

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI**

**MID SOUTH SEAFOOD, INC.,
Individually, and on behalf of
all others similarly situated,**

CASE NO.

JUDGE

Plaintiffs,

MAGISTRATE JUDGE

JURY DEMAND

vs.

**BP, P.L.C.,
BP PRODUCTS NORTH AMERICA, INC.,
BP CORPORATION OF NORTH AMERICA, INC.,
BP COMPANY NORTH AMERICA, INC.
BP EXPLORATION AND PRODUCTION, INC.
BP AMERICA, INC., ANTHONY HAYWARD,
and JOHN and JANE DOES, 1-100**

Defendants.

CLASS ACTION AMENDED COMPLAINT

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CLASS ACTION AMENDED COMPLAINT

1. Plaintiff, **MID SOUTH SEAFOOD, INC.**, individually and as representative of the class defined herein (the Class), brings this action by and through their undersigned counsel against Defendants BP P.L.C, BP PRODUCTS NORTH AMERICA, INC., BP CORPORATION OF NORTH AMERICA, INC., BP COMPANY NORTH AMERICA, INC., BP EXPLORATION AND PRODUCTION, INC., BP AMERICA, INC., ANTHONY HAYWARD, (“BP” or “BP Defendants), and John Does 1-100 (all defendants collectively referred to as “Defendants” or “BP and its Defendant coconspirators”), and allege as follows:

2. This is a class action lawsuit filed pursuant to Rule 23 of the Federal Rules of Civil Procedure, to recover damages to Plaintiffs and all others similarly situated. Plaintiffs’ damages were caused by Defendants’ scheme to secure billions of dollars in profits by committing a pattern of criminal predicate acts including mail fraud, wire fraud and money laundering. The object of the Defendants’ unlawful scheme was to obtain oil and billions of dollars in proceeds and profits from offshore drilling by: (1) fraudulently deceiving the public that they would safely conduct their offshore oil drilling operations to prevent oil spills, (2) fraudulently deceiving the public that they could effectively respond to and contain any oil spill, including worse case scenario oil spills like the Deepwater Horizon disaster, and (3) unlawfully promoting and conducting BP’s drilling operations with proceeds and profits from cutting expenditures on critical safety measures that knowingly created the serious risk for the blowout and ensuing oil spill.

3. The action is brought under the federal civil RICO statute, 18 U.S.C. § 1964. (federal “civil RICO” or federal “RICO”). The enormous economic injury to the Plaintiffs’ business and property was directly caused by these RICO violations that resulted in one of the largest

environmental and economic catastrophes in history.

4. Plaintiffs seek treble monetary damages under the federal RICO statute, as well as temporary, preliminary and permanent injunctive relief to which they are entitled.

5. Plaintiffs reserve the right to amend this Complaint with any appropriate additional claims. There are many currently unknown potential impacts from the oil spill that could cause Plaintiffs further cognizable injuries and damages; plaintiffs reserve the right to amend this Complaint once additional information becomes available.

I. INTRODUCTION

6. The Gulf of Mexico is in the midst of an ecological Armageddon that could literally destroy the marine and coastal environment and way of life for generations of Americans. On April 20, 2010, an explosion caused the sinking of the mobile offshore drilling unit Deepwater Horizon (hereinafter “Deepwater Horizon” or “Oil Rig”). The ensuing oil spill has been gushing at an uncontrolled estimated rate of 60,000 barrels per day, and various reports suggest that the actual flow of the oil spill could be as great as 100,000 barrels per day.

7. The enormous uncontained spill created a fast moving oil slick that has covered tens of thousands of square miles of ocean and has now made landfall on the coasts of Mississippi, Louisiana, Alabama, and Florida. The uncontained oil slick is also predicted to ride the Gulf Stream current around the southern tip of Florida into the Atlantic Ocean, up the east coast and across the Atlantic Ocean. Additionally, there are undersea oil plumes spanning miles in length and ranging from 600 to 3,300 feet in depth that have further endangered the Gulf’s ecosystem.

8. According to *Bloomberg Businessweek*, the damage caused by BP could cost coastal property owners \$43 billion in real estate values alone.

9. The uncontained oil spill has and continues to cause devastating environmental damage

and billions of dollars in damages to the income, business and property of the people of Mississippi. There have been thousands of square miles of waters closed to fishing throughout the Gulf of Mexico; thousands of square miles of barrier islands and coastal marshes have been compromised; fishermen and fishing businesses have and continue to lose income and continue to be put out business; Mississippi has posted advisories for 16 of 20 beaches; the tourism industry and hotels, resorts, restaurant owners and other businesses are losing income; and property values along the Mississippi coastline are decreasing due to the uncontained oil spill.

10. The uncontained oil spill is a catastrophe of epic proportions brought about by the unbridled greed and fraudulent conduct of BP, a multi-billion dollar oil company. Rather than being truthful with the American people about knowingly cutting corners on critical safety measures to prevent oil spills and about its inability to control and contain a deepwater oil spill, BP fraudulently chose to make billions in offshore oil drilling while it exposed the environment, the business and property and the entire Gulf Coast way of life to environmental and economic catastrophe.

11. The gulf seashores, coastal marshes, barrier islands and fishing grounds of Mississippi, Louisiana, Alabama and Florida are an American treasure. Left to their own greedy designs, BP and its other as yet unnamed big oil and/or corrupt government employee coconspirators have now poisoned our Gulf waters; they have spoiled our pristine white sand beaches; they have caused our pelicans, dolphins, sea turtles and other precious marine and coastal wildlife to suffer and die; and they have damaged and threatened the livelihood and way of life for the millions of Americans who derive income and happiness for themselves and their families from the beautiful coastlines and waters of the Gulf of Mexico.

II. PARTIES

A. Plaintiffs

12. Plaintiff, MID SOUTH SEAFOOD, INC., is a Mississippi corporation doing business in this district. Plaintiff is a seafood business that buys seafood from the Gulf of Mexico on the Gulf Coast and sells the seafood throughout Mississippi. Plaintiff has suffered direct injury to its business and property as a direct result of Defendants' unlawful conduct alleged herein.

B. Corporate Defendants

13. Defendant, BP, P.L.C. ("BP") is a British corporation, organized under the laws of the United Kingdom, doing business in the State of Louisiana and throughout the United States. BP is one of the world's largest oil companies.

14. Defendant, BP AMERICA, INC. ("BP America") is a Delaware corporation with its principal place of business in Warrenville, Illinois, but doing business in the State of Louisiana and throughout the United States. BP America, Inc. is a subsidiary of BP, PLC.

15. Defendant, BP PRODUCTS NORTH AMERICA, INC. ("BP Products") is a Maryland corporation, with its principal place of business in Houston, Texas, but doing business in the State of Louisiana and throughout the United States. BP Products North America, Inc. is a subsidiary of BP Company North America, Inc.

16. Defendant BP CORPORATION OF NORTH AMERICA, INC. (formerly BP Amoco Corporation), is an Indiana corporation with its principal place of business in Houston, Texas, but doing business in the State of Louisiana and throughout the United States.

17. Defendant BP COMPANY NORTH AMERICA, INC. is a Delaware corporation with its principal place of business in Warrenville, Illinois but doing business in the State of Louisiana and throughout the United States.

18. Defendant BP EXPLORATION & PRODUCTION, INC. is a Delaware corporation with

its principal place of business in Houston, Texas but doing business in the State of Louisiana.

19. Defendant, BP, P.L.C. (“BP”) is a foreign corporation doing business in the State of Louisiana.

20. Defendant BP America, Inc.; BP Corporation North America, Inc.; BP Company of North America, Inc., BP Products North America, Inc., BP P.L.C., and BP Exploration & Production, Inc. are wholly owned subsidiaries of the global parent corporation, BP, PLC, and they shall be referred to herein collectively as “BP.”

C. Individual Defendants

21. Defendant Anthony Hayward, 1 St. James Place, London, AW1Y4PD, United Kingdom. Defendant Hayward is the Chief Executive Officer (“CEO”) and a member of the Board of Directors of BP. (“Defendant Hayward” and collectively referred to along with the BP Corporate Defendants as “BP”). He has served as BP’s CEO since 2007 and as an Executive Director since 2003. Before becoming CEO, Hayward, who joined BP in 1982, served as the CEO of Exploration and Production from 2002 to 2007. In exchange for his loyalty and fidelity to BP, Hayward received a salary, performance bonus, non-cash benefits and other emoluments in the amounts of 2,509,000 pounds in 2008 and 3,158,000 pounds in 2009.

D. John and Jane Doe Defendants

22. The named Defendants have been assisted by numerous but currently unknown persons in their unlawful conduct; these persons include, but are not limited to, other corporate and/or individual co-conspirators, including various directors, officers or agents of the named Defendants, along with their respective corporate entities. These unknown persons may be joined to this litigation as named parties when the Plaintiffs complete further investigation and discovery and know their identities. The identities of these unnamed defendants are referenced

herein as John Does 1-100.

III. JURISDICTION AND VENUE

23. Jurisdiction in this action is predicated upon Title 18, United States Code, Section 1964, Title 28, United States Code, Sections 1331 and 1332, and Title 43, United States Code, Sections 1331, 1333, and 1349. This Court has jurisdiction under the federal civil RICO statute, 18 U.S.C. § 1964, since the case is brought by persons injured in their business or property by reason of Defendants' unlawful conduct that constitutes a RICO violation under 18 U.S.C. § 1962. This Court has jurisdiction under 28 U.S.C. § 1331 since the claims asserted herein arise under the laws of the United States and the State of Mississippi, which have been declared under 43 U.S.C. §§ 1331 (f)(1) and 1333 (a)(2) to be the law of the United States for that portion of the outer Continental Shelf from which the oil spill originated. This Court has jurisdiction under 28 U.S.C. § 1332(d)(2) since the matter in controversy is in excess of \$5,000,000, exclusive of interest and costs, and is brought as a class action by citizens of a State that is different from the State where at least one of the Defendants is incorporated or does business. This Court has jurisdiction under 43 U.S.C. § 1333(a)(1), which extends exclusive Federal jurisdiction to the outer Continental Shelf. This Court has jurisdiction under 43 U.S.C. § 1349(b)(1) since this case arises out of, or in connection with, operations conducted by Defendants on the outer Continental Shelf for the exploration, development, or production of oil, a mineral of the subsoil and seabed of the outer Continental Shelf. Venue for this action is proper under Title 18, United States Code, Section 1965 and Title 28, United States Code, Section 1391(b) (2) and (3), because a substantial part of the events giving rise to this action occurred in this District and because some of the Defendants are found or transacted their affairs in this District and the ends of justice require that the other Defendants be brought before this Court. Plaintiffs invoke the expanded service of

process provisions of Title 18, United States Code, Section 1965(b).

IV. FACTUAL ALLEGATIONS FOR RICO PREDICATE ACTS AND CLAIMS

A. BP Background of Corruption

24. British Petroleum is an enormous presence in the oil and gas industry and is the fourth largest corporation in the world operating in thirty countries. In 2009, BP produced 2.53 million barrels of oil per day and 8.48 million cubic feet of natural gas per day. This translates into an astonishing \$246 billion in annual revenues, almost one quarter of a trillion dollars. Behind this robust financial portrait is a corporate culture fueled by greed, fraud, dishonesty and a disregard of numerous laws and regulations.

25. In the past five years, BP has admitted to breaking United States environmental and safety laws as well as committing fraud. Following a 2005 explosion at its Texas City Refinery, the corporation pled guilty to criminal charges and paid \$50 million in fines. It was then placed on three years probation following the blast while the Occupational Health and Safety Administration (OSHA) conducted its investigation. Despite the tragic loss of 15 workers, the resulting criminal charges, and millions of dollars in fines, BP still failed to correct safety problems at the re-built Texas City refinery. In October 2009, this resulted in an additional \$87 million fine, the largest fine in OSHA history.

26. BP oil refineries in Texas and Ohio have accounted for 97% of the “egregious, willful” violations handed out by OSHA in the last three years. The agency’s statistics reveal that BP received 760 “egregious” and “willful” safety violations; other oil companies’ records pale in comparison. For example, Sunoco and ConocoPhillips had eight each; Citgo had two, and Exxon had one comparable citation.

27. In 2006, BP again faced criminal fines when 200,000 gallons of crude oil was released

into the Alaskan wilderness from a BP pipeline. Criminal investigators determined that the company was aware of corrosion along the pipeline where the leak occurred. BP was forced to pay \$12 million in criminal fines for the spill in addition to another \$4 million to the state of Alaska.

28. BP pled guilty to a criminal violation of the Clean Water Act on October 25, 2007. U.S. District Judge Ralph Beistline sentenced BP to three years probation for the felony Clean Water Act violation. Judge Breistline found at sentencing that BP's oil spills were a "serious crime" that could have been avoided if BP had placed more emphasis on investing in pipeline safety upgrades and "less emphasis on profit."

29. A Congressional committee later found that BP had ignored opportunities to prevent the Alaskan oil spill, instead adopting "draconian" cost cutting measures that led to shortcuts involving the felony Clean Water Act violations.

30. In 2008, BP, CEO Hayward and other BP executives were named as defendants in a civil RICO lawsuit involving fraud and a conspiracy to bribe top officials of the government of Kazakhstan in order to gain oil and gas licenses in the former Soviet state. This case is currently pending. A similar case was also filed against BP and former CEO Lord Browne alleging bribery of government officials in Grenada.

31. BP executives, including Lord Browne and others, were implicated in a multimillion dollar bribery scheme to unlawfully influence government officials in Azerbaijani. Les Abrahams, the leader of BP's successful bid for oil rights, publicly stated that line item expenditures on BP's books were not what they seemed. According to Mr. Abrahams, BP allocated a budget of 45 million pounds to cover costs for Azerbaijan operations which involved lots of prostitution and whisky. Mr. Abrahams stated: "The BP officials would come out to Baku

in groups of five or six every week. Sometimes I would charter an entire Boeing 757 to carry as few as seven staff. Their main base was the hard currency bar of the old Intourist Hotel—so named because it accepted only dollars and was only open to foreigners. It was full of prostitutes and many of us, including me used them on a regular basis, although we quickly established they all worked for the KGB.”

32. On May 5, 2010, a BP’s own shareholders filed a derivative lawsuit in federal court in New Orleans based on the central acknowledgment that:

BP Defendants elected to cut costs, including safety and maintenance expenditures, in pursuit of profitable results to report to Wall Street. These Defendants also lobbied the federal and state government authorities to remove or decrease the extent of safety and maintenance regulation of the Company’s Gulf operations, claiming, against all evidence, that ‘voluntary compliance’ would suffice to address safety and environmental concerns. Even after a 2006 shareholder derivative proceeding brought as a last resort to require BP to address safety concerns was voluntarily settled out-of-court by the BP Defendants, these defendants continued to ignore and disregard safety issues concerning the Company’s deepwater operations, making purely cosmetic changes at the corporate level while ignoring the substance of the safety violations and the threat they posed to the entirety of the Gulf, commercial and private property, and the Company’s own survival as a going concern.

B. BP’S Scheme To Obtain Oil And Money By Defrauding The Public And The Government And Scheme To Derive Unlawful Proceeds By Knowingly Cutting Critical Safety Measures That Created The Serious Risk For The Blowout And Ensuing Oil Spill.

33. The Defendants have engaged in a scheme to obtain oil and money by defrauding the public and the U.S. Government regarding their emphasis on safety to prevent oil spills and their ability to effectively respond to and contain any oil spill. The Defendants’ scheme was comprised of a pattern of multiple related mail and wire fraud RICO predicate acts that arose from BP’s material misrepresentations and omissions regarding its safety measures to prevent oil

spills and its ability to effectively contain any oil spills that might occur in connection with its offshore drilling operations. As a direct result of BP's false and misleading statements and omissions regarding its offshore oil drilling safety measures and its oil spill response and containment capability, BP has greedily and fraudulently obtained millions of barrels of oil and billions of dollars in proceeds and profits and has directly caused the Plaintiff and the class members billions of dollars in damages to their business and property.

34. The central purpose of BP's fraudulent scheme injuring the plaintiffs was to defraud the public and the government into believing that BP placed a high priority on safety protocols to prevent oil spills and that BP could effectively respond to and contain any offshore oil spill so that it could obtain oil and billions of dollars from offshore oil drilling. The Defendants knowingly and willingly devised this scheme and knowingly and willingly participated in the scheme.

35. In furthering the fraudulent scheme, the Defendants acted with fraudulent intent, including but not limited to their reckless indifference to the truth or falsity of their misrepresentations and omissions. BP's fraudulent intent and disregard for injuring the public and the Plaintiff is also clearly evident from the fact that the Deepwater Horizon blowout, fire, explosion and ensuing oil spill, as well as BP's inability to respond to and contain the Deepwater Horizon oil spill was a necessary result of its fraudulent conduct.

36. Similarly, BP's scheme included unlawfully deriving increased proceeds and profits by knowingly choosing to cut costs on critical safety measures for the Deepwater Horizon drilling operations that BP knew raised the serious risk for the blowout and ensuing oil spill.

1. BP's Material Misrepresentations and Omissions Regarding Its Ability To Respond To and Contain Worse Case Scenario Oil Spills

37. The Minerals Management Service (hereinafter MMS) was created as part of the

Department of Interior in 1982, in conjunction with the Federal Oil and Gas Royalty Management Act. This Act provides for protection of the environment and conservation of federal lands in the course of building oil and gas facilities. The MMS was set up as the public watchdog policing agency responsible for the mineral leasing of submerged lands of the Outer Continental Shelf. The agency's responsibility for offshore oil leasing includes watchdog and policing authority over the leaseholder's operations for appropriate safety assurances to prevent oil spills and appropriate response plans and containment assurances for any oil spill.

38. The Marine Preservation Association ("MPA") is a consortium of major oil companies that includes BP, Shell, Chevron, ExxonMobil and ConocoPhillips. The MPA is located at 8777 N. Gainey Center Drive, Suite 165, Scottsdale, Arizona 85258. The consortium was ostensibly created by the oil industry to satisfy the demands of the Oil Pollution Act of 1990 ("OPA 90") that requires that anyone involved in the transportation, distribution or receipt of petroleum products on water must establish an approved plan for immediately and comprehensively responding to any significant oil spill to the "maximum extent practicable."

39. The MPA ostensibly created and entirely funds the Marine Spill Response Corporation ("MSRC") to meet the oil industry's responsibility of providing an approved plan for providing and immediate and comprehensive response to any oil spill. The MSRC is located at 220 Spring Street, Suite 500, Herndon, Virginia 20170. The MPA holds the MSRC out to be "the largest, most comprehensive, dedicated standby oil spill response program in the United States. MRSC is the key to providing an immediate response to the 'maximum extent practicable.' Most importantly, membership in MPA ensures that members have direct and immediate access to MSRC...so that clean-up can begin right away."

40. The MSRC purports:

Since its inception, MSRC has become the largest, dedicated, standby oil spill response program in the United States including open water, shoreline and mid-continent river operations. *MSRC provides immediate assistance through experienced crews and fleets of equipment on call, ready and waiting to respond to any oil-based emergency, no matter how big, or how small.*

Every second counts—and the last thing anyone needs is to wait for appropriate government guarantees in order to begin the clean-up process. Yet plans that do not cite MSRC require government guarantees before MSRC can respond.

Meanwhile, the spill is worsening.

MPA members know that they have instant access to MSRC which has the largest cadre of professional, knowledgeable manpower, as well as the largest fleet of specialized vessels, array of equipment and other capabilities necessary to quickly respond to—and mitigate—the threat of a spill to the environment. Because of that, membership in MPA satisfies many of the obligations for an oil spill response plan, as mandated by OPA 90. (emphasis added).

41. BP and other members of the MPA also use the Response Group to assist in preparing their Gulf Of Mexico Regional Response Plan for submission to the public and the MMS. The Response Group is located at 13231 Champion Forest Drive, # 310, Houston, Texas 77069-2648.

The Response Plan states that BP has contracted with MSRC to provide equipment and assistance for effectively responding to and containing any oil spill response.

42. According to a July 14, 2010, *Washington Post* article entitled “*Oil Industry Cleanup Organization Swamped By BP Spill*”, Steve Benz, MSRC President and former BP executive, recently admitted: “Should the industry’s capacity have been greater than it is? That’s a fair question.” Similarly, Brett G. Drewry, CEO of the MPA that funds MSRC admitted: “There is no asset MSRC has that is designed to collect oil 5,000 feet under the seas.”

43. In furtherance of its fraudulent scheme, BP submitted its original Oil Spill Response Plan assurances to the public and MMS in 2000, and BP revised the plan in June of 2009. The Response Plan addressed the entire Gulf of Mexico area, including the area drilled by the Deepwater Horizon. According to former MMS Director Elizabeth Birnbaum, each Response Plan is to be thoroughly and meticulously reviewed by MMS personnel to ensure that the

company can indeed respond to a worst-case scenario oil spill.

44. In furtherance of the fraudulent scheme, the BP Oil Spill Response Plan vastly understated and concealed the dangers posed by an uncontrolled oil leak and vastly overstated BP's capability to respond to and contain a major oil spill to keep it from impacting the environment, the public and the Plaintiffs. BP's Response Plan misrepresents that it can effectively contain any oil spill of 250,000 barrels per day, including deepwater oil spills like the Deepwater Horizon oil spill 5,000 feet under the sea. In the greedy interest of obtaining billions of dollars in offshore drilling profits, BP chose to misrepresent its capability of responding to, containing and preventing oil spill impact to the environment, the public and the Plaintiffs. Similarly, BP chose to conceal its incapability to effectively respond to and contain offshore oil spills.

45. BP CEO Defendant Hayward recently admitted that the company was in fact not prepared to respond to the Deepwater Horizon oil spill. In an interview with *Financial Times* Defendant Hayward conceded BP was not prepared to respond to deepwater oil spills: "What is undoubtedly true is that we did not have the tools you would want in your tool kit ... [it is] an entirely fair criticism"

46. Similarly, on May 12, 2010, BP President of BP America reluctantly admitted in testimony to the House of Representatives Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, that BP did not have the capability and technology to respond to the Deepwater Horizon oil spill:

Mr. McKay. We are using the best technology at scale. This is the largest effort that has ever been put together. So we believe we are using the best technology and if we have any other ideas—

Mrs. Capps. But you never had any until it happened.

Mr. McKay. Well, we have been drilling with the Coast Guard for years.

Mrs. Capps. Did you develop technologies for dealing with this?

Mr. McKay. Not individual technologies for this, no.

Mrs. Capps. I rest my case. (Congressional Hearing Transcript, at 137).

47. BP's 2009 so-called Oil Spill Response Plan also included such blatant inaccuracies as references to sea lions, seals and walruses (Arctic marine mammals that clearly do not reside in Gulf waters); references to a professor listed as a consultant [for] responding that died four years before in 2005; and links to a Japanese home shopping website as being one of BP's Marine Spill Response Corp. (MSRC) "primary equipment providers for BP in the Gulf of Mexico region [for] rapid deployment of spill response resources."

48. MSRC has also now admitted: "There is no asset MSRC has that is designed to collect oil 5,000 feet under the seas."

49. BP's Gulf of Mexico Regional Response Plan submission to the public and MMS raises serious questions as to whether BP also colluded and conspired with other major oil companies through the MPA, the Response Group and the MSRC in misrepresenting its ability to respond to and contain a significant oil spill. In fact, ExxonMobil, Chevron, Shell and ConocoPhillips admitted in Congressional testimony to the House Committee on Energy and Commerce on June 15, 2010, that they were "embarrassed" by the Committee's discovery that they made essentially identical worse case scenario response and containment misrepresentations to the public and the government. Contrary to their misrepresentations, these fellow members of MPA that used the Response Group and MSRC with BP admitted they did *not* have the equipment and technology to effectively respond to and contain a deepwater oil spill like the Deepwater Horizon

catastrophe.

50. For example, in a recent June 15, 2010 hearing before the Subcommittee on Energy and Environment, Representative Henry Waxman, Chairman of the Committee on Energy and Commerce stated:

[T]he Committee asked each of the five major oil companies for their oil spill response plans. On paper, these are impressive documents. Each is 500 or more pages long. But what they show is that ExxonMobil, Chevron, ConocoPhillips, and Shell are no better prepared to deal with a major oil spill than BP. The same company—the Response Group—wrote the five plans and described them as ‘cookie cutter’ plans. Much of the text is identical. Four of the plans discuss how to protect walruses, but there are no walruses in the Gulf of Mexico.

....

Each of the five major oil spill response plans also includes a section on responding to a worst case scenario involving an offshore exploratory well. On paper, these plans look reassuring. BP’s plan says it can handle a spill of 250,000 barrels per day. Both Chevron and Shell say they can handle over 200,000 barrels per day, and Exxon says it can handle over 150,000 barrels per day. That is far more than is currently leaking into the Gulf from BP’s well.

But when you look at the details, it becomes evident these plans are just paper exercises. BP failed miserably when confronted with a real leak, and ExxonMobil and the other companies would do no better.

BP’s plan says it has contracted with the Marine Spill Response Corporation to provide equipment for a spill response. All the other companies rely on the same contractor.

51. In fact, the whole oil industry has only spent a meager \$20 million dollars per year on oil spill response and containment measures and safety. That’s compared to \$289 billion in profits over the last three years and means that investments in oil drilling safety and oil spill response are less than one-tenth of one percent of oil industry profits. (0.1%).

52. In furtherance of BP’s fraudulent scheme, BP also submitted an Initial Exploration Plan to the public and MMS that also incorporated the 2009 plan by reference. BP submitted the additional exploration plan for the Deepwater Horizon, Mississippi Canyon Block 252 offshore drilling project on February 23, 2009. The explorations plan submitted to the public and MMS included further oil spill response capability misrepresentations and further concealed the fact

that BP was not prepared to respond to a deepwater oil spill. The exploration plan is entitled “Initial Exploration Plan, Mississippi Canyon Block 252, OCS-G 32306, *Public Information*.” (emphasis added).

53. In its Initial Exploration Plan for MS Canyon Block 252, BP again misrepresented that it had “the capability to respond, to the maximum extent practicable, to a worst-case discharge or a substantial threat of such a discharge, resulting from the activities proposed in our Exploration Plan.” The plan incorporated the Regional Response Plan and misrepresented that BP could effectively respond to a 250,000 barrels of oil per day¹ worse case scenario oil spill. BP made fraudulent assurances that it had the “proven equipment and technology” to respond to a blowout of this size. BP also fraudulently concealed the fact that it was not prepared to respond to a major oil spill anywhere near that size, much less the present deepwater oil spill.

54. Although the document does not detail how a runaway well would be stopped, nor does it mention any safeguard devices, it does include a list of equipment required to set up a “Joint Information Center,” including a podium, four to six telephones, an answering machine, a wall clock and various other office supplies. The MMS accepted this Initial Exploration Plan via letter on April 6, 2009. The approval was given in conjunction with a categorical exclusion from National Environmental Policy Act of 1969 (hereinafter NEPA), which would have required the agency to conduct an extensive Environmental Impact Statement (hereinafter EIS) on the potential environmental impact of the drilling.

55. Both NEPA and MMS internal policies state that categorical EIS exclusions should not be given in instances where drilling is to take place in “relatively untested deep water,” “areas of high biological sensitivity” or for drilling operations “utilizing new or unusual technology.” It is

¹ The current, uncontained and uncontrolled oil spill is estimated to be dispersing around 60,000 barrels per day and possibly up to 100,000 barrels per day.

now clear that BP did not provide adequate drilling safety measures for the Mississippi Canyon Block 252 project, much less the equipment and technology for containing an oil spill on the Mississippi Canyon Block 252. MS Canyon Block 252 would thus fall into all of the above categories that preclude categorical EIS exclusions.

56. The ill-fated Deepwater Horizon exploration plan included additional false assurances and misrepresentations that BP had the capability to respond to a major oil spill with no resulting impact to the environment, marine and coastal habitat, and beaches and coastal communities. For example, the exploration plan BP submitted to MMS, the public and the Plaintiffs in furtherance of its fraudulent scheme specifically misrepresented its ability to respond to and contain a deepwater blowout on the Deepwater Horizon offshore oil drilling project: *“In the event of an unanticipated blowup resulting in an oil spill, it is unlikely to have an impact based on the industry wide standards for using proven equipment and technology for such responses, implementation of BP’s Regional Oil Response Plan which addresses available equipment and personnel, techniques for containment and recovery and removal of the oil spill.”*

57. It is now clear that BP knowingly and intentionally concealed the fact that it did not have the “proven equipment and technology” to respond to and contain the Deepwater Horizon oil spill. In fact, a BP statement released on May 10, 2010, concedes: “All of the techniques being attempted or evaluated to contain the flow of oil on the seabed involve significant uncertainties because they have not been tested in these conditions before.” Similarly, BP Chief Operating Officer Doug Suttles admitted on May 10, 2010, that BP did not have a response plan with proven equipment and technology in place that would contain the oil spill: “There’s a lot of techniques available to us. The challenge with all of them is, as you said, they haven’t been done before at 5,000 feet of water.”

58. It is equally clear that BP CEO Defendant Hayward, in furtherance of the fraudulent scheme, was fully aware of and aided and abetted the misrepresentations, material omissions and concealment associated with the BP regional response plan and the initial exploration plan submitted by BP Exploration & Production, Inc. to the public and MMS. Aside from being BP's CEO since 2007, Defendant Hayward was CEO of BP Exploration & Production, Inc. from 2002-2007. As such, Defendant Hayward was and is fully aware that BP's representations to the public and MMS that BP had the ability to respond to and contain a major deepwater oil spill were false, deceptive and misleading. Even knowing the dangers associated with BP having no capability to respond to a major oil spill on the Deepwater Horizon project, Defendant Hayward chose the huge profits from drilling over protecting the environment, the public and the Plaintiffs from this epic environmental and economic catastrophe that is a necessary result of BP's fraudulent conduct.

59. On November 19, 2009, David Rainey, Vice President for Gulf of Mexico Exploration for BP America, Inc. appeared before the Senate Energy and Natural Resources Committee and stated that advances in technology had enabled the industry to reduce the occurrence of oil spills and other environmental consequences of offshore drilling. Mr. Rainey claimed that technological developments over the past 50 years have made BP more capable of protecting the environment. Mr. Rainey acknowledged the general risk of offshore drilling in the Gulf of Mexico. But in furtherance of BP's fraudulent scheme, Mr. Rainey omitted the fact that BP had cut corners on implementing adequate safety measures and technology to prevent oil spills and that BP did not have the equipment and technology to respond to and contain a deepwater oil spill.

60. In discussing BP's safeguards for responding to and containing oil spills, Mr. Rainey

stated: “While our intent is to prevent all additional discharges, we conduct regular emergency drills with local, state, and federal agencies. All of our production facilities have contingency plans that identify the procedures, response equipment, and key personnel needed for responding to incidents.”

61. These representations were false and misleading. Mr. Rainey omitted to state that BP was unable to effectively respond to, contain and protect the public from an oil spill like the Deepwater Horizon disaster.

62. On May 17, 2010, Senator Barbara Boxer, Chairman of the Senate Committee on Environmental and Public Works, and other committee members sent a letter to Attorney General Eric Holder requesting that he open a civil and criminal investigation of the above false statements included in the exploration plan BP submitted to the public and MMS.

63. Attorney General Holder has since announced that the Department of Justice has opened a criminal investigation of BP for any unlawful conduct. President Barack Obama also recently publicly stated that BP will be held accountable to the full extent of the law and that it appears that BP cut safety and safeguard corners for offshore drilling at the expense of the environment and the livelihood of American people.

64. BP began drilling on MS Canyon Block 252 on February 15, 2010.

65. Capable of drilling at over 35,000 feet, BP had obtained an MMS permit for 20,211 feet for this particular location. A crewman on the Deepwater Horizon who handled BP company records claimed that the rig had actually been drilling over permit limitations at around 22,000 feet.

66. On April 20th, 2010, the Deepwater Horizon was in the final phases of drilling the exploratory well when the blowout and ensuing major deepwater spill occurred. In the more

than 50 days since the oil spill BP repeatedly tried untested technology to stop the massive uncontrolled and uncontained oil spill without success.

67. In furtherance of the fraudulent scheme, BP has engaged in related fraudulent conduct misrepresenting the rate at which the thousands of barrels per day have been leaking from the uncontained oil spill. BP has and continues to fraudulently low-ball its estimates to avoid the huge royalty payments and further massive oil spill rate support for damages liability BP has incurred from the oil spill. BP has fraudulently, knowingly and willingly misrepresented the oil flow rate and concealed the far higher rate at which the uncontrolled oil spill has spewed into the Gulf of Mexico. Although BP began with spill rate misrepresentations of 1,000 barrels per day, there is a wide consensus that the leakage has reached 60,000 barrels per day and potentially as much as 100,000 barrels per day. Various experts maintain that BP has had the technology all along to accurately estimate the rate of the oil flow from the uncontrolled spill within twenty-five percent (25%) of actual oil flow. Nevertheless, BP continues to intentionally and fraudulently misrepresent and conceal the actual flow rate of the oil spill has leaked with reckless indifference to the truth or falsity of the misrepresentations and omissions.

2. BP's Material Misrepresentations And Omissions Regarding Its "Safety First" Priority To Protect Lives And Prevent Oil Spills

68. Since the BP Texas City Refinery explosion in 2005 that took 15 lives, BP has for years misrepresented to the public that its top priority is "safety first" throughout all of its operations, including offshore oil drilling. In furtherance of its fraudulent scheme, BP has concealed the fact that in reality it has knowingly and dangerously continued to cut corners on safety, while placing "profits first" in all of its endeavors.

69. BP's material misrepresentations and omissions were made in furtherance of its scheme to defraud the public and the government into believing that it was employing the technology

and protocols to assure the safety of its offshore drilling operations. BP has repeatedly misrepresented to the public that safety is its top priority to protect its workers and prevent oil spills that would damage the environment and the public. BP deceptively misled the public in furtherance of its fraudulent scheme in order that it could obtain oil and billions of dollars from its offshore drilling operations.

70. A 2005 BP statement assures: “No activity is so important that it cannot be done safely...Simply obeying safety rules is not enough.” On December 9, 2005, BP issued a final investigative report regarding the Texas City disaster. The report represented that BP was improving safety not only at the Texas refinery but at all of its operations. A BP press release assured the public: “BP has accepted responsibility for the explosion and fire that occurred at its Texas City refinery on March 23, 2005. BP is deeply sorry for what occurred and for the suffering caused by its mistakes. BP is working to improve plant integrity, safety culture and process safety management at all BP-operated facilities in order to prevent incidents like this in the future.”

71. A 2006 shareholder derivative lawsuit filed after the Texas City disaster resulted in a settlement in which BP agreed to incorporate changes to improve its safety record.

72. BP also formed the Independent Safety Review Panel after the Texas City disaster to thoroughly review safety culture, safety management systems, and corporate safety oversight. In January 2007, the panel issued a report stating: “BP’s Group requirements are intended to ensure a consistent Group-wide effort to achieve BP’s stated commitment toward ‘no accidents, no harm to people, and no damage to the environment.’”

73. Lord John Browne, the former CEO of BP, issued a statement to the public after the release of the panel report assuring: “We will use this report to enhance and continue the

substantial effort already underway to improve safety culture and process safety management at our facilities...I intend to ensure BP becomes an industry leader in process safety management and performance.”

74. BP has repeatedly misrepresented its commitment to safety and risk management to the public on its website. For example, BP’s Code of Conduct, which is available on its website makes the following false assurances in a section entitled “Health, safety, security and the environment” (“HSSE”): “At BP our aspirations are—no accidents, no harm to people and no damage to the environment. We are committed to the protection of the natural environment, to the safety of the communities in which we operate, and to the health, safety, and security of our people. Everyone who works for BP, everywhere, has a responsibility for getting HSSE right.”

75. In March of 2009, BP began aggressively publicizing and promoting to the public that it was one of the largest deepwater offshore drilling operators in the world and that its deepwater operations in the Gulf of Mexico were one of the primary driving economic forces for the oil company. BP concealed and failed to disclose to the public that its deepwater drilling operations in the Gulf of Mexico were exceedingly risky, that BP knew it was dangerously cutting corners on safety measures for preventing oil spills, and that BP could not contain an oil spill in the event a deepwater oil spill occurred.

76. BP’s Form 20-F 2009 Annual Report issued on March 5, 2010, a month before the Deepwater Horizon disaster: “Safety, people and performance are BP’s top priorities. We constantly seek to improve our safety performance through the procedures, processes and training programs that we implement in pursuit of our goal of ‘no accidents, no harm to people and no damage to the environment.’” BP also stated in a section entitled “Outlook”: “Our priorities remain the same—safety, people and performance, focusing on the delivery of safe,

reliable and efficient operations. In 2010, we aim to use the momentum generated in 2009 to continue to improve operational, cost and capital efficiency, while ensuring we maintain our priorities of safe, reliable and efficient operations.”

77. BP’s Chief Executive of Exploration and Production, Andrew G. Inglis, again promoted BP’s focus on safety in BP’s 2009 Annual Report:

Safety, both personal and process, remains our highest priority. 2009 brought further improvement in personal safety with the segment’s reported recordable injury frequently improving from 0.43 in 2008 to 0.39 in 2009.

We also achieved improvements in the number of process safety-related incidents and a significant reduction in the number of spills.

During the year we continued our migration to the BP operating management system (OMS), which provides an increased focus on process safety and continuous improvement. By the end of 2009, 87% of our operating sites had transitioned to OMS.

78. Mr. Inglis also promoted BP’s “deepwater expertise” to the public, stating “BP is the leading operator in the deepwater Gulf of Mexico. We are the biggest producer, the leading holder and have the largest exploration acreage position.”

79. In the month preceding the Deepwater Horizon disaster, on March 2, 2010, BP published for the public and made a PowerPoint presentation in London that again emphasized BP’s expertise in deepwater offshore drilling operations, including its primary operations in the Gulf of Mexico. The first point BP presented in the publication for the public and the PowerPoint presentation is that “Safe and reliable operations remains #1” at BP.

3. BP Material Omissions Regarding The Safety Of The Deepwater Horizon Drilling Operations, As Well As BP’s Deriving Proceeds And Profits From Cutting Safety Measures That Knowingly Created Serious Risk For The Blowout And Ensuing Oil Spill And Endangered Lives

80. The truth that has recently come home to roost is that BP knowingly cut critical safety measures that created a serious risk of a blowout and ensuing oil spill instead of providing safeguards for the environment and the people of the Gulf Coast. As BP was assuring the public

that it had sound safety measures for preventing oil spills and that it was able to effectively respond to and contain any oil spill, BP concealed the fact that its safety measures and protocols were woefully inadequate, its safeguards for containing deepwater oil spills were actually nonexistent, and profits not safety were BP's top priority in its offshore drilling operations.

81. In fact, as detailed below, BP intentionally and unlawfully promoted its offshore drilling operations through cutting safety measures that knowingly raised a serious risk of a blowout and oil spill in order that it could derive increased proceeds and profits.

82. BP's own shareholders pointedly state in their recent derivative suit:

The consequences of this disaster will be felt by the families of the killed and injured workers, commercial fishermen, Gulf Coast property owners, and the environment at large for generations for which losses the affected parties have, understandably, commenced legal actions against the culpable parties.

....

The liability of the various defendants herein is clear. The BP Defendants have a long history of ignoring crucial safety issues related to the operation of offshore submersible rigs such as the Deepwater Horizon rig, including problems with the crucial blowout preventer devices that so spectacularly failed during this disaster. Despite repeated incidents serving as 'red flags' of the possibility of a major explosion and oil spill in the Gulf of Mexico, the BP Defendants elected to cut costs, including safety and maintenance expenditures, in pursuit of profitable results to report to Wall Street. These defendants also lobbied the federal and state governmental authorities to remove or decrease the extent of safety and maintenance regulation of the Company Gulf operations, claiming, against all evidence, that 'voluntary compliance' would suffice to address safety and environmental concerns. Even after a 2006 shareholder derivative proceeding brought as a last resort to require BP to address safety concerns was voluntarily settled out-of-court by the BP Defendants, these defendants continued to ignore and disregard safety issues concerning the Company's deepwater operations, making purely cosmetic changes at the corporate level while ignoring the substance of the safety violations and the threat they posed to the entirety of the Gulf, commercial and private property, and the Company own survival as a going concern.

83. There are countless fraudulent misrepresentations and omissions misleading the public into believing BP has been safely conducting its offshore drilling operations to prevent harm to its workers and to prevent oil spills damaging the environment and the livelihood of Gulf Coast

residents, businesses and property owners.

84. Furthermore, it is clear that BP cut safety measures that knowingly caused the serious risk for the blowout and oil spill in order to unlawfully derive increased proceeds and profits.

For example, as recognized in a June 14, 2010 letter by Representative Henry Waxman, Chairman of the House Energy and Commerce Committee, and Representative Bart Stupak, Chairman of the Subcommittee on Oversight and Investigations, to BP CEO Defendant Anthony Hayward:

The Committee's investigation is raising serious questions about the decisions made by BP in the days before the explosion on the Deepwater Horizon. On April 15, five days before the explosion, BP's drilling engineer called Macondo a 'nightmare well.' In spite of the well's difficulties, BP appears to have made multiple decisions for economic reasons that increased the danger of a catastrophic well failure. In several instances, these decisions appear to violate industry guidelines and were made despite warnings from BP's own personnel and its contractors. In effect, it appears that BP repeatedly chose risky procedures in order to reduce costs and save time and made minimal efforts to contain the risks.

....

At this time in the investigation, however, the evidence before the Committee calls into question multiple decisions made by BP. Time after time, it appears that BP made decisions that increased the risk of a blowout to save the company time or expense. If this is what happened, BP's carelessness and complacency have inflicted a heavy toll on the Gulf, its inhabitants, and the workers on the rig.

85. Similarly, on June 30, 2010, Chairman Waxman stated in a hearing before the Subcommittee on Energy and Environment:

We know—thanks to the work of this Subcommittee and Chairman Stupak's Subcommittee on Investigations and Oversight—that this disaster could have been prevented. BP made a series of risky decisions before the explosion that destroyed the Deepwater Horizon. These decisions saved time and money for BP, but increased the risks of a catastrophic blowout.

When BP CEO Tony Hayward appeared before the Subcommittee on Oversight and Investigations, we asked him to explain these decisions. He tried to dodge responsibility, telling us repeatedly that he was not involved in the critical decisions. And he tried to shift blame to others.

BP chose a risky well design on the Macondo well that provided minimal barriers to prevent dangerous gases from flowing to the wellhead. They ignored their

contractor's advice about how to properly cement the well. They failed to conduct a critical cement test. And they failed to properly circulate well fluids.

86. In testimony on June 15, 2010, before the House Subcommittee on Energy and Environment, BP's oil industry colleagues testified that the Deepwater Horizon disaster was "preventable" and caused by BP's failure to adhere to proper deepwater oil drilling safety regimes. For example, Chevron Chairman John Watson and ConocoPhillips Chairman John Mulva testified the Deepwater Horizon blowout was "preventable"; ExxonMobil CEO Rex Tillerson testified "We would not have drilled the well the way they did"; and Shell Oil Company's President Marvin Odum testified that the Macondo well was a dangerous well to drill, stating "It is not a well we would have drilled."

87. BP knew the risks of drilling the Macondo deepwater well were especially high and that the project was laden with dangerous challenges that could result in a blowout and oil spill if the highest safety precautions were not employed. BP was equally aware that in the event of a blowout BP did not have the equipment and technology to effectively respond to and contain the ensuing oil spill. Yet, as Chairman Waxman also stated on June 15, 2010, BP "[t]ime after time, BP appears to have taken shortcuts that increased the risks of a catastrophic blowout." Similarly, Chairman Waxman stated to BP's CEO, Defendant Hayward, in hearings on June 17, 2010:

“...[T]he Subcommittee will ask you about a series of internal BP documents. They appear to show that BP repeatedly took shortcuts that endangered lives and increased the risks of a catastrophic blowout. But what is equally important is what is missing from the documents. When you became CEO of BP, you promised to focus ‘like a laser on safe and reliable operations.

....

We could find no evidence that you paid any attention to the tremendous risks BP was taking. We have reviewed 30,000 pages of documents from BP, including your e-mails. There is not a single e-mail or document that shows you paid even the slightest attention to the dangers at this well.

....

The drilling engineer for the rig called Macondo a ‘nightmare well.’ Other

BP employees predicted that the cement job would fail. Halliburton warned of a 'SEVERE gas flow problem.'

These warnings fell on deaf ears.

BP's corporate attitude may be summed up in an e-mail from its Operations Drilling Engineer, who oversaw BP's team of drilling engineers. After learning of the risks and BP's decision to ignore them, he wrote: 'who cares, it's done, end of story, will probably be fine.'

There is a complete contradiction between BP's words and deeds. You were brought in to make safety the top priority of BP. But under your leadership, BP has taken the most extreme risks.

BP cut corner after corner to save a million dollars here and a few hours there. And now the whole Gulf Coast is paying the price.

88. On September 3, 2009, BP announced the fated "giant" new oil discovery over five miles deep in the Gulf of Mexico. BP acknowledged that extraction of the oil would require advanced techniques and applications because of the depth of the discovery and the fact that the oil and gas in the field were extremely hot and under intense pressure.

89. In spite of the well's dangerous challenges, BP repeatedly made cost cutting decisions that cut safety measures under very dangerous circumstances and increased the risks of a catastrophic blowup. From the start, BP's Deepwater Horizon exploratory drilling project was plagued with problem after problem and decision after decision by BP that increased the serious risks of a blowout. Time after time the Defendants chose to derive more proceeds and profits by knowingly deviating from standard and accepted industry drilling operation practices rather than making expenditures on critical industry safety measures designed to prevent a blowout and ensuing oil spill the Defendants knew they could not contain. All the while BP continued to mislead the American public that it was employing the highest levels of safety protocols to assure there would be no blowout and oil spill and concealing the fact that it was cutting safety measures that resulted in the catastrophic blowout and ensuing oil spill.

90. The ill-fated circumstances and the knowingly risky decisions BP made to derive increased proceeds and profits include, but are not limited to:

- BP repeatedly chose risky procedures in order to reduce costs and save time with little efforts to contain the added risks;
- At the time of the April 20, 2010 blowout, the Macondo well was significantly behind schedule. Transocean charged BP approximately \$500,000 per day to lease the Deepwater Horizon rig, plus contractors' fees. By the day of the blowout, the project was 43 days beyond scheduled leasing, which had already cost BP as much as \$21 million dollars in leasing fees alone. Additionally, an earlier problem with the well that later exploded cost BP \$25 million dollars. Agitated with the expense of the operation, BP managers pressured workers to speed up their work and ordered workers to speed up the drilling rate. This also set the context for BP's ill-fated cost cutting decisions that cut safety measures throughout the operation and in the final days and hours before the blowout in order to increase its proceeds and profits.
- BP knew that Transocean had a history of repeated safety problems with Blow Out Preventers ("BOPs") on its rigs and that the Deepwater Horizon BOP was ten years old and had not been recalibrated, maintained, and/or tested appropriately in violation of federal offshore drilling requirements. BP also knew that the Deepwater Horizon had previously had numerous oil spills and accidents and knew that the U.S. Coastguard had cited the rig 18 times in the last 11 years for being an "acknowledged pollution source." Instead of improving safety on the rig, BP knowingly ignored serious safety problems with the BOP and the rig in order to increase its proceeds and profits by cutting costs;
- Even with knowledge of past problems with the BOP, BP knowingly chose not to install a remote control shutoff "acoustic switch" that could have activated the blowout preventer after the blowout; the remote control acoustically activated shutoff valve cost approximately \$500,000, is mandated in Brazil and Norway, and is utilized by Royal Dutch Shell and Total SA;
- Even with knowledge of past problems with the BOP, BP knowingly chose not to install a deepwater, sub-sea valve as a further backup in the event the BOP malfunctioned;
- MMS released an industry-wide alert over ten years ago ordering companies drilling in deep water in the outer continental shelf ("OCS") to have effective back-up systems. The March 2000 MMS alert stated: "The MMS considers a backup [BOP] actuation system to be an essential component of a deepwater drilling system and therefore expects OCS operators to have reliable back-up systems for actuating the [BOP].";
- Nevertheless, BP knowingly chose not to have a back-up system for activating the blowout preventer on the Deepwater Horizon;
- BP knew that its employees had experienced recurring problems with pockets of highly flammable natural gas on the Deepwater Horizon. In fact, BP knew that in the

weeks leading up to the April 20, 2010 gas explosion there was an emergency stop to all “hot work” ordered to attempt to lessen the risk of an explosion from the gas that continued to threaten the workers and the rig;

- Nevertheless, BP knowingly continued to make a series of high risk time and cost cutting decisions that ignored dangerous gas flow issues that threatened the crew and the rig and threatened the environment and the public with an ensuing oil spill BP knew it could not contain;
- BP knowingly chose to use a well design with less barriers to dangerous gas flow. Despite the known risks to installing the less safe single casing well design instead of the liner and tieback approach, BP chose the single casing design. In the course of debates over the proper well design with BP executives, BP drilling Engineer emailed colleague Richard Miller, stating “this has been [a] nightmare well which has everyone all over the place.”
- The BP decision to use the single casing well design cut safety measures and costs in order to save time and increase proceeds and profits;
- BP knowingly chose an insufficient number of “centralizers” to prevent channeling of gas during the cementing process. *Halliburton, the contractor hired by BP to cement the well, warned BP that the well could have a “SEVERE gas flow problem” if BP lowered the final string of casing with only six centralizers instead of 21 recommended by Halliburton. BP rejected Halliburton’s advice to use additional centralizers. In April 16 email, a BP executive involved in the decision-making explained: “it will take 10 hours to install them...I do not like this.”* Later that day, another BP official knowingly acknowledged the increased risk of proceeding without a sufficient number of centralizers, *but carelessly commented with lethal disregard for the people and the environment that could be seriously injured: “who cares, it’s done, end of story, will probably be fine.”*;
- BP knowingly chose not to run a cement bond to evaluate the effectiveness of the cement job in preventing dangerous gas flow. A cement bond is an acoustic test that is conducted by running a tool inside the casing after cementing is completed. The cement bond determines whether the cement has bonded to the casing and surrounding formations to prevent gas flow. If a channel that would allow gas flow is found, the casing can be perforated and additional cement injected unto the annular space to repair the cement job. On April 18, 2010, BP flew a crew from Schlumberger to the rig to be available to perform a cement bond log. But at 7 a.m. on the morning of the April 20, 2010 disaster, BP instructed the Schlumberger crew that their services would not be needed to perform the cement bond log test. The crew departed at 11:15 a.m. on the regularly scheduled BP helicopter flight. The decision BP knowingly made not to conduct a cement bond test that seriously increased the risk of a blowout and oil spill was made to increase proceeds and profits while ignoring the safety considerations for offshore oil drilling it had repeatedly misrepresented assurances for to the American public;

- The House Committee on Energy and Commerce requested an independent engineer to analyze BP's decision not to conduct a cement bond log. The engineer, Gordon Aaker, Jr., P.E., a Failure Analysis Consultant, said that it was "unheard" of not to perform a cement bond log on a well using a single casing approach, and he described the decision BP knowingly made to be "horribly negligent." Another independent expert consulted by the Committee, John Martinez, P.E., told the committee that "cement bond or evaluation logs should always be used on the production string.";
- BP knowingly chose not to circulate potentially gas-bearing drilling mud out of the well. The "bottoms up" mud circulation procedure involves circulating drilling mud from the bottom of the well all the way to the surface. The procedure has several purposes: it allows workers on the rig to test the mud for influxes of gas; it allows a controlled release of gas pockets that may have entered the mud; and it ensures the removal of debris such as well cuttings to prevent contamination of the cement. Despite the BP operations plan and contractor Halliburton's recommendation, BP knowingly chose not to circulate the drilling mud. BP's knowingly risky decision to ignore this safety measure was based upon the fact that the mud circulation would have added 12 hours in time and expense and BP could derive increased proceeds and profits without the safety measure;
- BP knowingly chose not to secure the wellhead with the critical lockdown sleeve apparatus before allowing pressure on the seal from below. When the casing is placed in the wellhead and cemented in place, it is held by gravity. Under certain pressure conditions, the casing can become buoyant, rising up in the well and potentially creating an opportunity for hydrocarbons to break through the wellhead seal and enter the riser to the surface. To prevent this dangerous occurrence, a casing hanger lockdown sleeve is installed. BP's knowingly risky decision not to install the lockdown sleeve was made out of time and expense considerations for increasing its proceeds and profits and ignored safety assurances it had repeatedly provided the American public. BP's planned procedures in the final phases of the well operation describes two options involving the lockdown sleeve: (1) BP was seeking permission from MMS to install the final cement plug on the wall at a lower depth than previously approved, and (2) BP's alternative plan was that if MMS did not approve the proposed depth of the final cement plug, it would run the lockdown sleeve first, before installing the cement plug at a shallower depth;
- Approximately five weeks before the Deepwater Horizon disaster, BP became aware there were serious problems with the blowout preventer; chunks of the annular blowout preventer had broken off and had floated to the rig surface. The annular is a critical part of the blowout preventer used to ensure that explosive gas does not escape to the surface. BP was also aware in the weeks and months prior to the disaster that the battery on the blowout preventer was weak and one of the control pods on the blowout preventer was broken. According to engineering expert Robert Bea, having a malfunctioning control pod is "like losing one of your legs.";

- In the final phase, BP made knowingly a risky decision to ignore safety to increase its proceeds and profits that unleashed all of the ill-fated dangerous circumstances BP knew it was operating in and all of BP's ill-fated knowingly risky decisions ignoring safety into one huge catastrophe. Halliburton workers under the supervision of BP employees were attempting to create the cement seal to plug off the wellhead. BP knew it was operating in a dangerous formation under severe risks in which a critical series of safety precautions had already been knowingly ignored in the interests of time and money. Nevertheless, BP ordered the drillers to begin extracting the mud from the well before all of the cement plugs were put in place. This knowingly risky decision would once again speed up the process and cut costs—but BP also knew that it meant the pressure on the well would be dangerously unstable. Likewise, BP made the risky decision knowing there were dangerous problems with the blowout preventer being able to prevent a disaster and ensuing oil spill. The results of BP's knowingly risky decision were catastrophic. Extremely hot high pressure gases broke through the wellhead to the rig surface causing the explosion that took the lives of 11 workers and an ensuing massive deepwater oil spill BP knew it could not contain.
- Needless to say, the blowout preventer did not stop the flow of oil after the explosion and attempts to activate the blowout preventer in the days and weeks after the blowout were not successful. Similarly, since BP knowingly chose not to install a backup acoustically activated shut-off valve or the additional deepwater backup shutoff valve in order to increase its proceeds and profits, there was no backup safety equipment to stop the oil flow when the BOP did not function properly;
- Contrary to its safe operating assurances to the public that BP would provide every safeguard to prevent oil spills, time and time again BP operating procedures were knowingly ignored as BP bypassed critical safety tests if the tests cost BP more time and money. These critical procedures and tests included protocols that would have allowed BP to detect and remove gas building up in the well. Moreover, BP knowingly allowed inexperienced managers to perform the tests that were performed. For example, Robert Luluza, the BP manager responsible for overseeing the final well tests had little if any experience overseeing tests for deepwater oil drilling operations. Mr. Luluza informed the Coast Guard that he was on the Deepwater Horizon to “learn about deepwater.”;
- BP fraudulently concealed all of these dangerous circumstances and knowingly risky decisions ignoring safety measures from the public in order that it could obtain oil and money from offshore drilling and in order that it could derive increased proceeds and profits;
- Contrary to BP's representations designed to defraud the public and the U.S. Government into believing it was putting safety first, BP fraudulently, deceptively and knowingly put increased proceeds and profits over expending money on critical safety measures that would protect the environment and the public from the blowout

and oil spill;

- Contrary to BP's superficial adoption of green colors for its company logo to mislead the public into believing BP is environmentally responsible, it is clear the green BP logo stands for money, proceeds and profits over critical safety expenditures for offshore oil drilling that would protect its workers and protect the environment and the public from a blowout and ensuing oil spill.

91. BP's unlawful pattern of misrepresentations that it was employing safety measures and protocols to prevent oil spills from blowout disasters such as the Deepwater Horizon disaster, as well as BP's omissions concealing that BP was actually dangerously cutting safety measures and protocols to increase its proceeds and profits directly caused concrete economic injury to the Plaintiff and the Class's business and property.

C. BP's Material Misrepresentations and Omissions Constitute Mail and Wire Fraud RICO Predicate Acts

92. The multiple material misrepresentations and omissions were devised and carried out in furtherance of Defendants' scheme or artifice to defraud the public and the U.S. Government by means of false and fraudulent pretenses, representations and promises Defendants caused to be delivered by the United States postal service, including letters, memoranda, and other means, in violation of 18 U.S.C. § 1341 (mail fraud), and transmitted by means of wire communications in interstate commerce, including writings, signals and sounds, to wit, interstate electronic mail messages and/or facsimile in violation of 18 U.S. C. § 1343 (wire fraud), or aided and abetted in such unlawful acts.

93. There are also numerous additional related RICO predicate acts alleged below, including but not limited to mail and wire fraud related predicate acts involving material misrepresentations and omissions regarding the safety of other BP offshore drilling projects in the Gulf of Mexico such as BP's *Atlantis* deepwater drilling operation.

94. As alleged below, the knowingly risky decisions BP made to cut safety measures to promote its offshore drilling operations with unlawfully derived proceeds and profits constitutes multiple money laundering RICO predicate acts.

D. BP's Unlawful Conduct Deriving Proceeds From Knowingly Cutting Safety Measures That Created The Serious Risk For The Blowout And Ensuing Oil Spill Constitutes Money Laundering RICO Predicate Acts Since The Proceeds Were Derived From Felony Clean Water Act "Specified Unlawful Activity"

95. BP's scheme against the American public and the U.S. Government also includes its unlawful conduct on the Deepwater Horizon offshore drilling operation that constitutes multiple money laundering RICO predicate acts under 18 U.S.C. § 1961(1). BP engaged in unlawful money laundering predicate acts by deriving "proceeds" from felony Clean Water Act "specified unlawful activity" in which BP promoted its offshore drilling operations through cutting expenditures on critical safety measures that knowingly created the serious risk of the blowout and ensuing catastrophic oil spill. In effect, BP subsidized its Deepwater Horizon offshore drilling operation and greed by refusing to spend money on critical safety measures that knowingly brought on the serious risk of the blowout and oil spill.

96. The federal money laundering statute provides, in pertinent part: "Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of unlawful activity—with intent to promote the carrying on of the specified unlawful activity" shall be guilty of money laundering under 18 U.S.C. § 1956 (a)(1)(A)(i), (a)(2)(A), and (a)(3)(A). Likewise, the companion federal money laundering statute, 18 U.S.C. § 1957, provides that whoever knowingly engages in or attempts to engage in a monetary transaction greater in value than \$10,000 that is criminally derived from the proceeds of "specified unlawful activity" as defined in 18 U.S.C. § 1956 is guilty of money laundering;

the money laundering provisions apply to circumstances taking place in the United States or the special maritime and territorial jurisdiction of the United States or outside the United States.

97. The money laundering statute provides that such “specified unlawful activity” includes, but is not limited to “a felony violation of the Federal Water Pollution Control Act (“Clean Water Act”) (33 U.S.C. 1251 et seq.),” 18 U.S.C. § 1956(c)(7)(E).

98. The previously alleged “knowingly” risky BP decisions to derive increased proceeds by cutting safety measures, along with the previously alleged BP concealment of its knowingly risky conduct cutting critical safety expenditures for preventing the blowout and ensuing Deepwater Horizon oil spill constitute multiple money laundering RICO predicate acts. Through this unlawful conduct BP “knowingly” committed felony Clean Water Act violations and intended to promote its offshore drilling operations and to conduct its financial transactions with the “proceeds” of “specified unlawful activity” felony Clean Water Act violations.

99. For example, several Clean Water Act experts recently observed the standards for BP “knowingly” committing felony Clean Water Act violations in a May 12, 2010, article by *McClatchy Newspapers*, concluding:

Federal investigators are likely to file criminal charges against at least one of the companies involved in the Gulf of Mexico spill....

....

[E]nvironmental law experts say it’s just a matter of time until the Justice Department steps in—if it hasn’t already—to initiate a criminal inquiry and take punitive action.

‘There is no question there’ll be an enforcement action,’ said David M. Uhlmann, who headed the Justice Department’s environmental crimes section for seven years during the Clinton and Bush administrations. ‘And, it’s very likely that there will be at least some criminal charges brought.’

Such a likelihood has broad legal implications for BP and the two other companies involved—....

....

While Attorney General Eric Holder has confirmed that Justice Department

lawyers are helping the agencies involved in the oil spill inquiry with legal questions, department officials have refused to detail what their role entails. But Uhlmann and other experts said it's likely prosecutors are already poring over the evidence from the spill ...under the Clean Water Act...

....
...William Carter, a former federal prosecutor of 14 years who headed the environmental crimes section for the Los Angeles U.S. Attorney....[said] 'I would be shocked if there were no criminal charges filed in this case. There are so many things that went wrong out there.'

....
Prosecutors also look at the history of violations, which could also persuade them to file charges. BP, for example, has already agreed to pay millions in criminal penalties for several major incidents, including for a fatal explosion at a Texas refinery in March 2005.

BP and several of its subsidiaries agreed to pay a total of \$375 million in fines for the Texas explosion, *leaks of crude oil from pipelines in Alaska [and associated felony Clean Water Act charges]*, and for fraud for conspiring to corner the market and manipulate the price of propane carried through Texas pipelines.

In 1999, the Ninth Circuit U.S. Circuit Court of Appeals upheld the misdemeanor conviction under the Clean Water Act of a supervisor at a rock quarry project that accidentally ruptured an oil pipeline, causing a spill.

For a felony, prosecutors have to demonstrate companies 'knowingly' violated the regulations.

Tracy Hester, the director of the Environment, Energy and Natural Resources Center at the University of Houston, said *prosecutors would be looking for 'any possible concealment of the risks, a failure to respond to any known risks, and a failure to report a dangerous situation.'*

'Knowing is a slippery term,' Hester said. 'But knowing doesn't necessarily mean that you know it was a violation of the law. You just have to be aware that what you were doing fell into what is regulated.'

But Oliver Houck, a professor with Tulane University who specializes in environmental law, predicted that prosecutors are not going to want to pursue minor charges for such a catastrophic spill.

....
'To get into criminal land, you would have to prove that they knew that the short cuts they were taking brought high probability of serious risk,' he said...Houck added that some of the strongest environmental criminal cases have come out of civil cases...[such as this civil RICO action]. (emphasis added).

100. As alleged in detail above in paragraphs 80 to 91, BP's chose not to make expenditures on critical safety measures that knowingly created the serious risks of a blowout and oil spill in order to derive increased proceeds and profits. Likewise, BP knowingly concealed the risks, failed to respond to the known risks, failed to report the dangerous situation, and BP's cuts on

safety expenditures to derive increased proceeds knowingly brought on a high probability of serious risk for the blowout and oil spill. BP's seriously risky conduct deviated so far from acceptable industry practices that BP "knowingly" committed felony Clean Water Act violations under 33 U.S.C. § 1319(c)(2); BP knew the blowout and oil spill could happen because of its seriously risky actions. It is clear that BP acted "knowingly" as the meaning of term is understood under the law—BP realized what it was doing; BP was aware of the nature of its decisions and the risks it was taking; and BP was aware of forewarnings from others advising it of the risks it was taking. Thus, BP acted "knowingly", as opposed to acting or failing to act out of ignorance, mistake or accident. The fact that BP acted "knowingly" is also evident from BP's conduct along with all the previously alleged facts and circumstances surrounding its "knowingly" risky and unlawful conduct. Indeed, subject to further investigation and discovery, upon information and belief certain BP Defendants creating the serious risk for the blowout and oil spill also committed felony Clean Water Act "specified unlawful activity" under 33 U.S.C. § 1319(c)(3) for the "knowing endangerment" their serious risk taking and lethal disregard for safety brought to the workers on the Deepwater Horizon.

101. BP intended to promote and conduct its offshore drilling operations and financial transactions with the predicate act money laundering "proceeds" of these "specified unlawful activity" felony Clean Water Act violations. BP's greedy decision to derive increased proceeds and profits from cutting drilling operation safety expenditures knowingly showed a lethal disregard for the lives of the workers on the rig and knowingly created the serious risk of the blowout and oil spill for the environment, for our precious marine and coastal wildlife, for our pristine beaches, and for the businesses, properties, livelihoods and coastal way of life for millions of Americans.

102. To the best of Plaintiffs' knowledge, 18 U.S.C. § 1956(c)(7)(E) "specified unlawful activity" money laundering charges for unlawful proceeds from felony Clean Water Act violations have never been brought by federal prosecutors since this amendment to the money laundering statute in the 1990's—but for BP and other potential defendants the time has come.

103. BP has subsidized its business and its greed with unlawful proceeds and profits from refusing to make safety expenditures for the environment and the American people for far too long. In fact, when BP was charged with felony Clean Water Act violations for its Alaskan pipeline oil spill in 2007, federal Judge Breistline found at sentencing that BP's oil spills were a "serious crime" that could have been avoided if BP had made more safety expenditures on upgrading the pipeline and had placed "less emphasis on profits."

104. BP's unlawful pattern of money laundering by promoting its Deepwater Horizon offshore drilling operation with the felony Clean Water Act "specified unlawful activity" to derive the proceeds alleged herein resulted in a catastrophic oil spill directly causing concrete economic injury to the Plaintiff and the Class's business and property.

E. BP's Unlawful Conduct Deriving Proceeds From Mail And Wire Fraud "Specified Unlawful Activity" Constitutes Money Laundering RICO Predicate Acts

105. BP's scheme against the American public and the U.S. Government also includes its unlawful conduct on the Deepwater Horizon offshore drilling operation that constitutes multiple money laundering RICO predicate acts for mail and wire fraud "specified unlawful activity."

The money laundering statute provides that any RICO predicate act listed under 18 U.S.C. 1961(1) is also "specified unlawful activity" under 18 U.S.C. § 1956(c)(7)(A). Mail and wire fraud violations are listed as RICO predicate acts under 18 U.S.C. § 1961(1).). Similarly, the Florida RICO statute's definition of RICO predicate act "criminal activity" incorporates any federal RICO predicate act criminal offense under Fla. Stat. Ann. § 772.102(1)(b). The Florida

RICO statute thus encompasses the mail and wire fraud “specified unlawful activity” that gives rise to money laundering offenses under 18 U.S.C. §§ 1956 and 1957.

106. BP engaged in multiple money laundering RICO predicate acts by deriving “proceeds” from the previously alleged promotion and conduct of its offshore drilling operations through mail and wire fraud “specified unlawful activity” under 18 U.S.C. § 1956(c)(7)(A) and “criminal activity” under Fla. Stat. Ann. § 772.102(1)(b). As previously alleged, BP engaged in multiple mail and wire fraud RICO predicate act material misrepresentations and omissions regarding the safety of its offshore drilling operations and its ability to effectively contain a worse case scenario deepwater oil spill in order that it could obtain oil and money proceeds and profits from offshore drilling. BP’s unlawful conduct also included obtaining increased money and proceeds from its Deepwater Horizon offshore drilling operation by concealing that it was creating the serious risk for the oil spill that it could not contain when it chose to increase its proceeds and profits from not making expenditures on critical drilling operation safety measures. Thus, BP intended to promote and conduct its offshore drilling operations and financial transactions with the “proceeds” and profits of “specified unlawful activity” mail and wire fraud violations.

107. BP’s unlawful pattern of money laundering predicate acts under 18 U.S.C. §§ 1956 and 1957 by promoting and conducting its Deepwater Horizon offshore drilling operation with the mail and wire fraud “specified unlawful activity” to derive the proceeds and profits alleged herein directly caused concrete economic injury to the Plaintiff and the Class’s business and property.

F. The Oil Industry’s Scheme To Infiltrate MMS With A Culture Of Corruption

108. Since 2000, the relationship between oil companies and the MMS agency that regulates their offshore oil drilling has been characterized as an incestuous revolving door. Over the years,

what began as an MMS watchdog for the public policing unit turned into an association of oil industry yes-men.

109. In or around 2000, Vice President Dick Cheney conducted closed-door meetings regarding the “Cheney Energy Task Force” that was to produce a National Energy Policy Report. According to the Report itself, the task force that created the report was made up only of government officials. Records of the Secret Service, however, revealed that participants included oil executives, including Bob Malone, BP’s regional president. To date, all parties to the oil industry’s closed-door meetings have refused to release any records of the matters discussed or actions taken.

110. Upon information and belief, part of BP’s agenda at the meetings included installing oil industry appointments to MMS and other agencies so that BP could fraudulently cut corners on safeguards for offshore drilling projects.

111. MMS ethics rules prohibit personnel from soliciting or accepting gifts from “a prohibited source”— defined as a company that “has an interest which may be affected by the employee’s official duties.” Reports from the Inspector General reveal that oil industry representatives “purchased meals, drinks, and other items of entertainment” for MMS employees and MMS employees cozily viewed the oil companies as “partners” or “customers.”

112. The MMS employees were instructed to keep quiet about attending the oil industry social events and trips and one MMS supervisor even requested that employees RSVP to an industry event “in private.”

113. The OIG investigative reports found incidents in which the oil industry, (including members of the MPA that BP is a member of) has wooed MMS agents with an unlawful and unethical cascade of gifts, drugs, sex and alcohol. Specifically, one document concluded that

government personnel “frequently consumed alcohol at industry functions, had used cocaine and marijuana, and had sexual relations with oil and gas company representatives.” As part of its investigation, the OIG report noted that a confidential source “also told us about a sex toy business (one MMS employee) owned and advertised by passing out business cards at work...(Later in the report, this same woman) admitted to having a ‘one-night stand’ with a Shell (MPA member) employee. She said she did not subsequently recuse herself from work involving Shell because she only had a ‘one-night stand’ with its employee and did not think this would affect (MMS’s) RIK business.”

114. Similarly, the OIG has reported an incident indicative of the cozy relationship between other MPA members such as ConocoPhillips and MMS employees. According to a March 10, 2010 OIG report:

We showed this former MMS inspector an e-mail dated April 6, 2006, in which he told an employee with ConocoPhillips, that he had accepted gifts from certain ‘good friends’ in the oil and gas industry. The e-mail chain began with the inspector sending the ConocoPhillips employee an e-mail with the subject line, ‘Civil Penalty Case recaps—1st quarter 2006.’ He stated, ‘These are the fines that we assessed to different companies for breaking the rules.’ The ConocoPhillips employee responded, ‘[E]ver get bribed for some of that?’ He replied, ‘They try all the time.’ The ConocoPhillips employee responded back, ‘[E]ver take em?’ the inspector said, ‘I accept ‘gifts’ from certain people. But we have VERY strict ethic standards as you could imagine.’ The ConocoPhillips employee replied, ‘[C]ertain people, meaning women?’ the inspector said, ‘No, meaning good friends that I wouldn’t write up anyway.’

115. The various gifts bestowed on MMS figures included: golf and ski trips, snowboarding rental and lessons, golf and garment bags, silver trays, tickets to sporting events and music concerts, meals & drinks, invitations to holiday parties in various locations, “treasure hunt tours” in the Arizona desert, hunting and fishing trips and paintball outings. One employee continued to conduct safety inspections on a company he was currently in negotiations with for employment.

116. In October of 2008, Donald C. Howard, a Gulf of Mexico MMS official, pled guilty to making false statements. Howard had accepted gifts from an unnamed oil company that conducted business in his jurisdiction and had not reported it on his financial disclosure statement.

117. From these reports, it is clear that the cozy relationships the oil companies were cultivating with the MMS were to deprive the public of the honest services of the agency charged with providing environmental and public safeguards associated with offshore drilling. They succeeded.

118. BP itself has also successfully infiltrated the MMS; it has systematically submitted fraudulent unsubstantiated and erroneous Exploration and Oil Spill Response Plans and Lease Agreements, and it has been allowed to veto MMS efforts to implement additional safety rules and regulations that would have cost BP money to carry out. If it appeared that an oil lease would have been prevented for failure to procure a National Oceanic and Atmospheric Administration (“NOAA”) endangered species permit, MMS would simply bypass the requirement. If a lease should have been declined due to MMS’s own scientists’ reports showing the possibility of a significant environmental impact, the agency would downgrade those findings of spill risks, or, in some cases, have those findings changed completely to indicate no environmental impact at all.

119. This problem of BP and oil industry fraudulent and corrupt infiltration of the MMS to have the MMS rubber stamp and look the other way on serious safety, oil spill containment and impact issues has been systemic within the agency and certain MMS government employees. For example, in a September 2009 letter from NOAA to MMS, NOAA accused MMS of a pattern of understating the likelihood and potential consequences of a major oil spill. The

NOAA letter claims that MMS emphasizes the safety of offshore drilling while ignoring more recent evidence to the contrary. The letter asserts that the data used to justify approval of drilling in the gulf understates the “risks and impacts of accidental spills.”

120. Similarly, MMS scientists have been quoted as stating: “You simply are not allowed to conclude that the drilling will have an impact If you find the risks of a spill are high or you conclude that a certain species will be affected, your report gets disappeared in a desk drawer and they find another scientist to redo it or they rewrite it for you.”

121. Certain MMS government employees have been more interested in accommodating the oil companies rather than providing the American citizens honest services in their watchdog and policing responsibilities to the environment and the public. They have systematically rubber stamped and looked the other way on serious safety, oil spill containment and impact information, instead looking out for the greed for increased proceeds and profits of oil companies, including BP.

122. Equally troubling is the recent statement by Bobby Maxwell, a former MMS auditor who spent 22 years with the Interior Department. Mr. Maxwell stated that he has witnessed MMS so-called “inspections” of oil rig safety that were actually faked. Mr. Maxwell told CNN “They would look at some papers, have lunch, shake hands with their friends and say goodbye.” He said MMS has been infiltrated by the oil industry with a “culture of corruption” and that no real inspections were actually conducted.

123. The MMS has known at least since 2000 that a deepwater oil spill like the Deepwater Horizon spill could be a catastrophe. For example, while noting a blowout was unlikely, a Shell oil company offshore drilling plan filed with MMS prophetically stated: “Regaining well control in deep water may be a problem since it could require the operator to cap and control well flow

at the seabed in greater water depths ... and could require simultaneously firefighting efforts at the surface.” The 2000 Shell oil company plan warned that an oil spill in deep water would not be the same as in shallow water. “Spills in deep water may be larger due to the high production rates associated with deepwater wells and the length of time it could take to stop the source of pollution.”

124. In 2004, the MMS commissioned a study on “shear ram” blowout preventers and their efficacy in deepwater pressures. This study found:

[F]ailure to shear when executing this final option would be expected to result in a major safety and/or environmental event. Improved strength in drill pipe, combined with larger and heavier sizes resulting from deeper drilling, adversely affects the ability of a given ram BOP to successfully shear and seal the pipe in use . . . only three recent new-build rigs out of fourteen were found able to shear pipe at their maximum rated water depths ... this grim snapshot illustrates the lack of preparedness in the industry to shear and seal a well with the last line of defense against a blowout.

125. Even after receiving these looming forewarnings regarding such critical safety, oil spill containment and impact issues, no additional safety measures were put into place by the unlawfully infiltrated MMS agency other than the existing regulatory regime that included permitting and submission of regional and exploratory plans with bogus oil spill effective response and containment assurances by the oil companies for worse case scenario oil spills.

126. Likewise, between 2005 and 2009, the rate of drill site inspections dropped by nearly 40%; even though, the number of drill rigs rapidly increased during this time period. Penalties issued by MMS for regulatory violations dropped from 66 in 2000 to 20 last year.

127. BP used its influence over the MMS in 2009 to quash an effort by the agency to require operators to “develop and implement a Safety and Environmental Management System” that, based upon numerous accident panel investigative reports, would have “reduced the risk and number of accidents, injuries and spills during Outer Continental Shelf activities.” Faced with

opposition and the fraudulent and corrupt infiltration by BP and other oil companies, the MMS proposed regulations were never implemented to protect the environment and the American people.

128. Even though it was well aware of the dangers of deep water drilling and that it could not contain a deepwater oil spill, Defendant BP alone spent over \$16 million dollars lobbying the Federal government for less restricted drilling on the continental shelf.

129. The outright manipulation and apparent control BP had over the infiltrated MMS agency and certain Government employees, as well as BP's fraudulent scheme to diminish the safeguards this agency is charged with administering has apparently been intended to corruptly influence and deprive the American citizens of these government employees' duty of honest services to the American people.

130. Plaintiffs reserve the right to amend this complaint after further investigation and discovery to include additional RICO predicate acts, including but not limited to: (1) honest services bribery under the mail and wire fraud statute, (2) federal and state bribery, (3) Travel Act violations, (4) Stolen Property Act conversion for the unlawful use of the offshore federal public oil leases, (5) obstruction of justice, as well as additional felony Clean Water Act based money laundering related RICO predicate acts for BP's falsely stating and concealing the rate of flow of the catastrophic oils spill to greedily protect and derive BP proceeds and profits. Similarly, Plaintiffs reserve the right to allege additional RICO substantive and conspiracy violations, including but not limited to: (1) substantive violations of RICO § 1962(b) for maintaining an enterprise through a pattern of racketeering activity, as well as associated conspiracy violations under RICO § 1962(d); and (2) RICO § 1962(d) conspiracy violations against additional oil companies, oil industry oil spill response companies and support personnel

and/or individual MMS agency employees for conspiring with BP to defraud the public into believing BP and other major oil companies could respond to and contain a worse case scenario deepwater oil spill like the Deepwater Horizon catastrophe.

G. Related RICO Fraudulent Predicate Acts: Business As Usual

131. There is no doubt that BP's practice of fraud and deceit is "business as usual" for the oil company. Indeed, BP is working even today through its unlawful infiltration of MMS to avoid safety regulations and stifle full public inquiry into its safety preparation practices.

132. In October of 2007, BP's Atlantis platform began production in the Gulf. This rig is the world's deepest semi-submersible oil and gas platform, currently operating at a water depth of over 7,000 feet. According to BP's chief executive of exploration and production Andy Inglis "the water depths and reservoir structure make Atlantis among the most technologically challenging developments undertaken by BP."

133. Nearly two years ago, on August 15, 2008, internal BP emails noted that ". . . [c]urrently there are hundreds if not thousands of subsea documents that have never been finalized" and these omissions could "cause a catastrophic Operator's error."

134. On March 4, 2009, whistleblower Ken Abbott notified BP of the missing documents and safety issues. He then notified the MMS of the deficiency that same month. MMS did nothing.

135. Two months later, an independent engineer named Mike Sawyer completed an evaluation of BP's database and concluded that BP's failure to maintain the proper documents could lead to catastrophic hazards and recommended that the platform be temporarily shut down until the issues are resolved.

136. On June 30, 2009, MMS and BP engaged in discussion over the matter, and the agency requested documents for review. Almost a month later, the MMS received documents from BP

that were completely unrelated to the whistleblower's concerns. Again, the MMS did nothing.

137. On October 30, 2009, following a request by the Food and Watch group, the MMS responded in a letter that "MMS does not agree with your assessment of the potential for imminent danger to individuals or the environment, for which you premise your argument. After a thorough review of these allegations, the MMS, with concurrence of the Solicitor's Office, concludes your claims are not supported by the facts or the law." MMS further stated that although some of its regulatory requirements governing offshore oil and gas operations do require "as built" drawings, they do not have to be complete or accurate and are irrelevant to the hazard analysis that BP is required to complete.

138. On January 15, 2010, BP sent a letter to members of Congress, denying any and all problems with the Atlantis platform, and alleging that it had only recently become aware of the whistleblower's complaints. As noted above, BP internal emails revealed that it was actually aware of the issue nearly a year and a half earlier.

139. On April 30, 2010, MMS contacted Food and Water Watch, along with the whistleblower, announcing that it had not and would not be investigating the Atlantis platform matter.

140. The unlawful BP misrepresentations, omissions and concealment to the public involving the Atlantis deepwater oil drilling platform constitutes related RICO pattern of predicate acts of mail and wire fraud under 19 U.S.C. §§ 1341 and 1343, respectively.

141. Similarly, the Clean Water Act felony charge, alleged herein in paragraphs 27-29, entered against BP for putting profits over making its Prudhoe Bay pipeline safe from oil spills likewise constitutes a related RICO predicate act of money laundering for BP's promoting its business with the "proceeds" of the "specified unlawful activity" Clean Water Act felony violation under

18 U.S.C. § 1956(c)(7)(E). By criminally violating the Clean Water Act to make more proceeds and profits rather than investing in the pipeline upgrades to avoid an oil spill, BP promoted its business and financial transactions with “proceeds” of its felony “specified unlawful activity” Clean Water Act violations in violation of the money laundering statute, 18 U.S.C. § 1956.

H. General Impact And Direct Injury From Defendants’ Unlawful Conduct And Resulting Oil Spill

142. Contrary to BP’s representations to the public and MMS that a much larger oil spill would not even have an impact due to BP’s equipment and capability of responding to and containing oil spills, the uncontained oil spill has and continues to have a direct devastating impact on the environment and the economic well-being of the Plaintiffs and other injured parties.

143. Although BP initially attempted to conceal the catastrophic nature of the uncontrolled and uncontained oil spill by vastly underestimating the amount of oil spewing from its crippled well and by refusing to release sub sea video of the gusher, the government now estimates that the uncontrolled oil spill was approximately 60,000 barrels per day and potentially as much as 100,000 barrels per day.

144. BP’s unlawful conduct and ensuing uncontained oil spill has and continues to cause billions of dollars of direct economic damages to Plaintiffs’ income, business and property. The uncontained oil slick has had a catastrophic effect upon the marine and coastal environments and caused enormous damages including but not limited to damages to the fishing, tourism, hotel, rental, restaurant and other businesses and industries with their income directly tied to the coastal businesses. For example, thousands of travelers have cancelled their plans for visiting Mississippi; yet, the tourism industry accounts for billions of dollars in Mississippi revenue. Thousands of fishermen are out of business and the seafood industry that is so important to the

incomes and livelihood of thousands of Mississippians and Mississippi's economy is suffering direct economic loss to its business and property. There have been thousands of square miles of Mississippi waters closed to fishing; including coastal marshes, bays and cypress forests that have been compromised.

145. Property values along the Mississippi coastline are continuously decreasing in value due to the uncontained oil spill along with billions of dollars in real estate deals and investments. Coastal condo owners, fish camps and other property owners have suffered enormous direct financial injury² as a direct consequence the Defendants' unlawful conduct resulting in the oil spill. These direct RICO injuries to the Plaintiffs include but are not limited to actually realized diminished property values directly caused by Defendants' unlawful conduct and ensuing uncontained oil spill, and the diminished value has tangibly manifested itself. Plaintiffs injuries are concrete, tangible injuries that are not speculative or contingent.

146. The uncontained oil spill has and will continue to have a devastating impact on Mississippi's marine environment, coastal environment and estuarine areas and will tragically continue to injure and cause death to Mississippi's coastal wildlife, including but not limited to the brown pelican, dolphins, sea turtles and sperm whales. This ensuing environmental devastation arising from the uncontained oil spill has and will continue to directly damage Plaintiffs' incomes, businesses, industries and property values that rely on a viable functioning oceanic ecosystem.

147. As alleged above, BP's own shareholders even acknowledge that BP's oil spill and BP's associated unlawful conduct subjects BP to liability for the impact and direct injury it has caused Plaintiffs and others. *"The liability of the various defendants herein is clear these defendants*

² According to *Bloomberg Businessweek*, the uncontained oil could cost coastal property owners \$43 billion in real estate values.

continued to ignore safety issues concerning the Company's deepwater operations, making purely cosmetic changes at the corporate level while ignoring the substance of the safety violations and the threat they posed to the entirety of the Gulf, *commercial and private property*, and the Company's own survival as a going concern." (emphasis added).

V. CLASS ACTION ALLEGATIONS

148. Plaintiffs bring this action on behalf of themselves and all others similarly situated, as members of the proposed Plaintiffs' class. The proposed class is initially defined as:

All persons, firms, or entities who live in or work in, or derive income in the State of Mississippi who have sustained any legally cognizable injury and/or damages to their business or property by reason of the April 20, 2010 Deepwater Horizon blowout, fire and explosion and ensuing uncontained oil spill.

Excluded from the class are (1) the Defendants in this action (and their respective officers, directors, and employees), and any entity in which the Defendants have a controlling interest, and the legal representatives, heirs, successors, and assigns of the Defendants; (2) any governmental entity, subdivision, agency or department.

149. Numerosity—Fed. R. Civ. P. 23(a)(1): Upon information and belief, the Class consists of hundreds of thousands of individuals and/or businesses who have been legally injured by the disaster, making joinder impracticable. The disposition of the claims asserted herein through this class action will be more efficient and will benefit the parties and the Court.

150. Typicality—Fed. R. Civ. P. 23(a)(3): Plaintiffs claims are typical of the claims of the proposed class in that the representative Plaintiffs, like all Class Members, have suffered adverse effects due to the Defendants wrongful conduct. The claims of the Plaintiffs and all proposed class members are based upon the same legal theories.

151. Adequacy—Fed. R. Civ. P. 23(a)(4): Plaintiffs are adequate representative of the proposed class because their interests do not conflict with the interests of the members of the class they seek to represent. Plaintiffs adequately and truly represent the interests of the absent

class members; they have retained counsel with substantial experience in complex environmental class action litigation and Plaintiffs, along with their counsel, have the financial resources to pursue this action vigorously. The interests of Plaintiffs are coextensive with the interests of the proposed class members, with common rights of recovery based upon the same essential facts.

152. Existence and Predominance of Common Questions of Fact and Law—Fed. R. Civ. P.

23(a)(2): Common questions of fact and law predominate over the questions affecting only individual class members. These common factual questions and legal inquiries include, but are not limited to:

- a. Whether Defendants defrauded the public and the U.S. Government Defendants regarding their assurances that they would safely conduct offshore drilling and regarding their ability to effectively contain any oil spills that might occur from their offshore drilling operations;
- b. Whether and to what extent the Defendants have caused concrete, tangible economic damages to be realized by the Plaintiffs;
- c. Whether Defendants were unlawfully using the Minerals Management Service (“MMS”), the Marine Preservation Association (“MPA”), the Marine Spill Response Corporation (“MSRC”) or the Response Group in their fraudulent scheme;
- d. Whether Defendants unlawfully used MMS, the MPA, the MSRC, the Response Group or any combination of these entities to fraudulently misrepresent that they would safely conduct offshore drilling and that they could effectively contain a major oil spill and fraudulently concealed the fact that they did not have the equipment and technology to contain a major oil spill;
- e. Whether Defendants fraudulently misrepresented that through the use of the MSRC and/or other organizations they would safely conduct offshore drilling and that they could effectively contain a major oil spill and fraudulently concealed the fact that they did not have the equipment and technology to contain a major oil spill;
- f. Whether Defendants engaged in acts of mail fraud, wire fraud, money laundering or other RICO predicate acts in direct violation of the federal RICO statute;

- g. Whether the Defendants have engaged in a pattern of unlawful conduct;
- h. Whether the Defendants have conducted or participated, directly or indirectly, in a pattern of unlawful conduct in the operation, management or conduct of an enterprise in violation of 18 U.S.C. § 1962(c);
- i. Whether the Defendants have violated 18 U.S.C. § 1962(d) by conspiring to conduct or participate, directly or indirectly, in a pattern of unlawful conduct in the operation, management or conduct of an enterprise in violation of 18 U.S.C. § 1962(c); and
- j. Whether Plaintiffs and the proposed class members were injured as a result of Defendants' RICO predicate acts and RICO violations, and, if so, the appropriate class-wide measure of damages.

153. Class certification pursuant to Rule 23(b)(1) is also appropriate because the prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to individual members of the class, and could substantially impede the ability of other members to protect their interests.

154. Class certification pursuant to Rule 23(b)(2) is also appropriate because Plaintiff and all members of the proposed class seek declaratory and injunctive relief, including (1) requiring all Defendants to comply with the provisions of the Outer Continental Shelf Lands Act ("OCSLA"), and the regulations enacted thereunder; (2) requiring Defendants to comply with the terms of leases and permits issued to them by the MMS; and (3) precluding all Defendants from operating any offshore drilling operation in the Gulf of Mexico region without first having (a) complied with the requirements set forth under the OCSLA and their MMS leases and permits; and (b) implemented sufficient safety measures and protocols, including but not limited to acoustic regulators and adequate blowout preventers ("BOPs") to ensure that no other environmental and economic disaster of this nature occurs in the future; (c) implemented sufficient safeguards for containing oil spills, including worse case scenario oil spills to ensure that no other environmental and economic disaster of this nature occurs in the future, and (d) provided

unconditional legally binding assurances that Defendants will take full environmental and economic responsibility for cleaning up any oil spill and making Plaintiff and the Class whole for any economic damages incurred as a result of the Defendants' failing to contain any oil spill.

155. Class certification pursuant to Rule 23(b)(3) is also appropriate because class action treatment is a superior method for the fair and efficient adjudication of the controversy. Common issues predominate over individual issues, and there is no interest by members of the class in individually controlling the prosecution of separate actions. The size of the class renders joinder impracticable, and failure to certify the class will likely prevent individuals who have been damaged by Defendants' fraudulent scheme from pursuing their claims. Without a class action, individual class members would face burdensome litigation expenses, deterring them from bringing suits that would adequately protect their rights. Whatever difficulties may exist in the management of the class action are greatly outweighed by the class action procedure that would provide claimants with a method for the redress of claims that they may not otherwise be capable of pursuing. The class action device is superior to individual litigation under the circumstances of this case because it provides the benefits of unitary adjudication, judicial economy and economies of scale. The class action device in this civil RICO action provides access to the courts and a measure of justice and accountability for the individual and business claimants whose incomes, business and properties have been damaged by Defendants' greedy, fraudulent and unlawful conduct.

156. The Plaintiff and all Class members seek treble damages for their injury under the civil RICO provisions of 18 U.S.C. § 1964(c), including but not limited to economic damages for injury to their income, business, and property (including diminution of property values), cost of the suit, attorney's fees, injunctive relief and any other relief to which they may be entitled in

law and/or equity.

157. The Plaintiff and the Class members do not seek damages for personal injury.

VI. CLAIMS FOR RELIEF

COUNT 1 : By Plaintiffs Against Defendants For Violation Of 18 U.S.C. 1962(c)

158. Plaintiffs reallege and incorporate by reference all previous paragraphs.

159. The Racketeering Influenced and Corrupt Organizations Act (“RICO”) provides:

It shall be unlawful for any persons employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt. 18 U.S.C. § 1962(c).

160. Defendant BP, is and was at all times relevant to this action, a RICO “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

The RICO Enterprises

161. *The Minerals Management Services Enterprise* (hereinafter “The MMS Enterprise”) is a RICO “enterprise” within the meaning of 18 U.S.C. § 1961(4). The Minerals Management Services is a federal regulatory agency that at all relative times possessed and continues to possess an ongoing organizational structure with sufficient continuity.

162. At all relevant times the MMS Enterprise’s activities have affected and continue to affect interstate and foreign commerce and have existed separate and apart from the racketeering activity. For example, the lawful purpose of MMS is to serve as the agency responsible for the nationwide management of natural gas, oil and other mineral resources on the outer continental shelf. In addition, the MMS collects, accounts for and disburses an average of \$13.7 billion dollars a year in revenues from federal offshore mineral leases on federal and American Indian lands. Likewise, MMS’s responsibilities include the watchdog policing authority of ensuring that

offshore drilling operations are conducted safely to prevent blowouts and oil spills and ensuring that offshore drilling operations are able to immediately and effectively respond to and contain any oil spill, including worse case scenario oil spills.

163. Defendants are “persons” under the civil RICO statute because they knowingly and willfully conducted and participated in the conduct of the MMS Enterprise’s affairs, directly or indirectly, through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

Defendants engaged in such unlawful conduct by infiltrating and using the MMS Enterprise to further their fraudulent scheme of causing false and misleading information to be disseminated to the public that the Defendants would safely conduct offshore drilling and that the Defendants could effectively respond to and contain a worse case scenario oil spill like the oil spill resulting from the Deepwater Horizon disaster. The purpose of the Defendants’ fraudulent scheme and their infiltration and use of the MMS Enterprise was to fraudulently obtain oil and billions of dollars in proceeds and profits from offshore oil drilling while misrepresenting and concealing the fact that Defendants were not safely conducting offshore drilling on the Deepwater Horizon and were not able to effectively respond to and contain such a deepwater oil spill. Similarly, as previously alleged herein, the Defendants’ scheme also included using the MMS Enterprise to conceal that they were knowingly and intentionally promoting and conducting their offshore drilling operations with proceeds and profits derived from cutting critical safety expenditures for safety measures designed to protect lives and prevent a blowout and ensuing oil spill. For example, the Defendants knew there was “severe” increased gas flow explosion, blowout and ensuing oil spill risks associated with their concealed seriously risky decisions to ignore safety. Instead, the Defendants chose to derive more proceeds and profits by knowingly and riskily deviating from standard and accepted industry drilling operation practices rather than making

critical safety expenditures to prevent a blowout and ensuing oil spill the Defendants knew they could not contain. The Defendants also infiltrated the MMS Enterprise to corrupt certain as yet unknown MMS employees—through fake inspections, tampering with offshore drilling risk and impact reports, rubber stamp approvals and other means—into assisting the Defendants in using the MMS Enterprise to further their fraudulent and greedy ends. The Defendants used the MMS Enterprise as well as such unknown MMS employees to hold out a fraudulent façade to the public that: (1) Defendants’ offshore drilling operations were being conducted safely with a high priority on appropriate measures and expenditures for the safety for workers, the environment and the public, and (2) Defendants were able to effectively respond to and contain any offshore oil spill, including a worse case scenario oil spill. The Defendants’ thus infiltrated the MMS enterprise to associate with and conduct or participate, directly or indirectly, in the conduct of the MMS Enterprise’s affairs through the pattern of racketeering activity alleged herein. As previously alleged, the Defendants’ infiltration and fraudulent use of the MMS Enterprise to disseminate fraudulent and misleading information on critical safety, oil spill containment and impact issues has been systemic within the agency and with certain MMS government employees. Furthermore, there is a nexus between Defendants’ unlawful RICO predicate acts and the enterprise.

164. Alternatively, there are also association-in-fact enterprises that BP used to further its scheme and pattern of racketeering activity. The alternative association-in-fact enterprises possess an ongoing organizational structure with sufficient continuity, and the enterprises exist separate and apart from the racketeering activity. These alternative association-in-fact enterprises include, but are not limited to:

(1) *The BP & MMS Association-In-Fact Enterprise*. (“BP & MMS Enterprise”). Plaintiffs

hereby incorporate by reference all previous allegations made regarding the Defendants' infiltration of MMS, as well as all previously alleged RICO mail fraud, wire fraud and money laundering predicate acts. The BP & MMS Enterprise is engaged in and affects interstate commerce. The lawful purpose of the MMS agency is to serve as the agency responsible for the nationwide management of natural gas, oil and other mineral resources on the outer continental shelf. In addition, the agency collects, accounts for and disburses an average of \$13.7 billion dollars a year in revenues from federal offshore mineral leases on federal and American Indian lands. Likewise, MMS's responsibilities include the watchdog policing authority of ensuring that offshore drilling operations are conducted safely to prevent blowouts and oil spills and ensuring that offshore drilling operations are able to immediately and effectively respond to and contain any oil spill, including worse case scenario oil spills. The Defendants used the BP & MMS Enterprise to turn what began as a watchdog policing agency into an agency of BP yes-men. Defendants are "persons" under the civil RICO statute because they used the BP & MMS Enterprise to further their fraudulent scheme by causing false and misleading information to be disseminated to the public that the Defendants' would safely conduct offshore drilling and that they could effectively respond to and contain a worse case scenario oil spill like the oil spill resulting from the Deepwater Horizon disaster. As previously alleged herein, the Defendants' scheme also included using the BP & MMS Enterprise to conceal that they were knowingly and intentionally choosing to promote and conduct the Deepwater Horizon drilling operation with proceeds and profits derived from knowingly creating the serious risk for the ensuing catastrophe by cutting critical safety expenditures designed to protect lives and prevent a blowout and oil spill. The Defendants knew there was "severe" increased gas flow explosion, blowout and ensuing oil spill risks associated with their concealed seriously risky decisions to ignore safety.

Instead, the Defendants chose to derive more proceeds and profits by knowingly deviating from standard and accepted industry drilling operation practices rather than making standard and accepted safety expenditures to prevent a blowout and ensuing oil spill the Defendants knew they could not contain. The Defendants also used the BP & MMS Enterprise to corrupt certain as yet unknown MMS employees—through fake inspections, tampering with offshore drilling risk and impact reports, rubber stamp approvals and other means—into assisting the Defendants in furthering their fraudulent and greedy ends. The Defendants used BP & MMS Enterprise as well as such unknown MMS employees to hold out a fraudulent façade to the public that: (1) Defendants’ offshore drilling operations were being conducted safely with a high priority on appropriate measures and expenditures for the safety for workers, the environment and the public, and (2) Defendants were able to effectively respond to and contain any offshore oil spill, including a worse case scenario oil spill. The Defendants thus used the BP & MMS enterprise to associate with and conduct or participate, directly or indirectly, in the conduct of the BP & MMS Enterprise’s affairs through the pattern of racketeering activity alleged herein. As previously alleged, the Defendants’ fraudulent use of the BP & MMS Enterprise to disseminate fraudulent and misleading information on critical safety, oil spill containment and impact issues has been systemic within the agency and with certain MMS government employees. Furthermore, there is a nexus between Defendants’ unlawful RICO predicate acts and the enterprise.

(2) *The Response Group, MPA & MSRC Association-In-Fact Enterprise*. (“Response Group, MPA & MSRC Enterprise”). The Response Group, MPA & MSRC Enterprise is an enterprise comprised of the Response Group, the MPA consortium of major oil companies including BP, ExxonMobil, Chevron, Shell and Conoco Phillips, as well as the MSRC. This enterprise is engaged in and affects interstate commerce. The ostensible purpose of enterprise member MPA

is to fully fund enterprise member Marine Spill Response Corporation. (“MSRC”), and the purported purpose of the MSRC is to provide immediate and comprehensive oil spill response planning and capability for “any oil spill, large or small.” BP and the other oil industry MPA enterprise members utilized the Response Group to provide their Gulf of Mexico Regional Response Plans that made representations regarding their ability to effectively respond to and contain a worse case scenario oil spill to the public and the U.S. Government. The Response Group in turn designated the MSRC as the response, containment and clean-up unit that purportedly had the equipment and personnel to immediately and effectively respond to any oil spill. The BP Defendants are “persons” under the civil RICO statute because they used the Response Group, MPA & MSRC Enterprise to further their fraudulent scheme by causing false and misleading information to be disseminated to the public that they could effectively respond to and contain a worse case scenario oil spill like the oil spill resulting from the Deepwater Horizon disaster. The BP Defendants thus used the Response Group, MPA & MSRC enterprise to associate with and conduct or participate, directly or indirectly, in the conduct of the enterprise’s affairs through the pattern of racketeering activity alleged herein. There is a nexus between Defendants’ unlawful RICO predicate acts and the enterprise.

(3) *The Response Group, BP, MPA, MSRC & MMS Association-In-Fact Enterprise.* (Response Group, MPA, MSRC & MMS Enterprise). The Response Group, BP, MPA, MSRC & MMS Enterprise is an enterprise comprised of the Response Group, BP, the MPA consortium of major oil companies including BP, ExxonMobil, Chevron, Shell and Conoco Phillips, MSRC, as well as the MMS. This enterprise is engaged in and affects interstate commerce. As previously alleged herein, the ostensible purpose of enterprise member MPA is to fully fund the Marine Spill Response Corporation. (“MSRC”), and the purported purpose of the MSRC is to provide

immediate and comprehensive oil spill response planning and capability for “any oil spill, large or small.” BP and the other oil industry MPA enterprise members utilized the Response Group to provide their Gulf of Mexico Regional Response Plans that made representations regarding their ability to effectively respond to and contain a worse case scenario oil spill to the public and the U.S. Government. The Response Group in turn designated the MSRC as the response, containment and clean-up unit that purportedly had the equipment and personnel to immediately and effectively respond “to any oil spill, large or small.” The BP Defendants are “persons” under the civil RICO statute because they used the association-in-fact Response Group, BP, MPA, MSRC & MMS Enterprise to further their fraudulent scheme by causing false and misleading information to be disseminated to the public that they could respond to and contain a worse case scenario oil spill like the oil spill resulting from the Deepwater Horizon disaster. BP and other MPA enterprise members ExxonMobil, Chevron, Shell and Conoco Phillips infiltrated enterprise member MMS and turned what began as a watchdog policing agency into an agency of yes-men that would rubber stamp oil industry representations to the MMS and the public that the oil industry, including Defendant BP, could effectively respond to and contain any oil spill, including a worse case scenario oil spill. Defendants are culpable “persons” under the civil RICO statute because they used the enterprise to conduct the enterprise through the previously alleged pattern of multiple mail and wire fraud RICO predicate acts. There is a nexus between Defendants’ unlawful RICO predicate acts and the enterprise.

165. At all times, these association-in-fact “enterprises” as that term is defined in 18 U.S.C. § 1961(4), have been and are engaged in and affect interstate and foreign commerce.

166. Defendants are associated with each enterprise, and knowingly and willfully conduct and participate in the conduct of the enterprises’ affairs, directly and indirectly, through a pattern of

racketeering activity in violation of 18 U.S.C. § 1962(c). Each of the Defendants derives income, directly or indirectly, through the operation, management or control of the enterprises.

167. As alleged herein throughout this Complaint, Defendants were aware that they were not safely conducting offshore oil drilling and were not able to effectively respond to and contain a deepwater oil spill like the Deepwater Horizon disaster. Thus, Defendants used the pertinent enterprises as part of their scheme to defraud the public and Plaintiffs into believing that they were conducting offshore drilling safely and/or into believing that they could effectively respond with the planning, safeguards, equipment and technology to contain a worse case scenario deepwater oil spill.

168. Defendants intended that the enterprises disseminate false, misleading, material misrepresentations through the mails and wires that omitted material information concerning Defendants' failure to safely conduct offshore drilling and Defendants' inability to effectively respond to and contain a worse case scenario deepwater oil spill. Similarly, Defendants used the mails and wires in thousands of communications with the enterprises in furtherance of their fraudulent scheme and material misrepresentations and omissions.

169. Defendants intended that the enterprises transmit this false and misleading information to allow the Defendants to obtain oil and billions of dollars in proceeds and profits therefrom.

170. The enterprises did transmit this false and misleading information to the Plaintiff and members of the Class. Plaintiff and the members of the Class relied upon the false and misleading information when they invested in or conducted their business and property affairs that form the subject matter of the economic injury to plaintiffs directly caused by Defendants fraudulent scheme and unlawful acts in violation of the civil RICO statute.

171. The Defendants also intended to use the MMS Enterprise and the association-in-fact

enterprises to conceal that they were promoting their offshore drilling operations and associated conduct of financial transactions through increased proceeds and profits derived from knowingly cutting safety expenditures for critical safety measures designed to protect life and prevent blowouts and an ensuing oil spill. The Defendants knew there were serious risks associated with their concealed decisions to derive increased proceeds and profits rather than make safety expenditures to prevent a blowout and ensuing oil spill the Defendants knew they could not contain.

The RICO Predicate Acts

172. As set forth in alleged in detail in paragraphs 33 to 94, BP and its competitors engaged in a fraudulent scheme to defraud the public, the plaintiffs and the United States government into believing they would safely conduct offshore drilling and that they were able to effectively respond to and contain any oil spill, including the Deepwater Horizon oil spill.

173. For the purpose of devising and carrying out their scheme and artifice to defraud the public, Plaintiffs and the government by means of false and fraudulent pretenses, representations and promises, the Defendants did place in an authorized depository for mail, or did deposit or cause to be deposited with private and commercial interstate carriers and knowingly caused to be delivered by the United States postal service, letters, memoranda, and other matters, in violation of 18 U.S.C. § 1341, or aided and abetted in such criminal acts as follows:

- a. A mailing dated February 23, 2009, titled “Initial Exploration Plan Mississippi Canyon Block 252”, which was submitted to the Minerals Management Service. In this document, BP minimized the prospect of any serious damage associated with a spill, saying there would be only “sub-lethal” effects on fish and marine mammals, and “birds could become oiled.” BP further represented that “[i]n the event of an unanticipated blowout resulting in an oil spill, it is unlikely to have an impact based on the industry wide standards for using *proven equipment and technology* for such responses, implementation of BP’s Regional Oil Spill Response Plan which address available equipment and personnel,

techniques for containment and recovery and removal of the oil spill.”
[emphasis added]

- b. A letter dated April 6, 2009, sent by the MMS to Scherie Douglas at BP, approving BP’s Initial Exploration Plan of Mississippi Canyon Block 252. This mailing attached and mailed a copy of BP’s submitted plan.
- c. A letter dated September 14, 2009, sent from BP to the MMS. In this letter, BP fought off safety regulations, which would have required them to have their safety program audited at least once every three years, instead of the voluntary system that is currently in place. Specifically, BP stated “[w]hile BP is supportive of companies having a system in place to reduce risks, accidents, injuries and spills, we are not supportive of the extensive, prescriptive regulations as proposed in this rule. We believe the industries current safety and environmental statistics demonstrate that the voluntary programs implemented since the adoption of API RP 75 have been and continue to be very successful.
- d. BP caused an Environmental Impact Statement, dated October 22, 2007, to be signed by the Director of MMS, Randal B. Luthi. The EIS never once analyzes the impact of a major oil spill, like the Deepwater Horizon, but rather downplays the efforts needed to control any accident caused from drilling operations.
- e. BP caused a Halliburton contractor April 18, 2010 Production Casing Design Report to be sent by Halliburton’s Account Representative, Jesse Gagliano, evidencing the knowing, reckless and dangerous decision ignoring safety by BP’s only using six centralizers, stating “well is considered to have a SEVERE gas flow problem” and stating that BP was aware of the serious risks and proceeded with knowledge that Mr. Gagliano’s report warned BP that the well would have a severe gas problem.
- f. An October 30, 2009, letter from MMS to Food and Water Watch in response to the organization’s freedom of information act request seeking documents that indicate BP “has in its possession a complete and accurate set of ‘as built’ drawings . . . for its entire Atlantis project, including the subsea sector.” In this response, MMS denied the request, stating that “MMS does not agree with your assessment of the potential for imminent danger to individuals or the environment . . .” MMS further states that although some of its regulatory requirements governing offshore oil and gas operations do require “as built” drawings, they need not be complete or accurate.

174. For the purpose of devising and carrying out their schemes and artifice to defraud

Plaintiffs by means of false and fraudulent pretenses, representations and promises, the Defendants caused to be transmitted by means of wire communication in interstate commerce, writings, signals and sounds, to wit, interstate electronic mail messages and/or facsimile in violation of 18 U.S.C. § 1343, or aided and abetted in such criminal acts as follows:

- a. An August 15, 2008 email sent by Barry Duff, BP Production Member, to BP officials, warning the officials that the Piping and Instrument Diagrams for the Atlantis subsea components “are not complete” and “there are hundreds if not thousands of subsea documents that have never been finalized, yet the facilities have been” up and running. These documents form the foundation of a hazards analysis BP is required to undertake as part of its Safety and Environmental Management Program related to its offshore drilling operations. The email further states [t]he risk in turning over drawings that are not complete are: 1) The Operator will assume the drawings are accurate and up to date, . . .
- b. An April 16, 2010 email from BP Well Team Leader to BP Drilling Team Leader that involved the reckless and dangerous decision not to use the 21 centralizers, indicating “it will take 10 hours to install them...I do not like this” even though the BP contractor had warned BP the well could have a “SEVERE gas flow problem” if BP only used six centralizers.
- c. An April 16, 2010 email from Brett Cocales, BP’s Operations Engineer, to Brian Morel, BP Drilling Engineer, that involved the reckless and dangerous decision to uses on six centralizers, indicating “But who cares, it’s done, end of story, will probably be fine...”

175. There are numerous additional mail and wire fraud predicate acts, including but not limited to the following fraudulent communications that were sent by either the mails or the wires or both, to wit:

- a. A BP Regional Oil Spill Response Plan with an original issue date of December 1, 2000 and a revision date of June 30, 2009 that was submitted to the MMS. In this plan, BP gives a false impression of its capabilities to handle a worst case oil spill by grossly underestimating the potential impact of a deepwater oil spill. BP states that in the event of an oil spill at a facility that is more than ten miles off the coast, the worst case discharge would be 177,400 barrels for the entire spill. Current reports suggest that the Deepwater Horizon oil spill is leaking between 25,000 and 40,000 barrels of oil per day, 750,000 to 1,200,000 barrels per month. One month has already passed and it is possible, if not likely, that the spill will continue at this rate for several more months. While BP was responsible for submitting a researched and accurate Oil Spill Response Plan, this

was simply not the case. Indeed, the plan mentions such marine mammals as “Sea Lions, Seals, Sea Otters” and “Walruses” as “Sensitive Biological Resources” even though none of these animals are present in the Gulf of Mexico. This implies that much of the Response Plan was simply cut and pasted from prior Arctic exploratory planning. To add insult to injury, the Response Plan lists a website for a Japanese home shopping site as the link to one of its “primary equipment providers for BP in the Gulf of Mexico Region rapid deployment of spill response resources on a 24 hour, seven days a week basis.”

- b. An April 15, 2010 wire communication from BP to MMS, requesting a permit to modify its plan to deal with a blockage. In the document, BP apologizes to government personnel for not having mentioned the type of casing they were using earlier, adding that they had “inadvertently” failed to include it. Less than ten minutes after submitting the request, the MMS approved the permit. Earlier that same month, BP internal documents had noted that the casing was “unlikely to be a successful cement job” and that the plan for casing the well was “unable to fulfill M.M.S. regulations.”
- c. An email from BP spokesman David Nicholas stating that BP’s Oil Spill Response Plan was an “integral part of our permitting with the MMS” and contending that “it is this plan that has been in action in response.”

176. As set forth in alleged in detail in paragraphs 95 to 104, BP has engaged in an unlawful 18 U.S.C. § 1961(1) RICO predicate act money laundering scheme under 18 U.S.C. §§ 1956 and 1957 to derive proceeds from felony Clean Water Act “specified unlawful activity” under 18 U.S.C. § 1956 (c)(7)(E). Similarly, as alleged in paragraphs 105 to 107, BP has engaged in an unlawful an unlawful 18 U.S.C. § 1961(1) RICO predicate act money laundering scheme under 18 U.S.C. §§ 1956 and 1957 to derive proceeds from mail and wire fraud “specified unlawful activity” under 18 U.S.C. § 1956(c)(7)(A).

177. Defendant Hayward has aided and abetted BP in committing the RICO predicate acts and engaged in unlawful conduct under violation of 18 U.S.C. § 1962(c). Hayward was the CEO of BP Exploration and Production, Inc. from 2002-2007 and has been serving as BP’s current CEO since 2007. As such, Defendant Hayward has been fully aware of and has had full supervisory authority of BP’s misrepresentation and omissions that BP would conduct the offshore drilling safely and that BP could effectively respond to and contain a major deepwater oil spill. In

furtherance of the fraudulent scheme, Defendant Hayward also engaged in multiple acts in which he concealed BP's failure to safely conduct the offshore drilling operations and concealed that BP could not effectively respond to and contain a major deepwater oil spill. Additionally, Defendant Hayward has also attempted to conceal the gravity and liability of BP for the amount of oil spilled by misrepresenting the daily amount of oil being spewed into the Gulf, the existence of plumes under water and the damages the spewing oil is directly causing to the Gulf environment and to the business, property and economic livelihood of the Plaintiff and the Class. Thus, Plaintiffs reserve the right to amend the Complaint to add related obstruction of justice RICO predicate acts under 18 U.S.C. § 1961(1).

The Pattern of Racketeering Activity

178. The Defendants' previously alleged RICO predicate acts constituted a pattern of racketeering activity within the meaning of 18 U.S.C. § 1961(5) because the predicate acts are related and continuous. Each predicate act had the same or similar purpose: the predicate acts involved material misrepresentations, omissions and concealment in a scheme to defraud the public, the Plaintiffs and the government into believing BP would conduct the offshore drilling operations safely and that BP could effectively respond to and contain any oil spill so BP could fraudulently obtain oil and billions of dollars in proceeds and profits. Similarly, the scheme included predicate acts through which the Defendants unlawfully derived proceeds by knowingly cutting safety measures and related expenditures that created endangerment to lives as well as the serious risk for the blowout and ensuing Deepwater Horizon oil spill. This pattern of racketeering is separate from and distinct from the legitimate mineral leasing of submerged lands on the Outer Continental Shelf; oil exploration and drilling operations; and funding, promotion and operation of the enterprises alleged herein.

179. The Defendants were each associated with the enterprises and did conduct or participate, directly or indirectly, in the conduct of the affairs of the enterprises through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1)(B) and 1961(5) and 1962(c), to wit:

- a. Multiple instances of mail fraud in violation of 18 U.S.C. § 1341;
- b. Multiple instances of wire fraud in violation of 18 U.S.C. § 1343;
- c. Multiple instances of money laundering in violation of 18 U.S.C. § 1956 for unlawfully deriving proceeds from felony Clean Water Act “specified unlawful activity” under 18 U.S.C. § 1956(c)(7)(E); and
- d. Multiple instances of money laundering in violation of 18 U.S.C. § 1956 for unlawfully deriving proceeds from mail and wire fraud “specified unlawful activity” under 18 U.S.C. § 1956(c)(7)(A).
- e. Multiple instances of money laundering in violation of 18 U.S.C. § 1957 for engaging in monetary transactions with a value greater than \$10,000 derived from proceeds of “specified unlawful activity,” as defined in 18 U.S.C. § 1956(c)(7)(A) and (c)(7)(E).

180. Plaintiffs have sufficiently alleged these predicate acts and pattern of racketeering to state a claim under 18 U.S.C. § 1962 in paragraphs 33 to 107 and 173 to 180. As a proximate result of the pattern of racketeering activity and RICO violations engaged in by Defendants, Plaintiff and the Class members have suffered economic injury and damages to their business and property, as well as other economic damages.

Continuity Of The Racketeering Activity

181. Continuity is demonstrated by the predicate acts alleged above, along with the related predicate acts described below. The pattern of racketeering involves multiple predicate acts that have taken place over many years, thus establishing both relatedness and continuity. These predicate acts illustrate a threat of continued racketeering activity and evince that the predicate acts constitute the regular manner that BP conducts business.

The Related Predicate Acts

182. BP's pattern of committing predicate acts satisfies the continuity requirement of civil RICO, as demonstrated both by the alleged predicate acts, along with other related predicates including but not limited to:

183. A mailing sent from BP to MMS, dated March 23, 2010, with their Initial Exploration Plan for the Green Canyon area attached. In this Initial Exploration Plan, BP represents that they have the capability to respond to a worse case discharge from an uncontrolled blowout—emitting 250,000 barrels of oil per day into the Gulf of Mexico. Under the heading “blowout scenario,” BP's Plan states that the information is “not required.” The plan concludes that “no alternatives to the proposed activities were considered to reduce environmental impacts” and further states that “no mitigation measures other than those required by regulation will be employed to avoid, diminish or eliminate potential impacts on environmental resources.”

184. On May 6, 2010, the MMS published on the internet its approval of the BP Exploration Plan for the Green Canyon Area. Even as the Deepwater Horizon site continues to spew fatal amounts into the Gulf of Mexico (contrary to BP's prior assurances that it could handle much larger spills), this approval for Green Canyon was made with a categorical exclusion—meaning no Environmental Impact Statement was prepared or analyzed by the MMS. This is in direct conflict with the agency's own internal policy that exclusions not be given in instances where the drilling was to be in deep water and/or using new technology.

185. As alleged in paragraphs 27 to 29, on October 25, 2007, BP pled guilty to a felony violation of the Clean Water Act for an oil spill resulting from BP's failure to make expenditures for upgrades to its Alaskan pipeline. The felony Clean Water Act violation and BP's associated conduct cutting corners to derive “proceeds” and profits from committing the Clean Water Act pipeline oil spill felony constitute “specified unlawful activity” for related money laundering

predicate acts under 18 U.S.C. § 1956(c)(7)(E). (money laundering through felony Clean Water Act violation) and 18 U.S.C. § 1961(1) (money laundering designated to be a RICO predicate act).

186. Upon information and belief, BP has engaged in multiple related predicate acts of bribery and/or attempted to or aided and abetted or conspired with others to bribe certain MMS and Department of Interior government employees in the course of its infiltration of the MMS to further the unlawful schemes alleged herein. Such related RICO predicate acts include, but are not limited to bribery under 18 U.S.C. § 1346 to deprive the citizens of the honest services of government employees, 18 U.S.C. § 201 bribery, and related Travel Act violations under 18 U.S.C. § 1952 for Defendants' travel in interstate or foreign commerce to promote, carry on or facilitate the promotion or carrying on of bribery. Subject to further investigation and discovery, Plaintiffs reserves the right to amend this Complaint to allege these RICO predicates acts are directly included in the pattern of racketeering activity alleged herein as opposed to being "related" predicate acts.

187. As a direct result of Defendants' unlawful racketeering acts and violation of 18 U.S.C. § 1962(c) Plaintiffs have been injured in their business or property and are entitled to recover treble damages and attorneys' fees under 18 U.S.C. § 1964(c).

COUNT 2: By Plaintiffs Against Defendants For Violation Of 18 U.S.C. 1962(d) By Conspiring To Violate 18 U.S.C. 1962(c)

188. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

189. 18 U.S.C. § 1962(d) provides:

It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

190. At all relevant times, Plaintiffs were "persons" within the meaning of RICO, 18 U.S.C.

§§ 1961(3) and 1964(c).

191. At all relevant times, the Defendants were each a “person” within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(d).

192. At all relevant times, the Defendants and their coconspirators formed the previously alleged association-in-fact enterprises for the purpose of defrauding the public and the U.S. Government. These association-in-fact enterprises were “enterprises” within the meaning of RICO, 18 U.S.C. § 1961(4).

193. At all relevant times, the enterprises were engaged in, and their activities affected interstate and foreign commerce within the meaning of RICO, 18 U.S.C. § 1962(c).

194. As set forth in Count 1, the Defendants and each of the other coconspirators associated with the enterprises and conducted or participated, directly or indirectly, in the conduct of the enterprises’ affairs through a “pattern of racketeering activity” within the meaning of RICO, 18 U.S.C. § 1962(c), that is, agreed to conduct and participate, directly or indirectly, in the conduct of the affairs of the enterprises through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(d).

195. The Defendants and the other coconspirators committed and caused to be committed a series of overt racketeering acts in furtherance of the conspiracy and to affect the objects thereof, including but not limited to the acts set forth above.

196. Evidence of the conspiracy between Defendant BP and MMS personnel John Doe[s] includes but is not limited to the previous allegations regarding certain MMS employees denying and concealing from the public MMS’s own scientists’ reports showing significant environmental impact. Several former and current MMS scientists (who have chosen to remain anonymous for fear of reprisal) have stated that any findings of an environmental impact were

dishonestly and fraudulently changed and/or modified by MMS managers in order to allow the oil companies to conduct offshore drilling operations. This scientific tampering at a minimum constitutes circumstantial evidence that MMS employees were engaged in a conspiracy agreeing to the objective of the conspiracy, the scheme to defraud and the RICO violations alleged herein.

197. Further evidence of the conspiracy between Defendant BP and certain MMS personnel John Doe[s] also includes but is not limited to the previous allegations regarding NOAA's assessment and letter to MMS accusing MMS of inaccurately misrepresenting the risks and impacts of offshore drilling by (1) emphasizing the safety of offshore drilling in the Gulf of Mexico while ignoring more recent evidence to the contrary, and (2) using inaccurate data to justify approval of offshore drilling in the Gulf of Mexico that understates the "risks and impacts of accidental spills." This inappropriate and unlawful conduct at a minimum constitutes circumstantial evidence that certain MMS employees agreed to and were engaged in a conspiracy with BP and the oil industry agreeing to the objective of the conspiracy, the scheme to defraud and the RICO violations alleged herein.

198. Further evidence of the conspiracy between Defendant BP and certain MMS personnel John Doe[s] also includes but is not limited to the previous allegations regarding certain MMS employees faking oil rig safety inspections reports for the oil companies and even fraudulently allowing the oil companies to pencil in their own inspection reports for the MMS employee to fill in as though the inspection findings were those of the MMS employee. Similarly, as previously alleged, an Inspector General report regarding oil industry and MMS employees unlawful conduct found that a fellow BP MPA member had engaged in improper discussions regarding bribery and MMS inspections. This inappropriate and unlawful conduct at a minimum constitutes circumstantial evidence that MMS employees were engaged in a conspiracy with the

Defendants at a minimum agreeing to the objective of the conspiracy, the scheme to defraud and the RICO violations alleged herein.

199. Such unlawful conduct as well all of the additional factual allegations and circumstances alleged above evidences that certain MMS John Doe employees colluded with and conspired with the Defendants and other oil companies to defraud the American people into believing: (1) that the Defendants would conduct the offshore drilling operations safely with no oil spills, and/or (2) that Defendants were able to effectively respond to and contain offshore oil spills in the event any oil spill occurred.

200. Subject to further investigation and discovery, Plaintiffs reserve the right to name additional oil company and/or individual government employees as defendant coconspirators in the overt racketeering activity and RICO violations alleged above. Such additional Defendants includes but is not limited to additional oil company defendants that conspired to defraud the public and the U.S. Government into believing they could effectively respond to and contain worse case scenario deepwater oil spills. The previously alleged identical misrepresentations BP and the other MPA members made to the public and the U.S. Government through the Response Group and the MSRC that they could effectively respond to and contain a worse case scenario deepwater oil spill raises serious oil industry collusion and conspiracy issues.

201. The Defendants knowingly and willfully became members of the conspiracy and agreed to participate, directly or indirectly, in the affairs of the enterprise through a pattern of racketeering activity.

202. As a proximate cause of Defendants' violation of 18 U.S.C. § 1962(d) by conspiring to violate 18 U.S.C. § 1962(c) and Defendants' overt racketeering acts, Plaintiffs have been directly injured in their business and property and are entitled to recover treble damages and attorneys'

fees under 18 U.S.C. § 1964(c).

VII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, and for the wrongs cited factually and legally in this Complaint, judgment should be rendered in Plaintiff and the Class members' favor against the Defendants, as follows:

- a. An award of compensatory damages that will fairly represent the economic injuries to the Plaintiff and Class members' business and property;
- b. An award of treble damages herein pursuant to 18 U.S.C. § 1964(c);
- c. An award of attorneys' fees pursuant to 18 U.S.C. § 1964(c);
- d. Pre-judgment interest on all awards;
- e. An award of injunctive relief including (1) requiring all Defendants to comply with the provisions of the Outer Continental Shelf Lands Act ("OCSLA"), and the regulations enacted thereunder; (2) requiring Defendants to comply with the terms of leases and permits issued to them by the MMS; and (3) precluding all Defendants from operating any offshore drilling operation in the Gulf of Mexico region without first having: (a) complied with the requirements set forth under the OCSLA and their MMS leases and permits; and (b) implemented sufficient safeguards, including but not limited to acoustic regulators and adequate blowout preventers ("BOPs") to ensure that no other environmental and economic disaster of this nature occurs in the future; (c) implemented sufficient safeguards for containing oil spills, including worse case scenario oil spills to ensure that no other environmental and economic disaster of this nature occurs in the future, and (d) provided unconditional legally binding assurances that Defendants will take full environmental and economic responsibility for cleaning up any oil spill and making Plaintiff and the Class whole for any economic damages incurred as a result of the Defendants' failing to contain any oil spill, and
- f. All further relief as the Court and/or the jury may deem appropriate, legal or equitable, in any form to which Plaintiffs may be entitled.

Plaintiffs demand a trial by jury on all issues so triable.

This the 16th day of August, 2010.

RESPECTFULLY SUBMITTED BY:

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