

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

JARVIS J. HARMON, SR.; JARVIS J. HARMON, JR., JACOB MICHAEL GUILLORY; MERVIN HARMON; JAMIE J. HARMON, LOUIS MATTHEWS; and CARLOS EDMOND, individually, and on behalf of themselves, and all others similarly situated,

Plaintiffs,

- against -

BP, PLC.; BP AMERICA, INC.; BP CORPORATION NORTH AMERICA, INC. F/K/A BP AMOCO CORPORATION; BP COMPANY NORTH AMERICA, INC.; BP PRODUCTS NORTH AMERICA, INC.; TRANSOCEAN, LTD.; TRANSOCEAN DEEPWATER, INC.; TRANSOCEAN OFFSHORE DEEPWATER DRILLING, INC.; HALLIBURTON ENERGY SERVICES, INC.; CAMERON INTERNATIONAL CORPORATION F/K/A COOPER CAMERON CORPORATION; M-I, LLC; ANADARKO PETROLEUM CORP.; and MOEX OFFSHORE 2007, LLC,

Defendants.

Case No. _____

Section No. _____

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Jarvis J. Harmon, Sr., Jarvis J. Harmon, Jr., Jacob Michael Guillory, Mervin Harmon, Jamie J. Harmon, Louis Matthews, and Carlos Edmond, individually, and on behalf of all others similarly situated (the "Class," defined below), by their undersigned attorneys, allege upon personal knowledge as to their own acts and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. Plaintiffs Jarvis J. Harmon, Sr., Jarvis J. Harmon, Jr., Jacob Michael Guillory, Mervin Harmon, Jamie J. Harmon, Louis Matthews, and Carlos Edmond are offshore recreational sport fishermen who have enjoyed use of the bountiful Gulf of Mexico waters for many years. They bring this class action, pursuant to the Federal Rules of Civil Procedure 23, on behalf of themselves and all others similarly situated who have enjoyed the recreational use of the Gulf of Mexico waters, against Defendants for losses and damages arising out of the catastrophic oil spill caused by the April 20, 2010 explosion and subsequent sinking of the offshore oil rig *Deepwater Horizon* (the “*Deepwater Horizon*”), operated by Transocean (as defined herein), in the Gulf of Mexico – approximately 50 miles from the Louisiana coast. The incident killed 11 workers, and critically injured four of the remaining 115-person crew.

2. Following the sinking of the *Deepwater Horizon* on April 22, 2010, an estimated **60,000 barrels of oil** per day have been leaking from the oil well upon which the *Deepwater Horizon* was performing completion operations, as well as from the pipe connected to it – the drill stack. To date, government estimates surmise that **100 million gallons of oil** have already hemorrhaged into the Gulf.

3. In addition, there is now more than approximately **1.6 million gallons of toxic dispersant** that Defendants have added to Gulf waters both on the surface and in experimental undersea applications directly on the leaking wellhead – the largest quantity of dispersant deployed to date to break up an oil spill in United States water – in an unsuccessful attempt to plug the still gushing oil.

4. The fast-moving oil slick, which has grown exponentially since April 20th, has, among other things, caused detrimental effects upon the Gulf of Mexico’s and Louisiana’s marine environments, coastal environments and estuarine areas. Plaintiffs and the Class

Members would be enjoying these areas, but for the oil spill. Unfortunately, as a result, most all recreational activities in or on the Gulf waters – from fishing to boating to swimming – have been brought to a complete standstill.

5. In particular, along with devastating the commercial fishing industry, the oil spill is crippling the offshore recreational sport fishing community's ability to enjoy the Gulf, of which Plaintiffs are members. Those in recreational fishing regard the sport as a key part of the Gulf region's livelihood and economy. Industry-financed studies estimate that the annual number of day trips on boats to fish in the gulf is 23.5 million, in addition to millions fishing from the shoreline. In fact, offshore recreational fishing is worth an estimated **\$1.9 billion** a year to the Gulf region, based on an American Sportfishing Association (the "ASA")-financed analysis of spending on items like hotels, docking and gear. The ASA has said that millions of dollars had already been lost due to the oil spill.

6. The oil spill has damaged and will continue to damage Plaintiffs' and Class Members' recreational use and enjoyment of the Gulf of Mexico and its natural resources.

7. On May 3, 2010, BP (as defined herein) admitted that it "***takes responsibility for responding to the Deepwater Horizon oil spill. We will clean it up.***" (Emphasis added). BP also said it "will pay all necessary and appropriate clean-up costs," stemming from the oil pollution disaster in the Gulf of Mexico.

8. Moreover, its company statement, BP vowed to consider all compensation claims "promptly" and pay them quickly if justified – adding that the company was "committed to pay legitimate and objectively verifiable claims for other loss and damage caused by the spill." In particular, as the company has acknowledged, "[t]its may include claims for assessment, mitigation and clean-up of spilled oil, real and property damage caused by the oil, personal

injury caused by the spill, *commercial losses including loss of earnings/profit and other losses as contemplated by applicable laws and regulations.*” (Emphasis added).

9. Plaintiffs and the Class Members herein allege some of the very same (and legitimate) claims that BP has committed itself to considering and paying as a result of this catastrophic oil spill. In particular, Plaintiffs and the Class Members are recreational sport fishermen and others who enjoy use of the Gulf’s natural resources from in or on the water, who have been directly affected by the oil spill. With the wellhead continuing to gush hundreds of thousands of gallons of oil per day into the Gulf waters, Plaintiffs and Class Members are suffering and will continue to suffer serious losses, including their enjoyment and use of the Gulf and the financial investments each has undertaken to be able to participate in these recreational activities.

10. While BP has said it would pay for the clean-up, it has blamed the equipment failure on Transocean, as operator of *Deepwater Horizon*. Also, Halliburton, who was responsible for sealing with cement the oil extracting drill below the Gulf surface, has been criticized about the cementing of the oil well and pipe that was completed 20 hours before the explosion. Then, there is Cameron, which made the blowout preventer that failed to engage. Despite this finger-pointing, the fire and explosion on the *Deepwater Horizon*, its sinking and the resulting oil spill were caused by the gross negligence of each of the Defendants, rendering them liable jointly and severally to Plaintiffs and the Class Members for all their damages.

PARTIES

Plaintiffs

11. Plaintiff Jarvis J. Harmon, Sr. is a Louisiana resident who fishes recreationally off shore in this District and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years.

12. Plaintiff Jarvis J. Harmon, Sr. is a Louisiana resident who fishes recreationally off shore in this District and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years.

13. Plaintiff Jacob Michael Guillory is a Louisiana resident who fishes recreationally offshore in this district and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years

14. Plaintiff Mervin Harmon is a Louisiana resident who fishes recreationally offshore in this District and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years.

15. Plaintiff Jamie J. Harmon is a Louisiana resident who fishes recreationally offshore in this District and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years.

16. Plaintiff Louis Matthews is a Louisiana resident who fishes recreationally offshore in this District and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years.

17. Plaintiff Carlos Edmond is a Louisiana resident who fishes recreationally offshore in this District and who is an offshore recreational sport fisherman, having used and enjoyed the Gulf of Mexico and its natural resources for many years.

18. These Plaintiffs are and were valid holders of Louisiana saltwater licenses at all pertinent times. Plaintiffs spend thousands of dollars each year in their efforts to fish offshore to catch fish that they and their families consume throughout the year. The loss of the fish that the Plaintiffs and their families consume throughout the year, among other things, constitutes a valuable economical loss.

19. But for the oil spill, Plaintiffs would have used and enjoyed the natural resources of the Gulf of Mexico waters, shore, and coastline, in and around the Louisiana “Coastal Zone,” as that term is defined in 43 U.S.C. §1331(e). As a result of the events described herein, Plaintiffs already have suffered ascertainable losses and damages, in that their use and enjoyment of the said natural resources has been and will continue to be curtailed, reduced, or eliminated for the foreseeable future.

Defendants

The BP Defendants

20. Defendant BP, Plc. is a British corporation, organized under the laws of the United Kingdom. BP, Plc. does business within this District, in the State of Louisiana, and throughout the United States. BP, Plc. is one of the world’s largest oil companies.

21. Defendant BP America, Inc. (“BP America”) is a Delaware corporation with its principal place of business in Warrenville, Illinois. BP America does business within this District, in the State of Louisiana, and throughout the United States. BP America is a subsidiary of BP.

22. Defendant BP Corporation North America, Inc., f/k/a BP Amoco Corporation (“BP Amoco”), is an Indiana corporation with its principal place of business in Houston, Texas. BP Amoco does business within this District, in the State of Louisiana, and throughout the United States. BP Corporation North America, Inc. is a subsidiary of BP America.

23. Defendant BP Company North America, Inc. (“BP NA”) is a Delaware Corporation with its principal place of business in Warrenville, Illinois. BP NA does business within this District, in the State of Louisiana, and throughout the United States. BP NA is a subsidiary of BP Amoco.

24. Defendant BP Products North America, Inc. (“BP Products”) is a Maryland corporation, with its principal place of business in Houston, Texas. BP Products does business within this District, in the State of Louisiana, and throughout the United States. BP Products is a subsidiary of BP Company North America, Inc.

25. Defendants BP America, BP Amoco, BP NA and BP Products are wholly owned subsidiaries of the global parent corporation, Defendant BP, Plc. Collectively, they are all referred to herein as “BP.”

The Transocean Defendants

26. Defendant Transocean, Ltd. (“Transocean, Ltd.”) is a Swiss corporation. Transocean, Ltd. does business within this District and in the State of Louisiana. Transocean Ltd. is the world’s largest offshore drilling contractor and leading provider of drilling management services worldwide.

27. Defendant Transocean Deepwater, Inc. (“Transocean Deepwater”) is a Delaware corporation with its principal place of business in Houston, Texas. Transocean Deepwater does business within this District, in the State of Louisiana and throughout the United States. Transocean Deepwater is a subsidiary of Transocean Ltd.

28. Defendant Transocean Offshore Deepwater Drilling, Inc. (“Transocean Offshore”) is a Delaware corporation with its principal place of business in Houston, Texas. Transocean Offshore does business within this District, in the State of Louisiana and throughout the United States. Transocean Offshore is a subsidiary of Transocean Ltd. Transocean is the world’s largest offshore drilling contractor.

29. Defendants Transocean Deepwater and Transocean Offshore are wholly owned subsidiaries of the global parent corporation, Transocean Ltd. Collectively, they are all referred to herein as “Transocean.”

Defendant Halliburton

30. Defendant Halliburton Energy Services, Inc. (“Halliburton”) is a Delaware corporation with two headquarters, one in Houston, Texas and one in Dubai, United Arab Emirates. Halliburton does business within this District, in the State of Louisiana and throughout the United States. Halliburton is one of the world’s largest providers of products and services to the energy industry.

Defendant Cameron

31. Defendant Cameron International Corporation f/k/a Cooper-Cameron Corporation (“Cameron”) is a Delaware Corporation with its principal place of business in Houston, Texas. Cameron does business within this District, in the State of Louisiana and throughout the United States. Cameron is a global provider of pressure control, processing, flow control and compression systems as well as project management and aftermarket services for the oil and gas and process industries.

Defendant M-I

32. Defendant M-I, LLC (“M-I”) is a Texas corporation with its principal place of business in Houston, TX. M-I does business within this District, in the State of Louisiana and throughout the United States. M-I, known as M-I SWACO, supplies drilling and completion fluids and additives to oil and gas companies, providing pressure control, rig instrumentation, and drilling waste management products and services.

Defendant Anadarko

33. Defendant Anadarko Petroleum Corp. (“Anadarko”) is a Delaware corporation with its principal place of business in The Woodlands, Texas. Anadarko does business within this District and in the State of Louisiana. Anadarko is an oil and gas exploration and production company that owns a 25% interest in the Macondo well at Mississippi Canyon Block 252.

Defendant MOEX

34. Defendant MOEX Offshore 2007, LLC (“MOEX”) is a Delaware corporation and has its principal place of business in Houston, Texas. MOEX does business within this District and in the State of Louisiana. MOEX is a subsidiary of MOEX USA Corporation. MOEX holds a 10% interest in the Macondo well at Mississippi Canyon Block 252.

JURISDICTION AND VENUE

35. This Court has jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds the sum or value of \$5,000,000.00, exclusive of interest and costs, and because it is a class action brought by citizens of a State that is different from the State where at least one of the Defendants is incorporated or does business.

36. Jurisdiction is also appropriate under 28 U.S.C. § 1331, because the claims asserted by Plaintiffs arise under the laws of the United States of America, including the laws of the State of Louisiana which have been declared, pursuant to 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. Title 43 U.S.C. § 1331 (1) extends exclusive Federal jurisdiction to the outer Continental Shelf.

37. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(2) because a substantial portion of the events or omissions giving rise to the claims asserted herein occurred in this District, and Defendants have received substantial compensation and other transfers of money in this District by doing business here and engaging in activities having an effect here.

SUBSTANTIVE ALLEGATIONS

Background

38. *Deepwater Horizon* was an ultra-deepwater dynamic positioned semi-submersible oil rig built in 2001. It was owned by Transocean and leased to BP through September 2013. It was one of the largest rigs of its kind.

39. BP leased the *Deepwater Horizon* to drill exploratory wells at the Macondo prospect site in Mississippi Canyon Block 252, a location on the outer Continental Shelf off the coast of Louisiana.

40. Defendant BP holds the lease granted by the U.S. Minerals Management Service (“MMS”) that allows BP to drill for oil and perform oil-production-related operations at the Macondo site in the Mississippi Canyon Block 252 section of the outer Continental Shelf in the Gulf of Mexico. As of April 20, 2010, BP operated the Macondo oil well that is the source of the current catastrophic oil spill at issue herein.

41. Defendant Transocean owned, and BP was leasing and operating, the *Deepwater Horizon*, which was performing completion operations on the Macondo well on the outer Continental Shelf off the Gulf Coast, at the site from which the oil spill now originates.

42. At all times material hereto, the *Deepwater Horizon* was owned, manned, possessed, managed, controlled, chartered, or operated by Transocean or BP.

43. Defendant Halliburton was engaged in cementing operations of the well and well cap aboard the *Deepwater Horizon* and, upon information and belief, improperly and negligently performed these duties, increasing the pressure at the well and contributing to the fire, explosion and resulting oil spill.

44. Upon information and belief, Defendant Cameron manufactured or supplied the *Deepwater Horizon*’s blow-out preventer valve (“BOPs”), a series of valves/seals that failed to

control pressure and prevent the release of oil at the time of the explosion. The BOPs were defective because they allegedly failed to operate as intended.

45. Upon information and belief, Defendant M-I provided the drilling fluids for the *Deepwater Horizon* at the time of the explosion.

The Deepwater Horizon Explosion

46. On April 20, 2010, the *Deepwater Horizon* was creating a cement seal and plug of the wellhead as part of the final phases of turning the Macondo well from an exploratory well into a production well. “Cementing” is delicate work that carries the risk of a blowout, which is the uncontrolled release of oil from the well.

47. During the course of this cementing work, an explosion occurred on the *Deepwater Horizon* and it caught fire, causing the deaths and injuries of many workers on the rig. Investigators believe the explosion was a blowout, likely caused by the cementing work the *Deepwater Horizon* had been performing.

48. The fire burned for two days and the rig began to list progressively more until it finally sank on April 22, 2010.

49. *Deepwater Horizon* had been connected to the wellhead at the seafloor by a 5,000-foot pipe called a riser. As the *Deepwater Horizon* sank to the seafloor, it pulled the riser down with it, bending and breaking the pipe before finally tearing away from it completely. The riser, bent into a crooked shape underwater, now extends from the well to 1,500 feet above the seabed and then buckles back down. Oil is flowing out from the open end of the riser and from two places along its length.

50. The emergency valve, installed on the wellhead for just such a disaster, failed to seal the wellhead as it should have, leaving the well spewing oil into the Gulf waters.

The Damage Caused

51. Although the now-leaking wellhead is fitted with a blowout preventer, the BOP, a stack of hydraulically activated valves at the top of the well designed to pinch the pipe closed, cut it, and seal off the well in the event of a sudden pressure release exactly like the one that occurred during the *Deepwater Horizon* blowout, the response teams have been unable to activate the *Deepwater Horizon*'s BOP.

52. If the BOP on the wellhead had been functional, it could have been manually or automatically activated right after the explosion, cutting off the flow of oil at the wellhead, limiting the spill to a minute fraction of its current severity and thereby sparing Plaintiffs and Class Members millions of dollars in losses and damage.

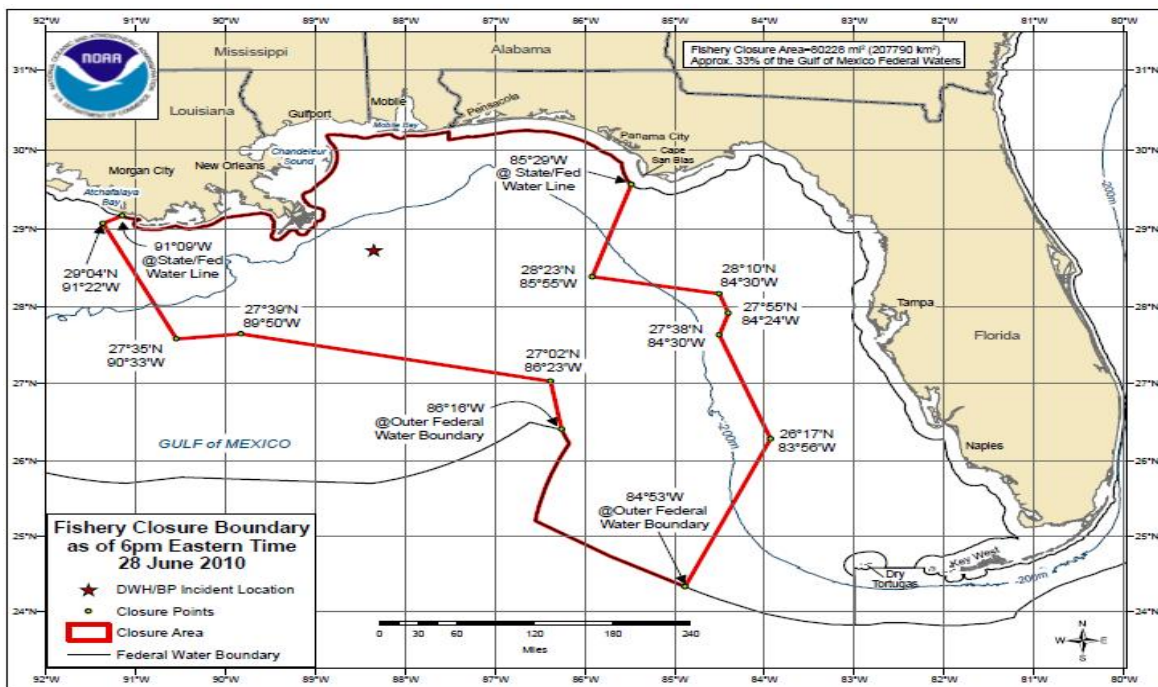
53. More than 60,000 barrels per day of crude oil have been leaking from the wellhead and broken riser, bubbling up to the surface and flattening out into a widening slick of oil. The most recent government estimates put the total amount of oil that has hemorrhaged into the Gulf at approximately 100 million gallons.

54. The growing, fast-moving, rainbow-colored smear is large enough to be visible from outer space, covering more than 413 miles of Gulf Coast shoreline – approximately 59 miles in Florida, 259 miles in Louisiana, 48 miles in Mississippi and 47 miles in Alabama. The ever-expanding oil slick made landfall on the fragile Louisiana coastline on April 30, 2010, and has continued to affect more and more Gulf coastline as it is driven landward by winds and currents. In fact, elevated southerly winds have pushed the perimeter of the spilled oil to shorelines as far east as the Florida Panhandle.

55. From fishing to boating to swimming, recreational activities in and on the Gulf waters have been significantly restricted. For example, healthy and swimming advisories for the Gulf waters off the Alabama, Mississippi and Louisiana coasts are becoming commonplace.

56. On May, 24, 2010, NOAA and U.S. Commerce Secretary Gary Locke determined there has been a “fishery disaster” in the Gulf of Mexico due to the economic impact on commercial and recreational fisheries from the ongoing *Deepwater Horizon* oil spill.

57. According to NOAA, approximately 80,228 square miles of Gulf of Mexico federal waters have been closed to fishing – commercial and recreational – in order to balance economic and public health concerns. This represents approximately 33.2 percent of Gulf of Mexico federal waters. On June 28, 2010, NOAA expanded the closed fishing area to include portions of the oil slick moving beyond the area’s current northern boundary, off the Florida panhandle’s federal-state waterline. The following map from NOAA shows the updated closures:



58. A disaster of this magnitude has significantly impacted the ability of anglers to get out on the water and for businesses depending on the recreational fishing industry to thrive. Those in recreational fishing regard the sport as a key part of the Gulf region’s economy. Recreational fishing contributes \$41 billion in economic output in the Gulf Coast region annually and supports over 300,000 jobs, according to the ASA.

59. According to NOAA, there are approximately 5.7 million recreational fishermen in the Gulf of Mexico region who took 25 million fishing trips in 2008. A June 19, 2010 article in *The New York Times*, “Fishing Tournament Cancellations Spread With Oil Spill,” noted that industry-financed studies estimate that the annual number of day trips on boats to fish in the gulf is 23.5 million, in addition to millions fishing from the shoreline. With thousands of miles of Gulf waters closed to fishing, these day trips routinely taken by offshore recreational fishermen, like Plaintiffs, have come to a screeching halt.

60. Based on the ASA’s analysis of spending on items like hotels, docking and gear, recreational fishing, alone, is worth an estimated **\$1.9 billion** a year to the Gulf region. The ASA has said that millions of dollars had already been lost due to the oil spill.

61. In fact, the ASA recently conducted a survey of recreational fishing-dependent business owners in the Gulf region to gauge the impact of the Gulf of Mexico oil leak on Memorial Day weekend sales – surveying 53 businesses in Louisiana, Mississippi, Alabama and Florida from June 1-3, 2010. The findings confirmed the oil spill’s direct and distressing impact on the recreational fishing industry:

- Over 85 percent of the owners surveyed stated they will not survive the oil leak’s fallout without immediate financial assistance.
- Compared to Memorial Day 2009, overall sales were down an average of 47 percent.
- In Louisiana, which has borne the brunt of the oil leak’s impact, sales were down an average of 55 percent with some businesses reporting sales as much as 90 percent lower than last year’s Memorial Day weekend.
- In Florida, sales were down an average of 35 percent, even though at that time the oil leak was still making its way to shore.
- Of those businesses that submitted claims to BP, only 13 percent received financial assistance as of June 3.

The combination of large area fishing closures and anglers staying away due to the oil leak and the subsequent fishing closures, according to the ASA, has placed “a stranglehold on retailers and other recreational fishing-dependent businesses that, in most cases, have no alternative income generating option.”

62. Although BP has undertaken several attempts to stop the flow to the leaking well, the relief effort has been unsuccessful so far and may take months (or even years) to complete, while oil continues to flow uncontrolled out of the leaking well.

63. The spilled oil has already caused substantial damage to the Gulf of Mexico’s marine, coastal and estuarine environments. With the unabated wellhead gushing of hundreds of thousands of gallons of oil per day into the waters, Plaintiffs and Class Members are suffering and will continue to suffer serious losses.

64. At the time of this filing, the wellhead has not been capped and the flow of oil continues unabated into the Gulf waters.

65. In addition, as of June 29, 2010, it was estimated that approximately 1.6 million gallons of toxic dispersants have been applied – 1.03 million on the surface and 552,000 have been pumped deep into the water column by BP, in an effort to dilute the oil. This is the largest quantity of dispersant deployed to date to break up an oil spill in United States waters.

66. While the media has compared this spill to the 1989 Exxon Valdez disaster, one crucial difference is that the Valdez was a tanker with a limited supply of oil. Experts estimate that the volume of this continuous gush of oil will eclipse that of the Valdez spill within 50 days. In contrast, the relief well will most likely take months – even years – to complete, virtually ensuring this spill’s classification as the worst oil spill in history.

67. Even worse, the floating booms BP has set out to block the oil from reaching the coastline may be too low or placed too far out to sea to be useful. Experts report that anything higher than a three-foot wave will clear the boom, lifting the oil slick over the barriers with it. Over the past few days, the Gulf has been experiencing seven- to ten-foot swells, diminishing the usefulness of any of these booms.

68. The oil spill and the resulting contamination have caused and will continue to cause loss of enjoyment of the Gulf of Mexico and its natural resources and damage to the value of and revenue generated from the offshore recreational sport fishing community.

Defendants' Failure To Prevent The Catastrophe

69. The risks of offshore drilling are well known to Defendants, and are especially high in the Gulf of Mexico, where floating rigs are used, unlike the permanent rigs used in other areas such as the North Sea. Permanent rigs are anchored to the ocean floor and cannot sink, while floating rigs are far more precarious and subject to disastrous results like this incident.

70. Moreover, Defendants knew the work the *Deepwater Horizon* was performing was especially risky. In 2007, the MMS raised concerns about oil rig blowouts associated with the exact type of cementing work the *Deepwater Horizon* was doing when it exploded. Although blowouts due to other causes were on the decline, the MMS study noted that blowouts during cementing work were continuing with regularity, and most frequently in the Gulf of Mexico. Cementing problems were associated with 18 of 39 blowouts between 1992 and 2006, and 18 of 70 from 1971 to 1991. Nearly all the blowouts examined occurred in the Gulf of Mexico.

71. Defendants were aware of the recent August 2009 blowout in the Timor Sea, which was found to have been caused by careless cementing work. During that incident, which bears a strong resemblance to the *Deepwater Horizon* blowout, oil leaked from the site for ten weeks, spreading damage over 200 miles from the well site.

72. The threat of blowouts increases as drilling depth increases. *Deepwater Horizon* was drilling in 5,000 feet of water, to a total depth of 18,000 feet below the sea floor. Defendants were aware of the high risk of blowouts from such deep drilling.

73. In addition to increasing the risk of blowouts, deep-sea drilling also increases the failure risk of the chief blowout safety mechanism, the BOP. Defendants were aware of the risk of the BOP failing at greater depths, yet did not install a backup BOP activation system or a backup BOP.

74. A 2004 study by Federal regulators showed that BOPs may not function in deep-water drilling environments because of the increased force needed to pinch and cut the stronger pipes used in deep-water drilling. Only three of 14 rigs studied in 2004 had BOPs able to squeeze off and cut the pipe at the water pressures present at the equipments' maximum depth. "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," the study said. Moreover, the study singled out Defendant Cameron, the manufacturer of the *Deepwater Horizon's* BOP, for relying on faulty calculations to determine the needed strength for its BOP equipment to function properly at greater depths.

75. According to an April 28, 2010 article in *The Wall Street Journal*, "Leaking Oil Well Lacked Safeguard Device," the oil well currently spewing crude into the Gulf of Mexico did not have a remote-control shut-off switch used in two other major oil-producing nations, and Brazil, as last-resort protection against underwater spills. The lack of the device, called an acoustic switch, could amplify concerns over the environmental impact of offshore drilling after the explosion and sinking of the *Deepwater Horizon* rig last week.

76. With the remote control, a crew can attempt to trigger an underwater valve that shuts down the well even if the oil rig itself is damaged or evacuated. *The Wall Street Journal*

article observes that the U.S. considered requiring a remote-controlled shut-off mechanism several years ago, but drilling companies questioned its cost and effectiveness, according to the agency overseeing offshore drilling. The agency, the Interior Department's Minerals Management Service, says it decided the remote device wasn't needed because rigs had other back-up plans to cut off a well.

77. Defendants did not undertake many reasonable precautionary measures that were available to them. For example, they could have installed a back up trigger to activate the BOP in the event of the main trigger failing to activate it. Although the backup trigger is a common drill-rig requirement in other oil-producing nations, including other areas where BP operates, the *Deepwater Horizon* was not equipped with this backup remote BOP trigger. Nor was the *Deepwater Horizon* equipped with a second, backup BOP, as newer rigs increasingly are.

78. *The Wall Street Journal* article points out that an acoustic trigger costs a mere \$500,000. This is a minor cost when considering that the *Deepwater Horizon* has a replacement cost of about \$560 million, and BP says it is spending \$6 million a day to battle the oil spill.

79. *Deepwater Horizon* only had one BOP installed, leaving the wellhead vulnerable to disaster if the single BOP fails, as it may have done in this case. In fact, on May 7, 2010, *The Wall Street Journal* reported in "Oil Regulator Ceded Oversight to Drillers" that the *Deepwater Horizon* did have an automatic "dead man switch," or a separate, remote-control on-off switch to activate the BOP, but it failed to activate the BOP. On top of that failure, the *Deepwater Horizon* lacked the separate, remote-control switch that is commonly used in Norway and Brazil.

80. Defendants' failure to take precautionary backup measures when drilling at depths they knew to be especially risky was made all the worse by the fact that Defendants were drilling so close to an extremely delicate and important natural resource: the Gulf Coast beaches,

coastline, marshes, wetlands, and estuaries that are a wellspring of marine life, and the source of Plaintiffs' and Class Members' income or livelihood.

81. Defendant BP has a history of cutting corners on safety to reduce operating costs. In 2005, a blast at a Texas refinery killed 15 people and injured more than 170, Federal investigators found the explosion was in part due to cost-cutting and poor maintenance. Also in 2005, a large production platform in the Gulf of Mexico began listing severely due to a defective control system. And in 2006, four years after being warned to check its pipelines, BP had to shut down part of its Prudhoe Bay oilfield in Alaska after oil leaked from a corroded pipeline.

82. According to the Occupational Safety and Health Administration ("OSHA"), over the past three years, BP has committed 760 willful safety violations – a number made even more shocking when compared to the other large oil companies, who average about five violations each.

83. Former employees and oil field workers who worked with BP have reported that BP regularly cheated on pressure tests and failed to report leaks and spills to the proper authorities. Most recently, reports revealed that BP is operating its Atlantis rig — a deepwater rig similar to the *Deepwater Horizon* — with incomplete and inaccurate engineering documents, which one official warned could "lead to catastrophic operator error" and disaster like the fate of the *Deepwater Horizon*.

84. Nevertheless, BP continues to fight for less regulation of the oil exploration and production industry. In 2009 and 2010, BP has spent more than \$20 million lobbying the Federal government on issues including encouraging removing restrictions on drilling on the continental shelf, despite its history of spills and explosions and its knowledge of the high risks involved in such drilling.

85. Moreover, Defendants have actively opposed MMS rules requiring oil rig lessees and operators to develop and audit their own Safety and Emergency Management Plans, insisting that voluntary compliance will suffice. The *Deepwater Horizon* incident is a tragic example to the contrary. According to a May 6, 2010 *Associated Press* article, “Feds Let BP Avoid Filing Blowout Plan For Gulf Rig,” BP did not file a plan to specifically handle a major oil spill from an uncontrolled blowout at its *Deepwater Horizon* project because the federal agency that regulates offshore rigs changed its rules two years ago to exempt certain projects in the central Gulf region.

86. It remains unclear whether the *Deepwater Horizon* project was covered by the blowout rule. Instead, a site-specific exploration plan filed by BP in February 2009 stated that it was “not required” to file “a scenario for a potential blowout” of the *Deepwater Horizon* well. According to the article, when questioned about the exemption claim, BP spokesman William Salvin said provisions for handling a blowout incident were actually included in the firm’s 582-page region oil spill plan, though he had difficulty pointing to specific passages. Mr. Salvin later maintained that the *Deepwater Horizon* location was not subject to the blowout scenario requirements because it triggered none of the conditions cited in the MMS’s April 2008 notice to operators about a loosening of the rules. Still, Mr. Salvin insisted that BP was prepared to handle a blowout and catastrophic spill at the project through provisions included in its regional plan: “We have a plan that has sufficient detail in it to deal with a blowout,” while acknowledging that the ongoing crisis at the *Deepwater Horizon* site is “uncontrolled.”

87. On May 27, 2010, *The Wall Street Journal* published an article summarizing its own investigation, “BP Decisions Set Stage for Disaster,” which provided the most complete account of the fateful decisions that preceded the blast aboard the *Deepwater Horizon*. In

particular, the article points out that BP made choices over the course of the *Deepwater Horizon* project that rendered the oil well more vulnerable to the blowout. For example:

BP cut short a procedure involving drilling fluid that is designed to detect gas in the well and remove it before it becomes a problem;

BP skipped a quality test of the cement around the pipe—another buffer against gas—despite what BP now says were signs of problems with the cement job and despite a warning from cement contractor Halliburton;

Once gas was rising, the design and procedures BP had chosen for the well likely gave this gas an easier path up and out. Workers, pushing to finish the job, removed a critical safeguard, the heavy drilling fluid known as “mud,” leaving little to keep the gas from rushing up to the surface. BP has even admitted a possible “fundamental mistake” in concluding that it was safe to proceed with mud removal; and

A BP manager overseeing final well tests apparently had scant experience in deep-water drilling. It told *The Wall Street Journal* investigators he was on the rig to “learn about deep water.”

88. In addition, the May 27th article indicates that some of BP’s choices allowed it to minimize costly delays, since the *Deepwater Horizon* project was operating behind schedule.

89. By mid-April, BP was convinced it had found a lot of oil. But, until BP engineers in Houston could make plans to start pumping it out, the *Deepwater Horizon* workers on the nearly complete well, in a standard practice, would plug it and temporarily abandon it. According to *The Wall Street Journal* article, “[o]ne of the final tasks was to cement in place the steel pipe that ran into the oil reservoir. The cement would fill the space between the outside of the pipe and the rock, preventing any gas from flowing up the sides.” Halliburton, the cementing contractor, advised BP to install numerous devices to make sure the pipe was centered in the well before pumping cement. Otherwise, the cement might develop small channels that gas could squeeze through. In an April 18 report to BP, the article discloses that Halliburton warned that if BP did not use more centering devices, the well would likely have “a SEVERE gas flow

problem.” Still, BP decided to install fewer of the devices than Halliburton recommended—six instead of 21.

90. Despite the well design and the importance of the cement, daily drilling reports reviewed by *The Wall Street Journal*, show that BP did not run a critical, but time-consuming, procedure that might have allowed gas building up in the well to be detected and removed. Before doing a cement job on a well, common industry practice known as “bottoms up,” is to circulate the drilling mud through the well, bringing the mud at the bottom all the way up to the drilling rig. BP’s decision to cut short the mud circulation could have left gas at the bottom of the well. The article claims that “when workers poured in cement to seal the sides, that gas would have been pushed up the outside of the well. Expanding as it rose, it would have reached the top of the well, where it either would have pushed against a massive seal on the ocean floor or might have gone even higher and reached the bottom of the pipe connecting the well to the drilling rig.”

91. BP’s plans for the well, approved by the MMS on April 16, 2010, called for workers to remove mud before performing two procedures designed to make sure gas could not get into the well. The first procedure called for installing a giant spring to lock the seal at the top of the well in place after removal of the mud. According to *The Wall Street Journal*, there is no evidence in rig-activity logs the spring was ever installed. “If gas was coming up the sides of the well, pushing against the seal, this spring would have helped prevent leakage.” Second, BP opted to remove the mud before placing a final cement plug inside the well. Gas could have gotten into the inside of the pipe through a failure of the cement at the bottom of the well. BP was purportedly planning to set a second, backup cement plug in the well before declaring its work done. But workers began removing mud before setting this plug, leaving little to prevent any gas

inside the pipe from rising to the rig. That plan was approved by the MMS on April 16, 2010, according to the permit reviewed by *The Wall Street Journal*.

92. The fire and explosion on the *Deepwater Horizon*, its sinking and the resulting oil spill were caused by the gross negligence of Defendants, which renders them liable jointly and severally to Plaintiffs and the Class Members for all their damages.

93. The injuries and damages suffered by Plaintiffs and the Class Members were caused by Defendants' gross negligence, as well as their willful or wanton failure to adhere to recognized industry standards of care and safety practices.

94. Defendants knew of the dangers associated with deep water drilling and failed to take appropriate measures to prevent damage to Plaintiffs, the Class Members, as well as the Gulf of Mexico's marine, coastal and estuarine areas. Moreover, additional safety mechanisms, technologies, and precautions were known and available to Defendants, but Defendants chose not to employ them on the *Deepwater Horizon*.

After The Spill, Defendants' Failed Efforts

95. On May 3, 2010, 13 days after the explosion, Defendant BP said in a statement that it "takes responsibility for responding to the *Deepwater Horizon* oil spill. We will clean it up." BP has said it would pay "all necessary and appropriate clean-up costs" from the oil pollution disaster in the Gulf of Mexico, and vowed to consider all compensation claims "promptly" and pay them quickly if justified. Specifically, BP announced that it "committed to pay legitimate and objectively verifiable claims for other loss and damage caused by the spill." "This may include claims for assessment, mitigation and clean-up of spilled oil, real and property damage caused by the oil, personal injury caused by the spill, commercial losses including loss of earnings/profit and other losses as contemplated by applicable laws and regulations."

96. But, immediately after the explosion, Defendants attempted to downplay and conceal the severity of the oil spill. Their initial leak estimate of 1,000 barrels per day was found by government investigators to be a fraction of the actual leak amount of 5,000 barrels of oil per day. Moreover, Defendants were slow and incomplete in their announcements and warnings to Gulf Coast residents and business people about the severity, forecast, and trajectory of the oil spill.

97. According to *The New York Times* article titled “Amount of Spill Could Escalate, Company Admits,” on May 4, 2010, in a closed-door briefing for members of Congress, a senior BP executive also conceded that the ruptured oil well in the Gulf of Mexico could conceivably spill as much as 60,000 barrels a day of oil, more than 10 times the low-end estimate of the current flow. This admission further broadens the apparent scope of the problem, which has grown drastically since the *Deepwater Horizon* oil rig exploded and sank into the Gulf of Mexico.

98. Also on May 4, 2010, BP’s chief executive officer, Tony Hayward, told Senator Bill Nelson, Democrat of Florida, that the spill would clearly cause *more than \$75 million* in economic damage, the current cap on liability for drilling accidents.

99. BP has blamed the equipment failure on the *Deepwater Horizon*, which in turn caused both the explosion and its continuing damage, on the rig operator, Transocean. In fact, according to a May 10, 2010 article, “Rig Owner Had Rising Tally of Accidents,” *The Wall Street Journal* reports that “[n]early *three of every four incidents* that triggered federal investigations into safety and other problems on deepwater drilling rigs in the Gulf of Mexico since 2008 have been on rigs operated by Transocean.” (Emphasis added). Moreover:

Already the largest deep-water driller, Transocean in November 2007 took over rival GlobalSantaFe in an \$18 billion deal. A *Journal* analysis of records

maintained by the U.S. Minerals Management Service found that Transocean's share of incidents in deep water investigated by the regulator has gone up since the merger, even after accounting for its increased size.

From 2005 through 2007, a Transocean rig was involved in 13 of the 39 deep-water drilling incidents investigated by the MMS in the Gulf of Mexico, or 33%. That's roughly in line with the percentage of deep-water rigs, 30%, Transocean owned and operated in the Gulf then, according to data firm RigLogix.

Since the merger, ***Transocean has accounted for 24 of the 33 incidents investigated by the MMS, or 73%***, despite during that time owning fewer than half the Gulf of Mexico rigs operating in more than 3,000 feet of water.

(Emphasis added). The article notes that some of Transocean's clients have cited the merger as a reason they believe the company's performance has dropped.

100. While the cause of the April 20th explosion has not been determined, and the investigation is ongoing, investigators are now focusing on two things: (i) a cement seal meant to keep oil and gas from escaping from a well; and (ii) the blowout preventer, or BOP, a set of valves on the ocean floor that is supposed to close off a well in an emergency. MMS records show that Defendant Transocean has had problems with both. According to the May 10th article in *The Wall Street Journal* article, in 2006, regulators found, a BOP failed, in part because of maintenance issues, and in 2005, a well leaked drilling fluid because of problems with the cement seal.

101. Many questions continue to linger, but the immediate cause of the explosions aboard *Deepwater Horizon* appears to have been from a build-up of a bubble of methane hydrates – natural gas compressed into molecular cages of ice – through the riser. This quickly expanding pocket of methane gas shot up the drill column before exploding on the platform on the ocean's surface. But, several events leading up to the explosion are believe to have caused or exacerbated the release of methane gas, including faulty materials and procedures used in the cementing process for the well, removal of mud from the riser, defects relating to the blowout

preventer valve and improper well depth. Even the emergency valve, installed for just such a disaster, failed to seal the wellhead as it should have, leaving the well spewing oil into the Gulf waters.

102. The oversight and investigations subcommittee of the House Energy and Commerce Committee has held several hearings, to which top executives of Defendants BP, Transocean and Halliburton have appeared. Also, the Senate energy committee summoned executives from Defendants BP and Transocean, as well as a number of oil industry technical experts to another future hearing. These hearings are likely the first of many, which will look at the possible problems leading to explosions on the rig as well as the adequacy of containment and cleanup measures. A separate federal investigation into the explosion is under way by the Coast Guard and MMS.

103. On May 7, 2010, BP announced that it planned to lower a concrete-and-steel structure known as a “containment dome” almost a mile to the seafloor in an effort to stop the flow of oil from the drilling site. But gas hydrates – ice-like solids that form when methane gas combines with water under certain conditions – clogged the opening at the top of the dome, preventing oil from being funneled to the surface. Doug Suttles, BP’s chief operating officer, on a media conference call, said: “I wouldn’t say it has failed. What I would say is what we attempted to do last night wasn’t successful.”

104. BP removed the hydrates, and took time to determine its next steps. As of filing of this Complaint, Defendants had tried several different fixes for the problem, but are still without a solution. They have tried and failed with a “junk shot,” filling the BOP with debris (*i.e.*, shredded tires and golf ball), followed by heavy fluids, followed by cement to seal it closed – all in an attempt to “clog up” the leak. They have tried and not yet been successful with a tactic

called a "top kill" – force-feeding the leak heavy drilling mud and cement – which is routinely used above ground but has never been tried 5,000 feet underwater. Lastly, they have implemented a “containment cap” over the broken wellhead, which has shown some success in capturing and recovering oil and sending it up to a surface ship.

105. On May 9, 2010, *The Wall Street Journal* in “U.S. Considers ‘Malfeasance’ in Leak,” quotes Coast Guard Admiral Thad Allen, who is leading U.S. government efforts to tackle the disaster, who called it “maddening” that efforts by BP so far to stop the leak have failed. The article also quotes Sen. Richard Shelby (R. Ala.), who told CNN’s “State of the Union,” that “[a] lot of this could have been prevented.... Where was BP? Were they trying to do this on the cheap? ...Sooner or later there could be a gusher.”

106. Using government estimates, approximately 100 million gallons have spilled so far. As of June 29, 2010, the Gulf of Mexico oil spill has cost more than ***\$2.65 billion***, while some analysts estimate the disaster could cost up to ***\$40 billion***.

107. The oil spill and the resulting contamination have caused and will continue to damage the value of Plaintiffs’ and Class Members’ recreational use and enjoyment of the Gulf of Mexico and its natural resources.

108. There are many other potential affects from the oil spill that have not yet become known, and Plaintiffs reserve the right to amend this Complaint once additional information becomes available.

PLAINTIFFS’S CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this action and each of the claims herein, on their own behalf and on behalf of all others similarly situated pursuant to Federal Rules of Civil Procedure 23.

110. Plaintiffs bring this action as a class action on behalf of a Class, consisting of all persons who have been impacted by the oil spill and any subsequent remedial events as follows:

All persons who, but for the oil spill, would enjoy the recreational use of the natural resources of the Gulf of Mexico waters, shore, and coastline, in and around the Louisiana “Coastal Zone,” as that term is defined in 43 U.S.C. §1331(e), and who have sustained any legally cognizable damages as a result of the April 20, 2010, fire and explosion aboard the *Deepwater Horizon* drilling rig and resulting oil spill.

111. Excluded from the Class are: (a) the officers and directors of any of the Defendants; (b) any entity or division in which any Defendant(s) has a controlling interest; (c) any judge or judicial officer assigned to this matter and its or her immediate family; (d) any individual who has claims for personal physical, bodily injury as a result of the April 20, 2010 fire and explosion that is the subject of this action; and (d) any legal representative of Defendants, successor, or assign or any excluded persons or entities.

112. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds or even thousands in the proposed Class comprised of individuals and businesses in the affected area, which have been or may in the future be damaged by the subject oil spill and/or any actual or planned remediation efforts.

113. **Typicality.** Plaintiffs’ claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of laws/regulations, claims, causation and/or damages complained of herein.

114. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class litigation.

115. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the Class and have the financial resources to do so. Neither Plaintiffs nor their Counsel have interests adverse to those of the Class.

116. ***Predominance of Common Questions of Fact and Law.*** Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether Defendants caused and/or contributed to the explosion, fire, and oil spill;

(b) whether Defendant were negligent in the design, maintenance, manufacture, or operation of the of the oil rig, its pipes, valves, and other machinery and materials;

(c) whether Defendants knew or should have known of the risk of a major failure of the rig such as that which caused it to fail and resulted in the explosion, fire, and oil spill;

(d) whether Defendants knew of, or should have utilized, all available safety mechanisms to prevent a blowout or seal the wellhead;

(e) whether Defendants knew or should have known that their activities would cause damage to Plaintiffs;

(f) whether Defendants acted maliciously or with reckless disregard to the risk of a major failure of the rig, its pipes, valves, and other machinery and materials;

(g) whether Defendants breached duties owed to Plaintiffs and the Class, as alleged herein;

(h) whether the law was violated by Defendants' acts as alleged herein; and

(i) whether members of the Class have sustained damages and what measure of damages is proper.

117. ***Superiority.*** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

Furthermore, without a class action, individual Class Members would face burdensome litigation expenses, deterring them from bringing suit or adequately protecting their rights. Because of the ratio of the economic value of the individual Class Members' claims in comparison to the high litigation costs in complex environmental cases such as this, few could likely seek their rightful legal recourse. Absent a class action, Class Members would continue to incur harm without remedy. There will be no difficulty in the management of this action as a class action.

118. The consideration of common questions of fact and law will conserve judicial resources and promote a fair and consistent resolution of these claims.

COUNT I

(Negligence Against All Defendants)

119. Plaintiffs repeat and reallege each and every allegation contained above.

120. Defendants owed a duty to Plaintiffs and Class Members to exercise reasonable care in the construction, operation, inspection, training, repair and maintenance of the *Deepwater Horizon* and oil well.

121. Defendants had a heightened duty of care to Plaintiffs and Class Members because of the great danger and environmental concerns associated with the drilling of oil.

122. Defendants breached their legal duty to Plaintiffs and Class Members by failing to exercise reasonable care and acting with reckless, willful, and wanton disregard for the Plaintiffs and Class Members, in the construction, operation, inspection, training, repair and maintenance of the *Deepwater Horizon* and the oil well.

123. The fire, explosion, and resulting oil spill was caused by the concurrent negligence of all Defendants.

124. Upon information and belief, Plaintiffs maintain that the fire, explosion and resulting oil spill were caused by the joint negligence and fault of Defendants, as evidenced by the following, *inter alia*:

- (a) failing to properly operate the *Deepwater Horizon*;
- (b) operating the *Deepwater Horizon* in such a manner that a fire and explosion occurred onboard, causing it to sink and resulting in an oil spill;
- (c) failing to properly inspect the *Deepwater Horizon* to assure that its equipment and personnel were fit for their intended purpose;
- (d) acting in a careless and negligent manner without due regard for the safety of others;
- (e) failing to promulgate, implement and enforce rules and regulations pertaining to the safe operations of the *Deepwater Horizon* which, if they had been so promulgated, implemented and enforced, would have averted the fire, explosion, sinking and oil spill;
- (f) operating the *Deepwater Horizon* with untrained and/or unlicensed personnel;
- (g) inadequate and negligent training and/or hiring of personnel;
- (h) failing to take appropriate action to avoid and/or mitigate the accident;
- (i) negligent implementation of policies and/or procedures to safely conduct offshore operations in the Gulf of Mexico;
- (j) employing untrained or poorly trained employees and failing to properly train their employees;
- (k) failing to ascertain that the *Deepwater Horizon* and its equipment were free from defects and/or in proper working order;
- (l) failure to timely warn;
- (m) failure to timely bring the oil release under control;
- (n) failure to provide appropriate accident preventive equipment;
- (o) failure to observe and read gauges that would have indicated excessive pressures in the well;

- (p) failure to react to danger signs;
- (q) improper installation, maintenance and operation of BOPs or use of defective BOPs;
- (r) conducting well and well cap cementing operations improperly;
- (s) acting in a manner that justifies imposition of punitive damages; and
- (t) such other acts of negligence and omissions as will be shown at the trial of this matter.

125. In addition, and in the alternative, the fire, explosion, sinking and resulting oil spill were caused by defective equipment, including the BOPs, which were in the care, custody and control of Defendants. Defendants knew or should have known of these defects and Defendants are, therefore, liable for them.

126. Defendants knew or should have known that their gross negligence, willful, wanton and/or reckless conduct would foreseeably result in the disaster, causing damage to Plaintiffs and Class Members.

127. The injuries to Plaintiffs and the Class Members were also caused by or aggravated by the fact that Defendants failed to take necessary actions to mitigate the danger associated with their operations.

128. In addition to the grossly negligent actions described above, and in the alternative thereto, the injuries and damages suffered by Plaintiffs and the Class Members were caused by the acts and/or omissions of Defendants that are beyond proof by Plaintiffs and the Class Members, but which were within the knowledge and control of Defendants, there being no other possible conclusion that the fire, explosion, sinking and oil spill resulted from the negligence of Defendants.

129. Furthermore, the fire, explosion, sinking and the resulting oil spill would not have occurred had Defendants exercised the high degree of care imposed on them and Plaintiffs, therefore, pleads the doctrine of *res ipsa loquitur*.

130. Plaintiffs and the Class Members are entitled to a judgment finding Defendants liable to Plaintiffs and the Class Members for damages suffered as a result of Defendants' negligence – their acts and omissions – and awarding Plaintiffs and the Class Members adequate compensation therefore in amounts determined by the trier of fact.

COUNT II

(Gross Negligence Against All Defendants)

131. Plaintiffs repeat and reallege each and every allegation contained above.

132. Defendants owed a duty to all Plaintiffs and Class Members to exercise reasonable care in the manufacture, maintenance, and operation of the *Deepwater Horizon*.

133. Defendants had a heightened duty of care to Plaintiffs and all the Class Members because of the great danger associated with deep drilling from floating platforms, and the especially high risk of blowouts during cementing work such as that *Deepwater Horizon* was performing at the time of the explosion.

134. Defendants breached their legal duty to Plaintiffs and the Class, failed to exercise reasonable care, and acted with reckless, willful, and wanton disregard for the business and livelihood of others, including Plaintiffs and the Class Members, in the negligent manufacture, maintenance, and/or operation of the *Deepwater Horizon*.

135. Defendants knew or should have known that their wanton or reckless conduct would foreseeably result in a disastrous blowout and oil spill, causing damage to the economic interests of individuals and businesses in the area affected by the oil spill.

136. As a direct and proximate result of Defendants wanton or reckless conduct, which amounts to their gross negligence, Plaintiffs and Class Members have suffered legal injury and damages, in an amount to be proven at trial, including, but not limited to, loss of livelihood, loss of income, and other economic loss.

137. Defendants' wanton or reckless conduct, as described herein, entitles Plaintiffs and Class Members to punitive damages.

COUNT III

(Negligence Per Se Against All Defendants)

138. Plaintiffs repeat and reallege each and every allegation contained above.

139. Defendants' conduct with regard to the manufacture, maintenance, and/or operation of drilling operations and oil rigs such as the *Deepwater Horizon* is governed by numerous state and federal laws, and permits issued under the authority of these laws.

140. These laws and permits create statutory standards that are intended to protect and benefit Plaintiffs and the Class Members.

141. Defendants' violations of these statutory standards constitute negligence *per se* under Louisiana law.

142. Defendants' violations of these statutory standards proximately caused Plaintiffs' and the Class Members' injuries, warranting compensatory and punitive damages.

COUNT IV

(Oil Pollution Act of 1990 Against All Defendants)

143. Plaintiffs repeat and reallege each and every allegation contained above.

144. The Oil Pollution Act imposes liability upon a "responsible party for a ... facility from which oil is discharged ... into or upon navigable waters or adjoining shorelines" for the "damages that result from such incident." 33 U.S.C. § 2702.

145. Section 2702(b)(2)(C) provides for the recovery of “[d]amages for subsistence use of natural resources, which shall be recoverable by any claimant who so uses natural resources which have been injured, destroyed or lost, without regard to the ownership or management of the resources.”

146. The Coast Guard has named BP as the responsible party. The other Defendants have been implicated as well. Therefore, BP and the other Defendants are liable pursuant to Section 2702 for all the damages that result from the oil spill.

147. As a result of the oil spill, Plaintiffs and the Class Members have suffered, or are likely to suffer in the near future, loss of their enjoyment and use of the Gulf’s natural resources.

148. Also, as a result of the oil spill, Plaintiffs and the Class Members have not been able to fish, boat or swim, or participate in any other recreational activities in or on the Gulf waters, and have sustained economic losses for which they are entitled to recover from Defendants for such damages in amounts to be determined by the trier of fact.

149. Section 2702(b)(2)(E) provides for the recovery of “[d]amages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant.”

150. As a result of the oil spill, Plaintiffs and the Class Members have suffered the type of damages that may be recovered pursuant to Section 2702(b)(2)(E), and they demand compensation therefore from Defendants, namely BP, in amounts to be determined by the trier of fact.

COUNT V

(Louisiana Oil Spill Prevention And Response Act Against All Defendants)

151. Plaintiffs repeat and reallege each and every allegation contained above.

152. The Louisiana Oil Spill Prevention and Response Act (“LOSPRA”) imposes liability upon a responsible party for “intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters of the state or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters of the state.” La. R.S. 30:2454.

153. Pursuant to the LOSPRA, the owner of an oil well discharging petroleum pollutants into a waterway is liable for up to \$350,000,000 in damages arising from that discharge. Furthermore, pursuant to La. R.S. 30:2482, the owner of the well must pay all pollution removal costs and damages, regardless of any defenses that the owner may assert. As a result of the disaster, Plaintiffs and the Class Members have suffered the type of damages that may be recovered pursuant to the LOSPRA, and they demand compensation from Defendants in amounts to be determined by the trier of fact.

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

- A. determining that this action is a proper class action, certifying Plaintiffs as Class representatives under Federal Rule of Civil Procedure 23, and appointing their undersigned counsel as counsel for the Class;
- B. awarding compensatory damages in favor of Plaintiffs and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants’ wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. awarding punitive damages;
- D. pre-judgment and post-judgment interest at the maximum rate allowable by law;
- E. awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

F. such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

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

DATED: July 8, 2010

Respectfully submitted by,

**THE LAW OFFICE OF
DERRIEL C. McCORVEY, L.L.C.,**

By: /s/ Derriel C. McCorvey
Derriel C. McCorvey, Esquire (26083)
Post Office Box 2473
115 W. Main Street, Suite 14
Lafayette, LA 70501
Tel.: 337-291-2431
Fax: 337-291-2433
Email: derriel@mccorveylaw.com
angela_petry@mccorveylaw.com

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

Mark C. Rifkin, Esquire
(*Pro Hac Vice* admission pending)
Paulette S. Fox, Esquire
(*Pro Hac Vice* admission pending)
270 Madison Avenue
New York, New York 10016
Tel.: (212) 545-4600
Fax: (212) 545-4653
Email: rifkin@whafh.com
pfox@whafh.com

ATTORNEYS FOR PLAINTIFFS

/579453