redress securities fraud claims); *Green v. Wolf Corp.*, 406 F.2d 291, 296 (2d Cir. 1968) (class actions are the "appropriate means for expeditious litigation" of securities fraud claims); *Smith v. Dominion Bridge Corp.*, No. Civ. A. 96-7580, 1998 WL 98998, *1,*2 (E.D. Pa. Mar. 6, 1998) ("The use of the class action mechanism to resolve securities law claims is widely accepted in this circuit."); *In re Laidlaw Sec. Litig.*, No. 91-CV-1829, 1992 WL 68341, at *1, *2 (E.D. Pa. Mar. 31, 1992) ("Class action treatment of related claims is particularly appropriate where plaintiffs allege violations of the securities laws.").

[13] *See also Eisenberg,* 766 F.2d at 785; *In re Mercedes-Benz Antitrust Litig.* 213 F.R.D. 180, 184 (D.N.J. 2003); *Gunter v. Ridgewood Energy Corp.*, 164 F.R.D. 391, 394 (D.N.J. 1996); *Kahan v. Rosenstiel*, 424 F.2d 161, 169 (3d Cir. 1970); *Snider v. Upjohn Co.*, 115 F.R.D. 536,

Lead Plaintiff bears "the burden of proving each of the prerequisites of a class action under rule 23(a) and that the class fits within one of the three categories of class actions set forth in Rule 23(b)." *Meyer v. CUNA Mut. Group*, No. Civ. A. 03-602, 2006 WL 197122, at *10 (W.D. Pa. Jan. 25, 2006) (citing *Chiang v. Veneman*, 385 F.3d 256, 264 (3d Cir. 2004)). While "[a] court must undertake a 'rigorous analysis' to determine whether the putative class and its proposed representatives satisfy each of the prerequisites to class certification" (*Yang*, 2005 WL 2000156, at *3) (citing *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 161 (1982)), "it is not necessary for plaintiff to establish the merits of his case at the certification stage . . . . [I]n determining whether the class will be certified, the substantive allegations of the complaint must be taken as true." *Meyer*, 2006 WL 197122, at *10 (citing *Chiang*, 385 F.3d at 262).[14] However, "the court may in some cases 'analyze the elements of the parties' substantive claims and review facts revealed in discovery in order to evaluate whether the requirements of Rule 23 have been

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539 (E.D. Pa. 1987); *In re Kulicke & Soffa Indus., Inc. Sec. Litig.*, No. 86-1656, 1990 WL 1478, at *1 (E.D. Pa. Jan. 9, 1990).

[14] *See, e.g., Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974); *Chiang*, 385 F.3d at 262 ("[I]n determining whether a class will be certified, the substantive allegations of the complaint must be taken as true."); *In re Pharmaprint, Inc. Sec. Litig.*, No. 00-CV-00061, 2002 WL 31056813, at *1 (D.N.J. Apr. 17, 2002) (Pisano, J.) ("In ruling on a motion for class certification, the Court does not consider the merits of the case, and takes as true the substantive allegations within the Lead Plaintiffs' amended complaint."); *Brosious v. Children's Place Retail Stores*, 189 F.R.D. 138, 145 (D.N.J. 1999) ("A motion for class certification should not turn on the court's evaluation of the merits of the parties' legal or factual claims."); *Cullen v. Whitman Med. Corp.*, 188 F.R.D. 226, 229 (E.D. Pa.1999); *Neuberger v. Shapiro*, No. Civ. A. 97-7947, 1998 WL 826980, at *1, *2 (E.D. Pa. Nov. 25, 1998) (arguments by defendants concerning the merits of the case "are not within the purview of a motion for class certification"); *In re Cephalon Sec. Litig.*, No. Civ. A. 96-0633, 1998 WL 470160, at *1, *3 (E.D. Pa. Aug. 12, 1998) (determination of the merits of claims of Lead Plaintiffs "is not appropriate for resolution at the class action stage"); *Action Alliance of Senior Citizens v. Snider*, Civ. A. No. 93-4827, 1994 WL 384990, at *1, *3 (E.D. Pa. July 18, 1994) ("the class certification determination is not the time in this litigation to pierce the merits of the case"); *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 252 (3d Cir. 1975); *Barnes v. Am. Tobacco Co.*, 176 F.R.D. 479, 483 (E.D. Pa. 1997), *aff'd*, 161 F.3d 127 (3d. Cir. 1998).

satisfied.'" *Yang*, 2005 WL 2000156, at *3 (quoting *In re Ford Motor Co. Ignition Switch Prods. Liab. Litig.*, 174 F.R.D. 332, 339 (D.N.J. 1997)).

II. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS FOR CERTIFICATION UNDER RULE 23

For a proposed class to be certified, the requirements of Rule 23(a) and 23(b) must be satisfied. *See, e.g.*, *Stewart v. Abraham*, 275 F.3d 220, 226 (3d Cir. 2001); *In re Pharmaprint, Inc. Sec. Litig.*, No. 00-CV-00061, 2002 WL 31056813, at *5 (D.N.J. Apr. 17, 2002). Rule 23(a) identifies four prerequisites to class certification:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class.

These four requirements are commonly referred to as (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See In re Fleetboston Fin. Corp. Sec. Litig.*, No. Civ. No. 02-4561 WGB, 2005 WL 3579050, at *1 (D.N.J. Dec. 28, 2005).

If the four prerequisites of Rule 23(a) are met, Lead Plaintiff must also demonstrate that the action qualifies for class action treatment under one of three criteria set forth in Rule 23(b). *Id.* Lead Plaintiff moves for class certification under Rule 23(b)(3), which requires that "questions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). As demonstrated below, Lead Plaintiff has met its burden of showing that the prerequisites of Rule 23(a) and the requirements of Rule 23(b)(3) are satisfied.

A. The Requirements of Rule 23(a) are Satisfied

1. The Members of the Class are so Numerous that Joinder of All of them is Impracticable

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is impracticable. *See Stewart* 275 F.3d at 226; *Yang*, 2005 WL 2000156, at *3; *Brosious v. Children's Place Retail Stores*, 189 F.R.D. 138, 145 (D.N.J. 1999). As this Court stated in *Yang*, impractability does not mean impossibility, but rather "proof of 'difficulty or inconvenience of joining all members of the class.'" *Yang*, 2005 WL 2000156, at *3 (quoting *Wachtel v. Guardian Life Ins. Co.*, 223 F.R.D. 196, 211 (D.N.J. 2004)). In determining whether a proposed class meets the numerosity requirement, a court may accept common sense assumptions. *In re Cephalon Sec. Litig.*, No. Civ. A. 96-0633, 1998 WL 470160, at *2 (E.D. Pa. Aug. 12, 1998). "There are no specific standards regarding class size and it is not necessary for a plaintiff to allege the exact number of class members to satisfy the numerosity requirement." *In re Centocor, Inc. Sec. Litig.*, No. Civ. A. 98-260, 1999 WL 54530, at *1 (E.D. Pa. Jan. 27, 1999).[15] Courts within the Third Circuit have recognized "a presumption that the numerosity requirement is satisfied when a class action involves a nationally traded security . . . ." *Sinay v. Lepore & Assocs.*, Civ. No. 99-02231(DRD), slip op. at 8 (D.N.J. Feb. 14, 2001).

That this case satisfies the numerosity requirement is beyond dispute. The principal trading markets for the ordinary shares of Royal Dutch are the stock exchanges in Amsterdam

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[15] *See also In re Pharmaprint*, 2002 WL 31056813, at *5 ("'No magic number exists satisfying the numerosity requirement.'") (quoting *Moskowitz v. Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989)); *Yang*, 2005 WL 2000156, at *3 (same); *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001) (Pisano, J.) (same); *Wachtel*, 223 F.R.D. at 211; *Smith v. Dominion Bridge Corp.*, No. Civ. A. 96-7580, 1998 WL 98998, *3 (E.D. Pa. Mar. 6, 1998) ("there is no magic number that satisfies this requirement and plaintiff is not required to allege the exact number or identities of the class members"); *Ardrey v. Fed. Kemper Ins. Co.*, 142 F.R.D. 105, 109 (E.D. Pa. 1992); *Snider v. Upjohn Co.*, 115 F.R.D. 536, 539 (E.D. Pa. 1987); *Wolgin v. Magic Marker Corp.*, 82 F.R.D. 168, 171 (E.D. Pa. 1979).

and New York. Royal Dutch ordinary shares are also listed on stock exchanges in Austria, Belgium, France, Germany, Luxembourg, Switzerland, and the United Kingdom. The principal trading market for the ordinary shares of Shell Transport is the London Stock Exchange. Shell Transport ordinary shares are also listed and traded on stock exchanges in Belgium, France, and Germany, and Shell Transport has ADRs that are listed and traded on the NYSE.

As of December 31, 2002, Royal Dutch had 2,099,285,000 ordinary shares outstanding (Exh. G), of which approximately 522,321,706 were available for trading on the NYSE, with the remainder trading on overseas markets. As of that same date, Shell Transport had 9,667,500,000 ordinary shares outstanding (Exh. G), with approximately 48,414,148 ADRs available to trade on the NYSE (with each ADR representing six ordinary shares). The remainder traded on overseas markets. Based on this information, Lead Plaintiff believes that there are thousands, if not millions, of investors who purchased Royal Dutch and/or Shell Transport common shares or ADRs during the Class Period. Thus, the threshold for a presumption of impracticality of joinder is certainly exceeded.[16]

2. There are Questions of Law and Fact Common to the Class

Like numerosity, the commonality requirement has been construed liberally in securities litigation. *See Fogarazzao v. Lehman Bros., Inc.*, 232 F.R.D. 176, 180 (S.D.N.Y. 2005) ("The commonality requirement has been applied permissively in securities fraud litigation. In general,

[16] *See, e.g., Stewart*, 275 F.3d at 226-27 ("generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met"); *Eisenberg v. Gagnon*, 766 F.2d 770, 785-86 (3d Cir. 1985) (allegation of 91 class members satisfied the numerosity requirement); *In re Tel-Save Sec. Litig.*, No. 98-CV-3145, 2000 WL 1005087, at *4 (E.D. Pa. July 19, 2000) ("It is sufficient to say that in this case, where the plaintiffs allege that hundreds of investors have been defrauded, that the numerosity requirement is met."); *In re Honeywell Int'l Inc. Sec. Litig.*, 211 F.R.D. 255, 260 (D.N.J. 2002) (finding numerosity requirement satisfied for investors who purchased corporation's shares during the designated period, when corporation was a large and prominent publicly held company and SEC filings confirmed that shareholders numbered in the thousands).

where putative class members have been injured by similar material misrepresentations and omissions, the commonality requirement is satisfied."); *Moskowitz v. Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989). Rule 23(a)(2) is satisfied when the proposed class representatives share at least one question of fact or law with the claims of the prospective class. *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 120 (D.N.J. 2002) (Pisano, J.); *Hawker*, 198 F.R.D. at 625.[17] As this Court stated in *In re Lucent Techs., Inc., Sec. Litig.*, 307 F. Supp. 2d 633, 640 (D.N.J. 2004), "Rule 23 does not require that all class members be identically situated, just that substantial, common questions of either law or fact exist." *See also Yang*, 2005 WL 2000156, at *4 (burden to satisfy commonality is light).

The commonality requirement is easily satisfied in this action. The existence, nature, and significance of Defendants' misconduct – the most important issues in a securities fraud case – are issues common to the entire Class, and the Class is bound by a common interest in determining whether Defendants' conduct is actionable. *See Weikel v. Tower Semiconductor, Ltd.,* 183 F.R.D. 377, 389 (D.N.J. 1998) (questions of whether defendants violated securities laws and whether defendants participated in a common course of conduct satisfy commonality requirement); *In re Baldwin-United Corp. Litig.*, 122 F.R.D. 424, 426 (S.D.N.Y. 1986) ("The nub of plaintiffs' claims is that material information was withheld from the entire putative class in each action, either by written or oral communication. Essentially, this is a course of conduct case, which as pled satisfies the commonality requirement of Rule 23, F.R.Civ.P."); *Eisenberg*, 766 F.2d at 786 ("Plaintiffs presented a sufficient number of common questions of law and fact

[17] *See also Cullen v. Whitman Med. Corp.*, 188 F.R.D. 226, 230 (E.D. Pa.1999) (citing *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)); *Rosen v. Fid. Fixed Income Trust*, 169 F.R.D. 295, 298 (E.D. Pa. 1995); *In re Centocor*, 1999 WL 54530, at *2 (Rule 23(a)(2) "does not require that every question of law or fact be common to every member of the class."); *Neuberger v. Shapiro*, No. Civ. A. 97-7947, 1998 WL 826980, at *1 (E.D. Pa. Nov. 25, 1998) (to satisfy Rule 23(a)(2), "[p]utative class members need not share identical claims").

to meet the requirements of Rule 23(a)(2), in particular the defendants' liability for the alleged omissions and misrepresentations common to the offering and sale of all three limited partnerships.").

In connection with the appointment of PSERS and SERS as Lead Plaintiff, Judge Bissell determined that "[b]ecause of the virtually identical factual predicates" alleged in the numerous putative securities class actions pending against Defendants (and others) – namely that "Royal Dutch and Shell Transport reported reserves and future discounted cash flows that were materially false and misleading," consolidation was appropriate under Fed. R. Civ. P. 42. *See* Exh. H (June 30, 2004 Opinion) at 11, 22. The Court made a similar observation in deciding Defendants' motions to dismiss: "The claims in the Complaint stem from the dissemination by RDS of what Plaintiff characterizes as 'materially false and misleading statements' concerning RDS's reported proved oil and natural gas reserves." *In re Royal Dutch/Shell Transp. Sec. Litig.*, 380 F. Supp. 2d 509, 515 (D.N.J. 2005), *on reconsideration*, 404 F. Supp. 2d 605 (D.N.J. 2005).

Among the many questions of law and fact common to the Class in this action are whether:

(a) Defendants violated Sections l0(b) and 20(a) of the Exchange Act;

(b) Defendants engaged in a scheme or acted recklessly to overstate the Companies' proved oil and gas reserves;

(c) Defendants engaged in a scheme or acted recklessly to "play for time" (*i.e.*, conceal the fraud) in the hope that intervening developments would justify, or mitigate, the Companies' proved reserve exposures;

(d) Defendants materially misrepresented the Companies' financial condition during the Class Period;

(e) Defendants materially misrepresented the Companies' Supplemental Information reported to the SEC during the Class Period;

(f) Defendants acted with knowledge or recklessness in executing the schemes and other misconduct alleged in the Second Complaint;

(g) Defendants acted with knowledge or recklessness in making the misrepresentations and failing to disclose the omissions alleged in the Second Complaint; and

(h) Members of the Class have sustained damages and, if so, the appropriate measure thereof.[18]

Securities fraud actions addressing these types of common questions have repeatedly been held to be "prime candidates" for class certification. *Blackie v. Barrack*, 524 F.2d 891, 902-05 (9th Cir. 1975). *See, e.g, In re Pharmaprint*, 2002 WL 31056813; *In re Fleetboston*, 2005 WL 3579050; *In re Honeywell*, 211 F.R.D. 255; *Yang*, 2005 WL 2000156, at *4 (common questions of law and fact exist when the "[d]efendants undertook and participated in a scheme and common course of conduct to misrepresent and conceal from the investing public material facts . . . in violation of . . . Sections 10(b) and 20(a) of the Securities Exchange Act of 1934"). For all the foregoing reasons, the commonality requirement of Rule 23(a)(2) is satisfied.

3. The Proposed Class Representatives' Claims are Typical of the Claims of the Class

The typicality requirement of Rule 23(a)(3) is satisfied if the proposed class representative's claims arise from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory. *See In re Lucent*, 307 F. Supp. 2d at 640 ("The 'typicality' requirement is satisfied as long as the Lead Plaintiffs, the other representatives, and the Class 'point to the same broad course of alleged fraudulent conduct to support a claim for relief.'") (quoting *Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 401 (D.N.J. 1990). Any individual characteristics of the class representative are of no relevance. *See, e.g., In re Southeast Hotel Props. Ltd. P'ship Investor Litig.*, 151 F.R.D. 597, 605

[18] In connection with Section 10(b) and Rule 10b-5 claims, "[q]uestions of misrepresentations, materiality, and scienter are 'the paradigmatic common question[s] of law or fact in a securities fraud class action.'" *Deutschman v. Beneficial Corp.*, 132 F.R.D. 359, 372 (D. Del. 1990) (quoting *Moskowitz*, 128 F.R.D. at 629).

(W.D.N.C. 1993) (under Rule 23(a)(3) "the crucial issue is whether the claims of the class representatives are typical of the claims of the class members, not whether there is a similarity in personal backgrounds or knowledge between individuals"). Because typicality does not require that all plaintiffs' claims are identical, "even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories." *Baby Neal*, 43 F.3d at 58.[19]

Lead Plaintiff proposes PSERS, SERS, and Wood to serve as class representatives on behalf of all class members. SERS and PSERS are U.S. institutional investors that purchased their Royal Dutch and Shell Transport securities both domestically and abroad. *See* Exhs. D and E. In appointing PSERS and SERS as Lead Plaintiff, Judge Bissell recognized that "[t]heir claims arise from the same course of conduct, and they rely on the same legal theories to prove defendants' liability as those asserted by other class members." Exh. H at 38. Wood is a resident of Andorra who purchased his Shell Transport ordinary shares on the London Stock Exchange. *See* Exh. F.

Like the claims of all other members of the Class, the Proposed Class Representatives' claims arise from purchasing Shell ordinary shares and ADRs at prices that were artificially

[19] *See also In re Cephalon*, 1998 WL 470160, at *2; *Fox v. Equimark Corp.*, Civ. A. No. 90-1504, 1994 WL 560994, at *4 (W.D. Pa. July 18, 1994) ("All purchasers of stock during a class period share a common interest in showing that the stock was unlawfully inflated."); *In re Centocor*, 1999 WL 54530, at *2 (the typicality requirement of Rule 23(a)(3) is satisfied when the "'litigation of the named plaintiffs' personal claims can reasonably be expected to advance the interests of absent class members.'") (quoting *Arch v. Am. Tobacco Co., Inc.*, 175 F.R.D. 469, 478 (E.D. Pa. 1997)); *Zeffiro v. First Pennsylvania Banking & Trust Co.*, 96 F.R.D. 567, 570 (E.D. Pa. 1983) (observing that if the named plaintiff and class members have an interest in prevailing on similar legal claims, "particular factual differences, differences in the amount of damages claimed, or even the availability of certain defenses against a class representative may not render his or her claims atypical"); *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 185 (D.N.J. 2003) ("Typicality does not require that the claims of the named plaintiffs be identical to those of the proposed class members.").

inflated as a result of the inflation of the Companies' proved oil and gas reserves.[20] The foregoing course of conduct gave rise to repeated materially false and misleading statements and/or omissions of material fact. Because SERS, PSERS, and Wood purchased their Royal Dutch/Shell Transport ordinary shares and ADRs at artificially inflated prices and suffered losses as a result of the disclosures of the truth, the proof needed by them to prevail on their claims will be the same as that needed to prove the claims of the rest of the Class. Accordingly, their claims are typical of the claims of the Class within the meaning of Rule 23(a)(3).[21]

4. The Proposed Class Representatives Will Fairly and Adequately Protect the Interests of the Members of the Class

Under Rule 23(a)(4) – the adequacy of representation requirement – the Proposed Class Representatives must not have any conflict that might prevent them from representing the

[20] Whether a Class member purchased Shell ordinary shares or ADRs does not impact the typicality analysis. Shell ADRs are merely certificates representing ownership of Shell ordinary shares. Defendants' schemes and courses of conduct artificially inflated the prices at which class members purchased Shell securities, both ordinary shares and ADRs. Where the purchaser resides or where it purchased its shares is similarly irrelevant to the issue of typicality, because the geographical diversity of the investors of this global company does not change the fact that all investors were similarly damaged by Defendants' misconduct.

[21] *In re AremisSoft*, 210 F.R.D. at 121 (finding typicality requirement satisfied where "all claims arise from the same nucleus of operative facts: Defendants' misstatements artificially inflated AremisSoft's stock prices."); *In re Honeywell*, 211 F.R.D. at 260 ("The representative Plaintiffs' claims arise from the same alleged series of related misrepresentations that they claim injured all members of the proposed class. Their claims are therefore typical of those of the class for the purposes of the Rule."); *Fox*, 1994 WL 560994, at *4 (common interests of nominal plaintiffs and class in showing that stock price artificially inflated satisfied typicality requirement); *In re Centocor*, 1999 WL 54530, at *2 (named plaintiffs' claims were typical of the claims of the class because "the claims of the proposed class representatives and all other members of the class arise from false and misleading public statements made by [defendant] during the Class Period"); *Neuberger*, 1998 WL 826980, at *2 ("Because the allegations here include a common course of fraudulent conduct on the part of defendants and the same type of monetary harm to all putative class members, typicality is satisfied.").

interests of the Class, and their counsel must be competent to conduct a class action.[22] *See In re A-P-A Transp. Corp. Consol. Litig.*, No. Civ. 02-3480 WGB, 2005 WL 3077916, at *5 (D.N.J. Nov. 16, 2005). The requirements of fair and adequate representation in Rule 23(a)(4) are "'designed to ensure that the absent class members' interests are fully pursued'" by the class representatives actually before the court. *Id.* (quoting *Samuel-Bassett v. Kia Motors Am., Inc.*, 212 F.R.D. 271, 279 (E.D. Pa. 2002) (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.,* 148 F.3d 283, 312 (3d Cir. 1998)); *In re Fleetboston*, 2005 WL 3579050, at *3 (same).

In appointing PSERS and SERS as Lead Plaintiff, the Court noted that the two funds have "the ability and incentive to represent the claims of the class vigorously." Exh. H at 38. Since the Court appointed them as Lead Plaintiff in June 2004, PSERS and SERS, together with Lead Counsel, have vigorously prosecuted this action as fiduciaries acting in the best interests of all members of the Class. Lead Plaintiffs' efforts to date are well known to this Court and include, but are not limited to: (a) filing two amended securities class action complaints (Docket Nos. 39, 184); (b) filing a motion to partially lift the automatic stay of discovery under the PSLRA, defending the Court's order granting the motion on appeal to the Third Circuit, opposing the Companies' motion to enforce the stay of discovery during the pendency of their appeal, and filing a motion to enforce the Court's order (Docket Nos. 29, 35, 42); (c) defeating in substantial part Defendants' motions to dismiss under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) (Docket Nos. 109, 128, 130); (d) defeating various Defendants' motions to reconsider aspects of

[22] As a result of the 2003 amendments to the Federal Rules of Civil Procedure, the issue of appropriate class counsel is guided by Rule 23(g), rather than Rule 23(a)(4). *See* 2003 Advisory Comm. Notes to Rule 23 ("Rule 23(a)(4) will continue to call for scrutiny of the proposed class representative, while [Rule 23(g)] will guide the court in assessing proposed class counsel as part of the certification decision."); *accord, e.g., Jones v. Ford Motor Credit Co.*, 00 Civ. 8330RJHKNF, 2005 WL 743213, at *18 (S.D.N.Y. Mar. 31, 2005); *see also* 5 James Wm. Moore et al., Moore's Federal Practice § 23.25[3] (3d Ed. 2001). For the sake of convenience, however, Lead Plaintiff discusses the adequacy of counsel here.

the Court's August 9th decision (Docket Nos. 178, 179); (e) defeating the Companies' request for certification of an interlocutory appeal of the Court's denial of their motion to dismiss the claims of foreign purchasers who purchased their ordinary shares on foreign exchanges (Docket No. 179); (f) succeeding on reconsideration in securing the reversal of the Court's dismissal of the claims of Class members who held their Shell ordinary shares and ADRs after the 90-day look back period under the PSLRA (Docket Nos. 165, 204); (g) opposing KPMG-I's motion to dismiss the Second Complaint (Docket No. 242); (h) serving over 20 subpoenas on non-parties seeking the production of documents; (i) reviewing more than 2 million pages of documents produced to date; and (j) conducting various other discovery-related activities.

Lead Plaintiff and Lead Counsel have vigorously prosecuted this litigation precisely as the Court envisioned they would less than two years ago, and the Proposed Class Representatives will continue to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *In re Napster, Inc. Copyright Litig.*, No. C MDL-00-1369 MHP, 2005 WL 1287611, at *5 (N.D. Cal. June 1, 2005) (prior efforts of plaintiffs and counsel demonstrate adequacy to continue litigating on behalf of the class).

Moreover, there are no conflicts of interest between the Proposed Class Representatives and the other members of the Class. Indeed, the Class is particularly well represented by the Proposed Class Representatives, which are institutional investors who purchased Shell ordinary shares and/or ADRs both in the United States and abroad, and a foreign person who purchased Shell Transport ordinary shares on a foreign exchange. Although the presence of the Lead Plaintiff, which made substantial purchases both domestically and abroad, should suffice to negate any concern about the fair and adequate representation of both foreign and domestic Class

members,[23] the addition of Mr. Wood as a class representative would erase any conceivable concern about the representation of foreign Class members.

That the Proposed Class Representatives have no conflicts with the other members of the Class is further demonstrated by the fact that the Proposed Class Representatives, like the other Class members, were damaged as a result of Defendants' misconduct (and the materially false and misleading statements associated therewith) concerning the Companies' reported proved oil and gas reserves and financial statements. The Proposed Class Representatives will have to establish the materially false and/or misleading nature of the same statements as the absent Class members to establish Defendants' liability. The Proposed Class Representatives will vigorously prosecute the claims brought in this action on behalf of themselves and the Class, and thus, no Class members will be disadvantaged by the Proposed Class Representatives' representation in this action.

Finally, Lead Plaintiff has retained attorneys who are qualified, experienced, and able to conduct this litigation. Bernstein Liebhard & Lifshitz, LLP, appointed by Judge Bissell on June 30, 2004 to serve as Lead Counsel, has extensive experience litigating complex securities class actions and similar matters. Given the lack of any conflict of interest and the retention of competent counsel, the Proposed Class Representatives are adequate Class representatives. Accordingly Lead Plaintiff requests that Lead Counsel be appointed as Class Counsel pursuant to Fed. R. Civ. P. 23(g)(1), and that Lynch Keefe Bartels, a prominent New Jersey firm, be appointed liaison counsel.[24]

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[23] *See* Exh. H at 41 ("The Court finds the Pennsylvania Funds able to adequately represent the interests of all investors: those who purchased shares in both domestic and foreign markets.")

[24] The firm resumes of Lead Counsel and Liaison Counsel are attached hereto as Exhibits I and J.

B. The Requirements of Rule 23(b)(3) are Satisfied

In addition to meeting the requirements of Rule 23(a), Lead Plaintiff must also demonstrate that the requirements of Rule 23(b)(3) are satisfied. Rule 23(b)(3) states:

> (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:
>
> * * *
>
> (3) the court finds that the questions of law or fact common to the members of the Class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

As discussed below, both requirements of Rule 23(b)(3) – predominance and superiority – are satisfied here.

1. Common Questions of Law and Fact Predominate over any Individual Issues

To ensure that class litigation is more efficient than individual actions, Rule 23(b) requires that common issues predominate over issues that are particular to a proposed class representative. "Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues." *Smith*, 1998 WL 98998, at *5; *see also Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 99 (S.D.N.Y. 1981) ("To be sure, individual issues will likely arise in this as in all class action cases. But, to allow various secondary issues of plaintiffs' claim to preclude certification of a class would render the rule an impotent tool for private enforcement of the securities laws."). "The predominance inquiry 'focuses on the number and significance of common questions as opposed to individual issues.'" *Yang*, 2005 WL 2000156, at *7 (quoting *Jerry Enters. of Gloucester County, Inc. v. Allied Beverage Group, L.L.C.*, 178 F.R.D. 437, 446 (D.N.J. 1998)). In determining whether common questions predominate, the Court's inquiry is directed towards

the issue of liability. When a complaint alleges a "common course of conduct" of misrepresentations, omissions, and other wrongdoing that affects all members of the Class in the same manner, common questions predominate. *See Weikel*, 183 F.R.D. at 399-400 ("The present case, involving allegations of a common scheme to defraud[,] falls within the category of cases for which the predominance requirement is easily met."). The United States Supreme Court has stated that "[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *see also Brosious*, 189 F.R.D. at 147 (same, quoting *Amchem*). This Court has noted that "[t]he predominance test is readily met in most securities fraud actions." *In re AremisSoft*, 210 F.R.D. at 122 (citing *In re Prudential*, 148 F.3d at 314).

Here, common questions will predominate over any individual issues that theoretically might exist. The Second Complaint alleges that Defendants engaged in misconduct that artificially inflated the Companies' proved oil and gas reserves, and that they covered up that misconduct by "playing for time." If the Proposed Class Representatives and each Class member were to bring individual actions, they would each be required to prove the existence of these same schemes (and the materially false and misleading statements associated therewith) to establish liability. *See, e.g., Neuberger,* 1998 WL 826980, at * 4 ("Evidentiary issues as to misrepresentations and materiality will be substantially identical for all class members."). Indeed, courts have repeatedly held that common issues predominate over individual issues, even when the false and misleading representations were issued over significant lengths of time in many different documents.[25]

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[25] *See Blackie,* 524 F.2d at 894 (material misrepresentations contained in forty-five documents issued over a two year period); *Green v. Wolf Corp.*, 406 F.2d 291, 294 (2d Cir. 1968) (material misrepresentations contained in three prospectuses issued over the course of two

a. Common Questions Predominate Notwithstanding Potential Individual Questions of Damages

That questions of individual damages may exist does not change the overall nature of the claims asserted on behalf of the Class. *Wachtel*, 223 F.R.D. at 209 ("The fact that damages must be assessed on an individual basis does not necessarily preclude class certification.") (citing *Bogosian v. Gulf Oil Corp.,* 561 F.2d 434, 456 (3d Cir.1977)); 7 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1778 (3d ed. 2005) ("In [securities fraud] actions the courts generally hold that if defendants' activities present a 'common course of conduct' so that the issue of statutory liability is common to the class, the fact that damages or, in some securities cases, reliance may vary for each party does not require that the class action be terminated as being beyond the scope of Rule 23(b)(3).").

b. The Class Is Entitled to a Presumption of Reliance Under The Fraud-On-The-Market Doctrine

There are no issues of individual reliance that would otherwise preclude class certification because the Class is entitled to the fraud-on-the-market presumption of reliance approved by the United States Supreme Court in *Basic Inc. v. Levinson*, 485 U.S. 224, 241-47 (1988). Under this doctrine, the Class "'is entitled to a presumption of reliance if [it] bought securities in an efficient market; in an efficient market, the price of the security is assumed to have incorporated the alleged misrepresentations of the defendant.'" Exh. H at 41 (quoting *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 373 (3d Cir. 2002)) (citing *Semerenko v. Cendant Corp.*, 223 F.3d 165, 178 (3d Cir. 2000)).

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and one-half years); *Piel v. Nat'l Semiconductor Corp.*, 86 F.R.D. 357, 368 (E.D. Pa. 1980) ("it should not be permissible for a defendant to escape the possible effect of a class action merely because the wrong alleged was elaborately conducted over a long period of time and by a variety of different activities.").

However, before a putative class is entitled to rely upon the fraud-on-the-market presumption of reliance, the plaintiffs must demonstrate that: (a) the defendant made public misrepresentations; (b) the misrepresentations were material; (c) the plaintiff purchased the shares after the misrepresentations but before the truth was revealed; and (d) the shares were traded on an efficient market. Here, the Court has already found that Lead Plaintiff has satisfied the first three of the four above-enumerated factors.

First, the Court has determined that Lead Plaintiff has adequately alleged that the Defendants engaged in knowing or reckless misconduct pursuant to which Defendants made public misrepresentations concerning, among other things, Shell's reported proved reserves and financial condition. *See generally In re Royal Dutch/Shell Transport*, 380 F. Supp. 2d 509. Second, the Court has recognized that Defendants' misrepresentations concerned material facts. *Id.* Third, the Court has found that Lead Plaintiff has alleged that it purchased Shell ordinary shares and/or ADRs during the Class Period before the full truth was revealed on March 18, 2004. *Id.* Consequently, in determining that the Class is entitled to invoke the fraud-on-the-market presumption of reliance, the Court need only now determine whether Lead Plaintiff has demonstrated that Shell's ordinary shares and ADRs traded in efficient markets during the Class Period.

An efficient market is one in which material information about the company is widely available and is ultimately reflected in the value of the security. *See Basic*, 485 U.S. at 246-47 n.24; *see also In re PolyMedica Corp. Sec. Litig.*, 224 F.R.D. 27, 41 (D. Mass. 2004) ("The 'efficient' market required for the 'fraud on the market' presumption of reliance is simply one in which 'market professionals generally consider most publicly announced material statements about companies, thereby affecting stock market prices.") (citation omitted).

Both Royal Dutch and Shell Transport were (and are) closely watched entities about which there is no dearth of public information – information that is, beyond question, immediately reflected in the price of the securities on major international exchanges, including the NYSE, the London Stock Exchange, and the Amsterdam Euronext Exchange. Given the Companies' size and position in the global marketplace, there is simply no question that the domestic and international markets for Shell's ordinary shares and ADRs were (and are) efficient. *E.g., In re Initial Pub. Offering Sec. Litig.*, 227 F.R.D. 65, 107 n.324 (S.D.N.Y. 2004) (noting that federal courts have repeatedly held that a listing on a national market, such as the NASDAQ, is a good indicator of efficiency) (citations omitted). Indeed, Judge Bissell has already found that "it would be difficult to contend that the London and Amsterdam stock exchanges do not qualify, within the ambit of the doctrine's definition, as efficient markets." Exh. H at 41.

2. A Class Action is Superior to Numerous Individual Actions

A class action is superior to other available methods for the fair and efficient adjudication of this litigation within the meaning of Rule 23(b)(3) because: (i) absent certification of a class, the Court would be faced with the potential burden of adjudicating thousands if not millions of individual lawsuits, all of which would arise out of the same set of operative facts alleged in the Second Complaint; (ii) the resolution of common issues in one action will yield an efficient use of judicial resources and a single, uniform outcome; (iii) any administrative difficulties in handling potential individual issues under the class action device are less burdensome than the problems that are likely to arise in handling the claims in thousands or millions of separate actions; and (iv) because of the prohibitive expense of maintaining individual actions, denial of class certification here would effectively prevent numerous individuals from asserting their

claims against the Defendants, and render meaningless the causes of action provided under the federal securities laws.[26]

Nor does the presence of foreign defendants and foreign victims change this conclusion. Courts considering this issue have rejected attempts by corporate wrongdoers to avoid compensating their foreign victims – particularly where, as here, the foreign corporations have availed themselves of United States consumer and capital markets, and where there is subject matter jurisdiction in the United States. As one court noted, concerns over the *res judicata* effect of a U.S. judgment were nothing more than a pretext to send foreign purchasers into hostile forums (or no forum) so that the defendants could reduce the amount of compensation that they would ultimately pay to those they have harmed. *In re U.S. Fin. Sec. Litig.*, 69 F.R.D. 24, 52 (S.D. Cal. 1975). "Given the American situs of the alleged fraud perpetrated upon these holders, such a result would be unconscionable." *Id.*; *see also In re Turkcell Iletisim Hizmetler, A.S. Sec. Litig.*, 209 F.R.D. 353, 361 (S.D.N.Y. 2002) ("We believe that, having availed itself of the benefits of American capital markets, Turkcell cannot evade the private enforcement mechanism

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[26] *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (class action plaintiffs pool claims that are uneconomical to litigate individually); *Eisenberg*, 766 F.2d at 785 ("Class actions are a particularly appropriate and desirable means to resolve claims based on the securities laws, 'since the effectiveness of the securities laws may depend in large measure on the application of the class action device.'") (quoting *Kahan v. Rosenstiel*, 424 F.2d 161, 169 (3d Cir. 1970)); *Rosen*, 169 F.R.D. at 301 ("class certification remains a desirable method of seeking redress under the securities laws, particularly where, as here, 'a large number of individuals [allegedly] have been injured, although no one person may have been damaged to a degree which would have induced him to institute litigation solely on his own behalf.'") (quoting *In re Regal Commc'ns Corp. Sec. Litig.*, No. 94-179, 1995 WL 550454, at *7 (E.D. Pa. Sept. 14, 1995)); *Gunter v. Ridgewood Energy Corp.*, 164 F.R.D. 391, 400 (D.N.J. 1996) ("[C]lass actions are usually seen as the appropriate vehicle for resolving securities fraud cases because 'those who have been injured are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive.'") (internal quotation marks omitted; quoting *Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. at 410).

intended to ensure the efficient operation of those markets. Any holding to the contrary would effectively shield many foreign corporations listed in the United States from civil liability.").

Moreover, where, as here, the losses suffered by individual Class members would not likely justify the time and expense associated with bringing individual actions, a class action is the superior method of securing a remedy. *See, e.g.*, *In re Initial Pub. Offering*, 227 F.R.D. at 121 ("the cost of litigating a securities fraud action against multiple well-funded defendants is staggering") (citing *In re Cendant Corp. Litig.*, 243 F. Supp. 2d 166, 172-74 (D.N.J. 2003) (citation omitted)); *In re Nortel Networks Corp. Sec. Litig.*, No. 01 Civ. 1855(RMB), 2003 WL 22077464, at *6 (S.D.N.Y. Sept. 8, 2003) (court found that class action would be superior to individual actions because multiple lawsuits would be costly and inefficient, and the exclusion of foreign class members who could not afford separate representation would be unfair). This is particularly true for non-United States domiciliaries, who would have to incur the cost and expense of retaining their own counsel, experts, and investigators, together with the cost of attempting to develop an adequate record in discovery – including the 2 million plus pages of documents, investigative reports, and other documents and materials discovered or developed to date in the global efforts engaged in by Lead Plaintiff before this Court.

Finally, although in January of this year two individual actions were filed in this Court seeking monetary damages from certain of the Defendants for claims that arise under the same facts and circumstances as those asserted by the Class, Lead Plaintiff is unaware of any other such related actions either in the United States or elsewhere. Under such circumstances, courts have found the class action device to be superior to other methods of adjudication. *See, e.g.*, *In re Nortel*, 2003 WL 22077464, at *7 (class including Canadian purchasers certified even though three class actions were pending in Canada).

Certification of this litigation as a class action is therefore superior to any other available method for the fair and efficient adjudication of the controversy. There is no doubt that, absent certification, many of the Class members who were injured by the Defendants' wrongdoing would never receive compensation for any of their losses. Such a result would be inimical to the notions of fundamental fairness and justice that underlie Rule 23, and should be rejected by this Court in favor of certifying the Class.

3. No Substantial Difficulties Are Likely to Be Encountered in Managing This Action As a Class Action

a. Global Classes Are Routinely Certified in Securities Action

Courts in securities actions have certified classes that include non-United States domiciled class members who purchased their securities on foreign exchanges. *See In re Nortel*, 2003 WL 22077464, at *1 (certifying class that included foreign purchasers of securities traded on both the New York and Toronto stock exchanges); *In re Gaming Lottery Sec. Litig.*, 58 F. Supp. 2d 62, 77 (S.D.N.Y. 1999) (certifying class of American and Canadian purchasers of Gaming Lottery stock in the American or Canadian securities markets); *In re Int'l Nesmont Sec. Litig.*, No. 94-4202(WGB), slip op. at 44 (D.N.J. Dec. 2, 1996) (certifying class of American and Canadian purchasers of securities traded in both the American and Canadian securities markets); *Frietsch v. Refco, Inc.*, No. 92 C 6844, 1994 WL 10014, at *12 (N.D. Ill. Jan. 13, 1994) (certifying class of foreign purchasers of foreign commodity pools asserting claims under the Commodities Exchange Act and the Securities Exchange Act); *Jordan v. Global Natural Res., Inc.*, 102 F.R.D. 45 (S.D. Ohio 1984) (certifying class including foreign purchasers of securities traded in the London, American, and German securities markets, among others).

Nortel is especially instructive. *Nortel* involved a Canadian institutional investor, Ontario Public Employees' Union Pension Trust Fund ("OPTrust"), seeking certification of a

class of domestic and foreign investors. The defendants argued that certification was inappropriate because the Canadian courts were better equipped to consider the claims of foreign purchasers who purchased Nortel stock on the Ontario exchange. After considering the conduct test and the effects test, the court determined that it had subject matter jurisdiction over the claims of foreign purchasers on foreign markets. *Id.* at *24. Consequently, the court granted the motion for class certification and appointed OPTrust as class representative. *Id.* at *24.

In addition, courts have certified classes that include foreign purchasers who acquired their securities on U.S. exchanges. *See, e.g., Cromer Fin. Ltd. v. Berger*, 205 F.R.D. 113, 134-35 (S.D.N.Y. 2001); *Krangel v. Golden Rule Res., Ltd.*, 194 F.R.D. 501, 506 (E.D. Pa. 2000); *In re Pizza Time Theatre Sec. Litig.* 112 F.R.D. 15, 17 (N.D. Cal. 1986); *In re U.S. Fin.*, 69 F.R.D. at 50; *see also Takeda v. Turbodyne Techs., Inc.*, 67 F. Supp. 2d 1129, 1139 (C.D. Cal. 1999) (there is no *per se* rule against foreign class members); *In re Lloyd's Am. Trust Fund Litig.*, No. 96 Civ. 1262(RWS), 1998 WL 50211, at *15, *21 (S.D.N.Y. Feb. 6, 1998) (court included foreign investors as part of certified class in action for alleged breach of fiduciary duties). Thus, the domicile of an investor is irrelevant to the issue of class certification, particularly where, as here, subject matter jurisdiction has already been determined to exist as to the claims of each investor. *See In re Royal Dutch/Shell Transp.*, 380 F. Supp. 2d at 548.

b. The Mere Possibility That a Foreign Court Might Not Recognize a Judgment of this Court is Insufficient to Defeat Class Certification

On August 9, 2005, the Court denied the motion of Shell and certain other defendants to dismiss for lack of subject matter jurisdiction the claims of foreign investors who purchased their Shell ordinary shares on foreign markets (the "Foreign Class Members"). *In re Royal Dutch/Shell Transport Sec. Litig.*, 380 F. Supp. 2d at 572. In denying Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1), Judge Bissell held that "[t]he probability alleged by

Defendants of foreign courts failing to enforce a judgment of this Court is not a near certainty," and that Defendants' argument that any judgment in this Court would not be enforceable abroad was "speculative." *In re Royal Dutch/Shell Transp. Sec. Litig.*, 380 F. Supp. 2d at 547.

Although decided on a motion to dismiss, Judge Bissell's ruling is consistent with the weight of authority involving motions for class certification in which the courts have rejected the argument that a class should not be certified because a foreign jurisdiction might not recognize a U.S. judgment. *E.g, Frietsch v. Refco, Inc.*, 1994 WL 10014, at *11 (granting class certification despite affidavit that a judgment would "most likely" not be given *res judicata* effect); *In re Turkcell*, 209 F.R.D. at 360; *Cromer Fin. Ltd. v. Berger*, 205 F.R.D. 113, 135 (S.D.N.Y. 2001); *In re Lloyd's Am.*, 1998 WL 50211, at **15-16. These cases make clear that the enforceability of a U.S. judgment abroad is relevant only when there is a "near certainty" that the U.S. judgment will not be accorded *res judicata* effect.[27]

Moreover, numerous courts have noted that even if the foreign jurisdiction may not consider the U.S. judgment as binding *per se*, they may, nevertheless, consider a U.S. judgment as persuasive authority. *See In re Turkcell*, 209 F.R.D. at 360 ("Based on the affidavits before us, we cannot conclude that a Turkish court would give no weight to a judgment of this court."); *In re Lloyd's Am.*, 1998 WL 50211, at *15 ("[Defendant's] affidavits regarding foreign law do

[27] Even Shell's own experts on foreign law couched their opinions (in support of Shell's Rule 12(b)(1) motion) not in terms of a near certainty, but in terms of mere likelihood. *See* Grunsky Opening Decl. ¶ 10 ("a German court is *likely* to consider that binding the Absent European Class Members would violate German public policy and . . . the German court *likely* would not recognize or enforce the judgment of the U.S. court"); Groen Opening Decl. ¶ 10 ("the Absent European Class Members *likely* cannot enforce in the Netherlands a judgment in favor of the Absent European Class Members"); Kaufmann-Kohler Opening Decl. ¶ 14 ("The answer to both questions is that Swiss courts would *likely* refuse to give effect to the U.S. judgment . . . ."); Lemontey Opening Decl. ¶ 11 ("the Absent European Class Members *likely* would not have been made party to the proceedings in a way that conforms with applicable French public policy") (emphasis added as to all).

not compel the conclusion that a judgment in the United States would have no value in a foreign court. This is an action against a trustee for breach of its fiduciary duty under New York State law, where the trust *res* is situated in New York, and the situs of all the alleged wrongful acts occurred in New York. Accordingly, a foreign court may look to the results achieved here for guidance, thereby contributing to the superiority of the class action procedure."); *In re U. S. Fin.*, 69 F.R.D. at 49 ("Assuming *arguendo* that a judgment of this or any other American court in defendant's favor technically might not be *res judicata* against a debenture holder who took affirmative steps in this action, it would be evidence in every country and it could be utilized by [the defendant] in defense of subsequent foreign lawsuits."). These decisions are consistent with the opinions submitted by certain of Shell's own experts in connection with the Rule 12(b)(1) motion to dismiss.[28]

Of course, it is well settled that the issue of *res judicata* is but one factor to consider in determining the superiority of the United States class action. *Cromer*, 205 F.R.D. at 135 ("Even where all the available evidence indicates that foreign plaintiffs who lose in the United States will be able to sue the defendant for a second time in their own country, a class action may remain the superior means for litigating the dispute, particularly where the court can take action

[28] *E.g.*, Groen Reply Dec. ¶ 47 ("In the course of the proceedings, the U.S. judgment can be offered as evidence by the Absent European Class Members. The Dutch court would not as such be bound by its content, however, but would have a wide margin of appreciation assessing its value."); Kodek Reply Dec. ¶ 39 (a U.S. judgment can serve as persuasive evidence in an Austrian court if all the parties so consent; even in the absence of consent, however, the foreign court can "consider the judgment but would need to hear direct evidence as to all contested facts"). *See also* the declarations of Lead Plaintiff's experts: *e.g.*, Czernich/Rudisch Dec. ¶ 38 ("Even if the class action judgment of the present case were not recognizable in Austria, the class action before the Federal Court in New Jersey would, from the Austrian perspective, be far from futile, but rather would conclusively predetermine the outcome of the litigation in Austria since the judgment is held to give full evidence of the facts, although subject to proof to the contrary."); Horsmans Decl. ¶ 28 ("the US decision would at the very least be evidence that the Belgian court could consider in deciding the same issues, even if it were not given binding effect").

to increase the benefits for the defendant as well as the plaintiffs."); *In re Lloyd's Am.*, 1998 WL 50211, at *15. *See also In re Royal Ahold N.V. Sec. & ERISA Litig.*, 219 F.R.D. 343, 352 (D. Md. 2003) (in deciding motion to dismiss, court found that "[t]his factor must be considered in determining whether a class action is the superior method of litigating a particular case, although it is not determinative"). Thus, this factor militates in favor of class certification.

c. The Need to Provide Notice to the Class Is Not an Impediment to Certification

Courts certifying global classes have consistently rejected the argument that providing notice to foreign class members presents a case manageability problem. *See, e.g.*, *Vancouver Women's Health Collective Soc'y v. A.H. Robins Co.,* 820 F.2d 1359, 1361-63 (4th Cir. 1987) (approving notice program to over 90 countries and involving mass media public service announcements, outreach to medical establishments and governmental agencies, and press releases); *In re Cable & Wireless, PLC, Sec. Litig.*, 321 F. Supp. 2d 749, 765 (E.D. Va. 2004) (court noted the protections afforded by Rule 23 and due process, which require notice to members of a certified class informing them of the pendency of the class action); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 144 (E.D.N.Y. 2000) (court approved settlement with worldwide notice program commenting that "[t]he notice plan . . . was tailored to the unique circumstances of this case; was effective as implemented . . . in that it provided the best notice practicable under the circumstances in terms of content, format and dissemination; and satisfied due process requirements and Fed. R. Civ. P. 23(c)"); *In re Lloyd's Am.*, 1998 WL 50211, at *16 (rejecting Citibank's argument that manageability problems would arise if the notices relating to the action needed to be sent in numerous foreign languages); *In re U. S. Fin.*, 69 F.R.D. at 47 ("Individual notice has never been required to be given every member of every class. Rather, in construing the clear provisions of Rule 23(c)(2), courts have required individual notice to be

given to every 'identifiable' class member along with some other form of notice to the unidentified members."); *Jordan v. Global Natural Res., Inc.*, 104 F.R.D. 447, 449 (S.D. Ohio 1984) (ordering notice to foreign shareholders and approving detailed plan of notice).

Rule 23(c)(2) does not require that class members be notified by every means possible; rather, the "best notice practicable under the circumstances" is all that is required. *Peoples v. Wendover Funding, Inc.,* 179 F.R.D. 492, 502 (D. Md. 1998) ("Rule 23(c)(2) requires that in a class action certified under Rule 23(b)(3), the Court must direct the 'best notice practicable' to the class members, including individual notice to all members whom the Court can identify with reasonable effort."); *In re U. S. Fin.*, 69 F.R.D. at 47 ("In this Court's view, notice by publication is the best practicable method of informing unknown debenture holders."); *Fisher v. Virginia Elec. & Power Co.*, 217 F.R.D. 201, 227 (E.D. Va. 2003) ("if the class members cannot be identified and individually notified through reasonable effort, a court may exercise its discretion to provide the best notice practicable under the circumstances") (citing *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 539 (N.D. Ga. 1992)).

Any suggestion by Shell that the need to give notice to foreign class members presents manageability problems would be disingenuous. In the four derivative actions relating to Shell's overstatement of proved reserves,[29] all of which settled together last year, notice of the settlement was given by publication in eight papers: *The Wall Street Journal*, *USA Today*, *Daily Telegraph* (U.K.), *The Times* (U.K.), *NRC Handeslblad* (The Netherlands), *De Telegraaf* (The Netherlands), *International Herald Tribune* (including the U.S. edition), and *Financial Times* (including the U.S. edition). Exh. K at 11. In addition, copies of the notice were published on

[29] Those actions are captioned *UNITE National Retirement Fund, et al. v. Watts, et al.*, No. 2:04-cv-03603 (DMC-MF) (D.N.J.); *Soojian v. Jacobs, et al.*, No. 04 CV 4160 (S.D.N.Y.); *Epstein v. Oxburgh, et al.*, No. 04168560 (N.Y. Sup. Ct.); and *Staehr v. van der Veer, et al.*, No. 04112723 (N.Y. Sup. Ct.).

Shell's website, and Shell issued a press release announcing the settlement, describing its terms, and directing shareholders to the notice. Exh. K at 11-12.

Not only did Shell defend this notice program as adequate in its briefing in support of the settlement (Exh. K); its counsel defended the notice program at the settlement hearing. According to Shell's counsel: "In terms of the notice, not only did Shell issue a press release on August 31st and publish the notice in eight papers, including the Financial Times and other U.K. papers, but Shell has disclosed consistently the pendency of this action in its annual report and filings, annual report that U.K. investors would see and filings with the Securities & Exchange Commission that U.S. investors would see." Exh. L at 12. In light of these representations in defense of the derivative settlement, Shell cannot credibly raise notice concerns in this case.

CONCLUSION

For the foregoing reasons, Lead Plaintiff respectfully requests that this Court enter an Order, pursuant to Fed. R. Civ. P. 23(a), 23(b)(3), and 23(g)(1): (1) certifying this action as a class action; (2) certifying a Class as defined herein; (3) appointing SERS, PSERS, and Peter M. Wood as class representatives; and (4) appointing Bernstein Liebhard & Lifshitz, LLP as Class

Counsel and Lynch Keefe Bartels as liaison counsel.

DATED: March 1, 2006

Respectfully submitted,

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