SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA RETIREMENT FUND and JUDITH MILLER, on behalf of the JUDITH A. MILLER LIVING TRUST, derivatively on behalf of THE GOLDMAN SACHS GROUP, INC. Plaintiff, v. LLOYD C. BLANKFEIN, GARY D. COHN, JOHN H. BRYAN, CLAES DAHLBACK, STEPHEN FRIEDMAN, WILLIAM W. GEORGE, RAJAT K. GUPTA, JAMES A. JOHNSON, LOIS D. JULIBER, LAKSHMI N. MITTAL, JAMES J. SCHIRO, RUTH J. SIMMONS, DAVID A. VINIAR, and J. MICHAEL EVANS Defendants, and THE GOLDMAN SACHS GROUP, INC., Nominal Defendant.	Index No. **JURY TRIAL DEMANDED**

SHAREHOLDER DERIVATIVE COMPLAINT

Plaintiffs Security Police and Fire Professionals of America Retirement Fund, and Judith Miller, on behalf of the Judith A. Miller Living Trust (“Plaintiffs”), by and through their undersigned attorneys, hereby submit this Shareholder Derivative Complaint (the “Complaint”) for the benefit of nominal defendant The Goldman Sachs Group, Inc. (“Goldman Sachs” or the “Company”) against certain members of its Board of Directors (the “Board”) and executive

officers seeking to remedy defendants' breaches of fiduciary duties and unjust enrichment relating to the Company's 2009 compensation (the "Relevant Period").

NATURE OF THE ACTION

1. This action seeks to recover billions in compensation that Goldman Sachs Group, Inc. ("Goldman" or the "Company") has paid and plans to pay to its employees in 2009. As explained below, the members of Goldman's Board of Directors (the "Board") abdicated their responsibility to administer the Company's compensation plans in the best interests of the Company and its shareholders, and instead have blindly "rewarded" executives for corporate performance that has absolutely nothing to do with the skill of the Company's employees. Over the last decade, Goldman's directors have reserved and issued as compensation to employees an amount approaching 50% of the Company's annual net revenues. Because the majority of the Company's revenues depend on the reported values of the firm's investments, however, these revenues are impacted by market forces and not necessarily the productivity of Goldman Sachs employees. Nevertheless, year after year, Defendants have caused the Company to pay billions of dollars in incentive based compensation, regardless of whether the Company's performance could be attributed to the skill of the employees Defendants determined to so generously compensate.

2. The compensation that Goldman Sachs has indicated it is prepared to pay for 2009 highlights the complete breakdown of the Defendants' oversight responsibilities. As of September 25, 2009, Defendants had reserved for issuance to company employees almost *$17 billion*, and is reported to be on track to hand out compensation in excess of *$22 billion* this year alone. This amounts to the most compensation ever paid to employees in the history of the firm. It is, however, just another repeat of its historical practice of paying almost 50% of the

Company's revenues as compensation. Indeed, Defendants base this extravagant compensation bonanza on record "revenues" generated by Goldman Sachs since the collapse of the U.S. financial markets in 2008.

3. But Goldman's success this year has *not* been the product of the skill and business acumen of the Company's employees, but is attributable directly to the multi-trillion dollar infusion of capital by the American taxpayers to bail out the entire financial services industry – including Goldman Sachs itself. Not only did Goldman Sachs accept a whopping $10 billion loan from the federal government's TARP program just to keep afloat, but it depended on another $13 billion infusion from the federal government through TARP funds used to bail out insurance giant AIG that Goldman Sachs used to salvage the value of investments that were essentially worthless if AIG was allowed to collapse. This $13 billion infusion of capital from AIG equals well over half of the "revenue" Goldman Sachs reported based on its investment activities through the third quarter of this year.

4. Because the majority of Goldman Sachs's reported revenue depends on market forces and are not necessarily the product of the performance of Company employees, Defendants abdicated their oversight responsibilities with respect to compensation by routinely paying nearly half of the Company's reported revenues as compensation. Through this action, Plaintiffs to seek to recover money damages from Defendants for looting the Company's coffers by "rewarding" employees who did little to contribute to Goldman's success.

JURISDICTION AND VENUE

5. Under New York Civil Practice Law and Rules ("CPLR") §§ 301 & 302, this Court has personal jurisdiction over all of the defendants. Each of the defendants either resides in New York or conducts continuous and systematic business in New York. Nominal Defendant Goldman is headquartered at 85 Broad Street, New York, NY 10004 and conducts much of its

business from that office, including investment banking, securitization, and investment management. Additionally, the transactions, events, and occurrences giving rise to the claims alleged herein occurred in New York.

6. Under CPLR § 503, venue is proper in this county.

THE PARTIES

7. Plaintiff Security Police and Fire Professionals of America Retirement Fund has continuously held Goldman stock since at least September 26, 2008.

8. Plaintiff Judith Miller has continuously held Goldman stock since September 20, 2002.

9. Nominal Defendant Goldman is a Delaware corporation headquartered at 85 Broad Street, New York, NY 10004. Goldman is a leading global financial services firm providing investment banking, securities, and investment management services to a diversified client base that includes corporations, financial institutions, governments, and high-net-worth individuals.

10. Defendant Blankfein ("Blankfein") has served as the Chairman and CEO of Goldman since June 2006. In addition, defendant Blankfein has served as a director of the Company since April 2003.

11. Defendant Cohn ("Cohn") has served as the President and COO of the Company since April 2009. In addition, defendant Cohen has served as a director of the Company since June 2006.

12. Defendant John H. Bryan ("Bryan") has served as a director of the Company since November 1999. In addition, defendant Bryan has served as a member of the Board's

Audit Committee (the "Audit Committee") and Compensation Committee during the Relevant Period.

13. Defendant Claes Dahlback ("Dahlback") has served as a director of the Company since June 2003. In addition, defendant Dahlback has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Dahlback is a citizen of Sweden.

14. Defendant Stephen Friedman ("Friedman") has served as a director of the Company since April 2005. In addition, defendant Friedman has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Friedman is a New York citizen.

15. Defendant William W. George ("George") has served as a director of the Company since December 2002. In addition, defendant George has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. George is a Massachusetts citizen.

16. Defendant Rajat K. Gupta ("Gupta") has served as a director of the Company since November 2006. In addition, defendant Gupta has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Gupta is a Connecticut citizen.

17. Defendant James A. Johnson ("Johnson") has served as a director of the Company since May 1999. In addition, defendant Dahlback has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Johnson is a Washington, DC citizen.

18. Defendant Lois D. Juliber ("Juliber") has served as a director of the Company since March 2004. In addition, defendant Juliber has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Juliber is a New York citizen.

19. Defendant Lakshmi N. Mittal ("Mittal") has served as a director of the Company since June 2008. In addition, defendant Mittal has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period. Mittal is a New York citizen.

20. Defendant James J. Schiro ("Schiro") has served as a director of the Company since May 2009. In addition, defendant Schiro has served as a member of both the Audit Committee and the Compensation Committee during the Relevant Period.

21. Defendant Ruth J. Simmons ("Simmons") has served as a director of the Company since January 2000. In addition, defendant Simmons has served as a member of the Compensation Committee during the Relevant Period.

22. Defendant Viniar ("Viniar") has served as Executive Vice President and CFO of the Company since 1999.

23. J. Michael Evans ("Evans") has served as a Vice Chairman of Goldman Sachs since February 2008 and chairman of Goldman Sachs Asia since 2004.

24. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, Simmons, Viniar, and Evans shall be referred to herein as "Defendants."

25. Blankfein, Cohn, Viniar, and Evans shall be referred to as the "Executive Officer Defendants."

26. Defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons shall be referred to "Director Defendants."

27. Defendants Byran, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, and Schiro shall be referred to herein as the "Audit Committee Defendants."

28. Defendants Byran, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons shall be referred to herein as the "Compensation Committee Defendants."

DEFENDANTS' DUTIES

29. By reason of their positions as officers, directors, and/or fiduciaries of Goldman and because of their ability to control the business and corporate affairs of Goldman, Defendants owed Goldman and its shareholders fiduciary obligations of good faith, loyalty, and candor, and were and are required to use their utmost ability to control and manage Goldman in a fair, just, honest, and equitable manner. Defendants were and are required to act in furtherance of the best interests of Goldman and its shareholders so as to benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each director and officer of the Company owes to Goldman and its shareholders the fiduciary duty to exercise good faith and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets, and the highest obligations of fair dealing.

30. Defendants, because of their positions of control and authority as directors and/or officers of Goldman, were able to and did, directly and/or indirectly, exercise control over the wrongful acts complained of herein. Because of their advisory, executive, managerial, and directorial positions with Goldman, each of the Defendants had knowledge of material non-public information regarding the Company.

31. To discharge their duties, the officers and directors of Goldman were required to exercise reasonable and prudent supervision over the management, policies, practices and controls of the Company. By virtue of such duties, the officers and directors of Goldman were required to, among other things:

a. Exercise good faith to ensure that the affairs of the Company were conducted in an efficient, business-like manner so as to make it possible to provide the highest quality performance of their business;

b. Exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and complied with all applicable federal and state laws, rules, regulations and requirements, and all contractual obligations, including acting only within the scope of its legal authority; and

c. When put on notice of problems with the Company's business practices and operations, exercise good faith in taking appropriate action to correct the misconduct and prevent its recurrence.

32. Pursuant to the Audit Committee's Charter, the members of the Audit Committee are required, *inter alia*, to:

a. Oversee the integrity of the Company's financial statements;

b. Oversee the Company's internal control over financial reporting;

c. Oversee the Company's management of market, credit, liquidity and other financial and operational risks;

d. Discuss with management earnings press releases and review generally the type and presentation of information to be included in earnings press releases; and

e. Review with management the type and presentation of any financial information and earnings guidance provided to analysts and rating agencies.

33. Pursuant to the Compensation Committee's Charter, the members of the Compensation Committee are required, *inter alia*, to:

a. Determine and approve the compensation of the Company's CEO and other executive officers;

b. Make recommendations to the Board with respect to incentive compensation and equity-based plans that are subject to Board approval;

c. In consultation with senior management, make recommendations to the Board as to the Company's general compensation philosophy and to oversee the development and implementation of compensation programs; and

d. Review and approve corporate goals and objectives established by the Board that are relevant to the compensation of the CEO, evaluate the performance of the CEO in light of those goals and objectives, and determine and approve the CEO's compensation level based on that evaluation.

SUBSTANTIVE ALLEGATIONS

Background of the Company

34. Goldman began over 140 years ago when Marcus Goldman opened a one room office and began trading promissory notes. Shortly thereafter, it expanded into a partnership, where its partners shared in the Company's profits.

35. Goldman remained private for almost 130 years until its initial public offering ("IPO") in 1999. Goldman's decision to convert to a publicly traded corporation had been

debated internally among the partners for decades, but ultimately the allure of public capital was too much to ignore. Nevertheless, in its IPO, the Company offered just 12% of its stock to the investing public, retaining 48% held by the firm's partners, 22% held by non-partner firm employees, and 18% held by two long term investors. Since then, however, Goldman's public ownership has increased. Today, insiders hold just over 11% of the Company's outstanding shares.

36. Goldman earns its revenue from four areas: investment banking, trading and principal investments, asset management and securities services, and net interest income. Investment banking revenue comes from, *inter alia*, providing merger and acquisition advisory services and underwriting equity and debt. Trading and principal investment income is derived from such sources as trading equities, commodities, credit products, mortgage related securities, and interest rate products. Asset management income comes from, *inter alia*, providing investment advisory services, financial planning, and investment products to clients. Interest income comes from, *inter alia*, money deposited with banks and lending securities.

Defendants Repeatedly Tout a Purported "Pay For Performance" Philosophy

37. Before and during the Relevant Period, Defendants (and in particular, the Compensation Committee Defendants) regularly touted the Company's "pay for performance" philosophy and practices.

38. For instance, in the Company's 2006 Proxy Statement, Defendants represented:

> The compensation program implemented by the Compensation Committee (the Restricted Partner Compensation Plan, in conjunction with equity-based awards under the Stock Incentive Plan and PMD Discount Stock Program) was designed to permit the Compensation Committee to provide our executive officers and Management Committee members ***with total compensation that is linked to Goldman Sachs' performance to reinforce the alignment of employee and shareholder interests.*** At the same time, it is intended to provide the Compensation Committee with sufficient flexibility to assure that such compensation is appropriate to attract and retain these employees who, together with participants in the Partner Compensation Plan, are vital to the continued

success of Goldman Sachs and to drive outstanding individual and firm-wide performance. While we believe the program met these objectives in fiscal 2005, we believe that certain changes to the Restricted Partner Compensation Plan are appropriate.

39. Defendants clearly intended that their pay for performance model be applied and viewed through the prism of the long-term success of the Company. For example, in the Company's 2007 Proxy Statement, Defendants not only touted the "pay for performance" mentality, but also promoted a "long term incentivized compensation" philosophy.

40. For instance, the 2007 Proxy Statement stated that the Company's "compensation programs have closely aligned pay and performance, particularly at senior levels."

41. Further, the 2007 Proxy Statement stated the following:

> ***The Restricted PCP is our shareholder-approved plan that is designed to pay bonuses that are tied to the performance of the firm, in order to align the interests of senior management with the interests of shareholders and to tied the compensation of our senior executives to the success of the firm.***

42. In seeking to maximize long term performance, Defendants stated in the 2007 Proxy Statement the following:

> The Committee determined that it was appropriate to grant part of the bonuses under the Restricted PCP in the form of RSUs and Options in light of a number of factors, including input from the Committee's outside consultants, competitive compensation practices, maximization of shareholder value and alignment of the long-term interests of our shareholders and our senior executives. ***Each individual who receives an RSU becomes, economically, a long-term shareholder of Goldman Sachs, with the same interests as our other shareholders.***

43. Defendants concluded in the 2007 Proxy Statement with the following:

> The compensation programs implemented by the Committee are designed to permit the Committee to provide Restricted PCP Participants with total compensation that is linked to Goldman Sachs' performance and to reinforce the alignment of employee and shareholder interests. At the same time, they are intended to provide the Committee with sufficient flexibility to assure that such compensation is appropriate to attract and retain these employees who, together with PCP participants, are vital to the continued success of Goldman Sachs, and to drive outstanding individual and firm-wide performance.

44. Naturally, these "pay for performance" assurances continued into 2008. Specifically, the Company's 2008 Proxy Statement stated the following:

Objectives in Setting the Compensation of Our NEOs

Our Compensation Committee determines the compensation to be paid to our NEOs, and that determination is approved by the independent members of our Board. The following are the principal objectives in setting the compensation of our NEOs:

- ***To reward our NEOs for their contribution to our overall success during the relevant fiscal year, measured primarily by reference to our operating results and other financial indicators we believe are related to the creation of shareholder value (for example, book value per share), both on an absolute basis and by comparison to the performance of our competitors;***

- ***To align the interests of our NEOs with the long-term interests of our shareholders by paying a significant portion of their compensation in the form of equity-based awards;***

- To retain and motivate our NEOs, whose efforts and judgments are vital to our continued success, by setting their compensation at appropriate and competitive levels relative to each other, to our other senior executives and to senior executives at our competitors;

- To compensate our NEOs appropriately in light of their individual performance during the fiscal year, by considering a performance evaluation for each of them for the fiscal year:

    - Pursuant to its charter, in November of each year our Corporate Governance and Nominating Committee, which includes all members of our Compensation Committee, evaluates our CEO's performance before our Compensation Committee determines our CEO's compensation for that fiscal year. The Corporate Governance and Nominating Committee evaluation takes into account the results from our "360 degree" feedback process, which reflects input regarding an array of performance measures from a number of employees, including peers, employees who are senior to the individual, if any, and employees who are junior to the individual. Included in the feedback process is also an assessment of the individual's contributions to hiring, mentoring, training and diversity.

    - Our other NEOs are evaluated as a part of our "360 degree" feedback process, and our CEO discusses the performance of our other NEOs, including these evaluations, with our Corporate Governance and Nominating Committee before our Compensation Committee determines our other NEOs' fiscal year compensation;

- To perpetuate the sense of partnership and teamwork that exists among our Participating Managing Directors (PMDs), who are our most senior

employees, by ensuring that our NEOs (all of whom are PMDs) participate in compensation plans, programs and other benefits that are provided broadly to other PMDs; and

- To permit, to the extent deemed appropriate by our Compensation Committee, the bonuses paid to our NEOs to be tax deductible to us as "qualified performance-based compensation" under Section 162(m) of the Internal Revenue Code (Section 162(m)).

Defendants Report Stellar Financial "Results" That Were Only Achieved By Excessive Risk-Taking For Short Term Gains Rather Than the Company's Long-Term Health

45. In addition to issuing false and misleading statements regarding the Company's compensation practices, Defendants issued false and misleading statements regarding the fundamental financial health of the Company.

46. For instance, Defendants reported that the Company's revenue grew from $29 billion in 2004 to $87 billion in 2007. Further, Defendants reported that the Company's net income increased from $4.5 billion in 2005 to $11 billion in 2007 and earnings per share increased from $8.92 per share in 2004 to $24.73 per share in 2007.

47. As was later revealed, these "positive" results were achieved only by concealing the Company's significant exposure to risky loans and credit risks and through the abandonment of meaningful internal controls.

48. The true status of the Company started to be revealed when Defendants caused the Company to report that its revenue declined by $34 billion, or over 30%, in 2008. Further, Defendants reported that net income plummeted by $9.3 billion, or over 80%. Lastly, Defendants reported that earnings per share collapsed by $20.26 per share, or over 80%. The Company's shockingly-poor 2008 results, however, would prove to be short-lived due to the federal government's unprecedented efforts to prop up the entire economy system generally, and Goldman specifically.

Goldman Requires $10 Billion in Federal Taxpayer Monies to Survive

49. In 2008, the financial markets of the United States collapsed, credit became scarce, and the value of investments plummeted. Of particular note, securities backed by subprime mortgages, which had fueled growth over the last decade, suddenly became "toxic" as distressed homeowners began defaulting on loans, interest rates increased, and the value of residential real estate collapsed.

50. To save the U.S. economy (and the nation's largest banks who, in large part, created the credit bubble because their officers were highly motivated to increase short-term profits at the expense of the long-term health of the companies), the federal government enacted the EESA, which provided the U.S. Treasury Department with $700 billion to aid financial institutions under TARP. Essentially, TARP provided government funds to prevent the collapse of the world's economy and this country's largest banks, and enable such companies to remove so-called "toxic" assets from their books.

51. In October 2008, Defendants accepted a $10 billion TARP loan for Goldman. These massive TARP funds, however, came with significant restrictions. Among other things, corporations such as Goldman that accepted TARP dollars were subject to oversight by the federal government, were restricted on their ability to pay out generous compensation, and were required to provide shareholders with an advisory vote on compensation policies (so-called "say-on-pay"). Eager to rid themselves of such restrictions and continue their way of life, Defendants announced the Company's intention to pay back the TARP loan as soon as it could do so.

52. However, the direct TARP loan to Goldman was not the only source of federal relief provided to Goldman. Indeed, in the fall of 2008, the Federal Deposit Insurance Company ("FDIC") enabled Goldman to generate $29 billion in cash by issuing FDIC insured debts

through the Temporary Liquidity Guarantee Program. That program sought to create liquidity by insuring debt issued by certain qualifying financial institutions such as Goldman. Stated another way, the federal government and U.S. taxpayers were “backstopping” Goldman’s debt.

53. According to *Barrons*, “participants probably are saving about two percentage points in annual interest costs by selling debt with FDIC guarantees, rather than by issuing debt on their own. For Goldman, this could add up to $600 million in yearly savings.” *See* Andrew Barry, *How Do You Spell Sweet Deal? For Banks, It's TLGP*, Barron’s (April 20, 2009).

Goldman Also Is Thrown a Lifeline Via The Bailout of AIG

54. Critically, Goldman also received federal funds from counterparties with which it had entered into financial contracts when such counterparties used federal funds to pay their obligations to Goldman. Most notably, Goldman Sachs received an astounding ***$13 billion*** of taxpayer money when insurance giant AIG used TARP funds to satisfy certain financial contracts with the Company.

55. AIG, operated primarily as a life and general insurance company until the 1980s when AIG created AIG Financial Products Corp. (“AIGFP”), which, at its essence, insured risky trades in complex securities made by other banks. AIGFP agreed to assume the risk of billions of dollars in Goldman trades through credit default swaps, which are insurance-like instruments. Under credit default swaps, AIGFP received a series of payments from counterparties in return for AIGFP agreeing to insure the counterparties for any losses suffered in the event that an underlying security is downgraded or defaults. If the underlying securities are never downgraded or never default, then AIGFP collects a profit from its counterparties’ regular payments.

56. Credit default swaps also require AIG to pay the counterparties cash collateral if certain events occurred that cast doubt on AIGFP's ability to pay the counterparty in the event of a default, such as a credit rating downgrade of AIG.

57. As should have been evident to Defendants at the outset, the protection AIG offered was an illusion. Although credit default swaps are similar to insurance contracts, they are not regulated like insurance contracts. Consequently, AIGFP was not required to hold reserves to cover losses as it would be if it sold insurance policies. If AIGFP did not have the cash to honor its obligations under the credit default swaps with Goldman, then Goldman would bear the entire risk of its securities losing value. Thus, in contracting with AIG, Goldman bore the risk that AIG would go bankrupt. Accordingly, valuing these AIG contracts at 100% of their nominal value always carried some risk, but particularly when AIG was experiencing a run-on-the-bank, they steadily, then quickly, became virtually worthless (assuming a free market not propped up by the federal government).

58. When the market for credit and asset backed securities collapsed, AIG did not have sufficient capital to pay its obligations under the credit default swaps. Beginning as early as the third quarter of 2007 and continuing through 2008, AIG's financial condition deteriorated significantly. This caused credit ratings agencies to downgrade AIG's credit rating. Consequently, AIGFP had to post collateral to satisfy its obligations under its credit default swaps contracts. But by later summer 2008, AIGFP did not have sufficient liquidity to post the required collateral and was on the verge of defaulting on its obligations to credit default swaps counterparties, which would likely have forced AIG into bankruptcy.

59. On September 16, 2008, in response to the potentially significant adverse effects on the economy if AIG failed, the Federal Reserve Board and the U.S. Treasury Department

authorized the Federal Reserve Bank of New York ("FRBNY") to lend up to $85 billion to assist AIG in meeting its obligations.

60. The magnitude of AIG's folly required even more capital. In addition to the $85 billion FRBNY loan AIG received, the Treasury Department injected another $40 billion into AIG by (1) purchasing newly-issued AIG preferred shares through TARP's capital purchase program in November 2008, (2) purchasing two AIG divisions for $30 billion in March 2009, and (3) purchasing another $50 billion in toxic assets from AIG.

61. The federal government's efforts prevented AIG from entering bankruptcy, where creditors such as Goldman would have received a fraction of the amounts AIG owed them. Instead, AIG (using government monies) repaid Goldman in full. The AIG securities lending unit paid Goldman $4.8 billion, Maiden Lane III (an entity created to unwind AIGFP's credit default swaps) paid Goldman $5.6 billion, and AIG posted another $2.5 billion in collateral to Goldman. In total, AIG funneled nearly ***$13 billion*** of government money to Goldman. This $13 billion in revenues created a material percentage of the Company's 2009 earnings upon which 2009 bonuses would be based. This was a direct transfer of wealth from U.S. taxpayers to Goldman and cannot be attributed to the performance of Goldman employees.

Defendants Issue False and Misleading Statements Regarding AIG and the Significance of TARP to the Company's Survival

62. In connection with the bailout of the U.S. financial system in the fall of 2008, Defendants caused the Company to issue false and misleading statements regarding its susceptibility to the financial well-being of AIG.

63. For instance, in an investor conference call in September 2008 (at the height of the AIG panic), defendant Viniar stated the following:

> Without giving exact numbers, let me just tell you how we think about this. AIG and Lehman, big important financial institution counterparties to Goldman Sachs.

> We did and we do a lot of business with both of them, as we do with all other major financial institutions. The way we do business with financial institutions is by having appropriate daily margin terms. That is how we are able to do the volume of business with each other that we do. And that goes for AIG, Lehman, and also Morgan Stanley, and JPMorgan, and Citi, and UBS, and Credit Suisse. That is how we manage our risk. In addition to the margin terms, we augment our risk management with appropriate hedging strategies. You heard at the beginning of my remarks that we believe one of the biggest challenges we have is to avoid large concentrated exposures; and we took that very much into account in managing our credit exposures to Lehman and to AIG, as well as we do with any other financial institution. ***Given that, what I would tell you is given the outcome at Lehman and whatever the outcome at AIG, I would expect the direct impact of our credit exposure to both of them to be immaterial to our results.***

64. These sentiments were echoed more than a year later by defendant Blankfein in an October 10, 2009 *Journal* Article entitled "The Bank Everyone Loves to Hate." In the article, Blankfein was quoted as saying that the potential impact of an AIG bankruptcy on Goldman was "***negligible***" and that he was "not worried about it."

65. Moreover, Blankfein told *Vanity Fair* magazine in an article published in November 2009 that Goldman "could have" survived the recent financial turmoil on its own without government help. Goldman's President and COO, defendant Cohn, similarly claimed, "***we would not have failed***."

Goldman's True Exposure Is Revealed

66. On October 28, 2009 in an article entitled "Goldman's Lies of Omission On AIG Implosion" author Janet Tavakoli took issue with not only the statements quoted above from Viniar, but also the statements from Blankfein. Ms. Tavakoli's article reveals that "Goldman's business exposure to AIG posed both credit risk and reputation risk" and that Defendants ***"should have plainly stated that [Goldman] was owed billions in additional collateral from AIG***."

67. Defendants' false and misleading statements were further contradicted when, on December 5, 2009, it was revealed by U.S. Treasury Secretary Timothy Geithner that in fact

Goldman would not have survived but for the Company's receipt of ***$10 billion*** in federal taxpayer funds. As Mr. Geithner stated: "***None of the [largest banks] would have survived***" had the government stood aside and let the crisis run its course. "***The entire U.S. financial system and all the major firms in the country***…were at that moment at the middle of a classic run, a classic bank run."

68. Consequently, it is apparent that not only were Defendants' statements regarding paying for performance misleading, as clearly the "performance" that Defendants were being excessively compensated for was fictitious and fueled by excessive risk-taking rather than the long-term health of the Company, but that Defendants' statements regarding AIG and the viability of the Company but for TARP monies were false and misleading as well.

69. Further, as mentioned above, throughout the Relevant Period, Director Defendants have caused the Company to set aside monies to pay compensation for employees at the Company. From 1999-2008 that percentage has not varied from the range of 44-49% of the revenues.

70. As of September 25, 2009, Director Defendants had reserved for issuance to company employees almost ***$17 billion***, and is reported to be on track to hand out compensation in excess of ***$22 billion*** this year alone.

71. Director Defendants base this extravagant compensation bonanza on so-called record "revenues" generated by Goldman Sachs since the collapse of the U.S. financial markets in 2008. However, Goldman's success this year has ***not*** been the product of the skill and business acumen of the Company's senior officers, but is, generally, attributable directly to the multi-trillion dollar infusion of capital by the American taxpayers to bail out the entire financial services industry – including Goldman and AIG. Specifically, a material percentage of

Goldman's profits this year stem from the $13 billion federal AIG-related wealth transfer to Goldman.

72. In essence, defendants consistently have concealed the same items time and again in their public statements in order to continue to ensure the continued way of life that Goldman's senior officers have grown accustomed to. Their misrepresentations are essentially the same, they only change with the circumstances. Prior to the financial crisis of 2008, in order to justify massive executive compensation, Defendants concealed that the Company's financial "results" were achieved only through its significant exposure to risky subprime loans and other major credit risks. When the inevitable occurred and the financial crisis became apparent, Defendants concealed the extent of the Company's exposure to AIG in connection with these same credit risks. Following the financial crisis, Defendants have continued to dismiss Goldman's exposure to AIG and claimed that TARP funds were not necessary to save the Company. Now, perhaps worst of all, Defendants have concealed that their senior officers' compensation is the direct result of "revenues" consisting of taxpayer money that was only required as the result of Goldman's and AIG's risky exposures. In other words, the thing that Defendants have lied about all year – their exposure to and need for AIG to be bailed out – has created a material percentage of the Company's revenues, which in turn, have led to the planned munificent bonuses.

73. Director Defendants have announced that they plan to dole out the same percentage of revenues in the form of "record" bonuses as they always have. The AIG portion of the bonus is not based upon the performance of its executives or its employees. Rather, it is the result of U.S. taxpayers' (forced) largesse. Historically, Goldman did not rely on the federal government's vast assistance to achieve its results. By applying the historical compensation methodology to 2009 bonuses, the Board has failed to exercise its business judgment, and/or has

not exercised appropriate business judgment, has acted in bad faith and has breached its fiduciary duties to Goldman and its stockholders.

Goldman Sachs Maintains Its Compensation to Net Revenue Ratio Although the Company's 2009 Revenue is Attributable to the U.S. Government Bailout of the Financial Industry

74. Goldman Sachs earns its revenue from four areas: investment banking, trading and principal investments, asset management and securities services, and net interest income. Investment banking revenue comes from, *inter alia*, providing merger and acquisition advisory services and underwriting equity and debt. Trading and principal investment income is derived from such sources as trading equities, commodities, credit products, mortgage related securities, and interest rate products. Asset management income comes from, *inter alia*, providing investment advisory services, financial planning, and investment products to clients. Interest income comes from, *inter alia*, money deposited with banks and lending securities.

75. Since its IPO, Goldman Sachs has become increasingly dependent on trading activities to generate firm revenues. For example, in 1999, revenue from trading and principal investment accounted for just 43% of the Company's total revenues. In 2009, it accounts for over 67% of Goldman Sachs's revenues:

Revenues	2009 (YTD)	2008	2007	2006	2005	2004	2003	2002	2001	2000	1999
Investment banking	3,162	5,179	7,555	5,613	3,599	3,286	2,400	2,572	3,677	5,339	4,359
Trading and principal investments	**23,829**	**8,095**	**29,714**	**24,027**	**15,452**	**11,984**	**8,555**	**7,297**	**9,296**	**6,528**	**5,758**
Asset management	2,928	4,672	4,731	4,527	3,090	2,655	1,917	1,716	1,545	3,737	2,524
Net Interest Income	5,639	4,276	3,987	3,498	3,099	3,026	3,151	2,401	1,293	986	704
Revenues	35,558	22,222	45,987	37,665	25,240	20,951	16,023	13,986	15,811	16,590	13,345

76. Goldman Sachs's reliance on revenues generated from trading and principal investments has at least one significant implication. Assets held by Goldman Sachs pursuant to its trading and principal investments strategy are valued on a mark-to-market basis, meaning the

market value of the assets is continually assessed. Where the asset increases in value, revenue for Goldman Sachs increases and where the asset decreases in value, Goldman Sachs must book a loss.

77. Often, the valuation of some assets is highly speculative, and dependent on market forces. As such, Goldman Sachs's reported revenue from trading and principal investments is highly dependent on market forces and, indeed, can be inflated by overvaluing particular assets.

78. In 2009, Goldman Sachs' revenue from trading and principle investments was significantly propped up by the government's bailout of Goldman Sachs and the financial industry as a whole. Nevertheless, Goldman is on track to award roughly the same percentage of net revenue as compensation to its employees.

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Net Revenue (bn)	$13.3	$16.6	$15.8	$14.0	$16.0	$21.0	$25.2	$37.7	$46.0	$22.2
Compensation	$6.5	$7.8	$7.7	$6.7	$7.4	$9.5	$11.7	$16.5	$20.2	$10.9
Comp as % of Rev.	48%	47%	49%	48%	46%	46%	47%	44%	44%	48%

79. The problem with Goldman Sachs's impending record-setting 2009 compensation payouts is that the Company's surge in reported revenue, from which the bonuses are drawn, is not the product of the performance of the executives whom the Company stands poised to reward, but is the result of a trillion dollar investment by the American taxpayers to stabilize the financial industry. Goldman Sachs has been able to regain its financial footing only because of an infusion of capital from the federal government – both in the form of a direct loan under the TARP program, and through the ability of other firms such as AIG to satisfy their financial obligations to the Company through the use of TARP funds. As one former managing director of Morgan Stanley recently commented, "the profits these companies are distributing now as

compensation are largely based on actions that the government took to stabilize and bailout the financial system. To argue that their profitability is due to their own hard work is simply not true." Lauren Pearle and Zunaira Zaki, Big Pay at Banks, but Money from Taxpayers?, ABCNews.com (Oct. 30, 2009).

80. Defendants have breached and continue to breach their fiduciary duties to the Company and its public stockholders by routinely causing the Company to pay nearly half of its reported revenues as compensation without regard to whether the Company's revenues, in fact, can properly be attributed to the productivity and performance of Goldman Sachs employees.

81. Paying employees such a huge portion of net revenue that Goldman Sachs earned in large part from the largesse of U.S. taxpayers in 2009 constitutes waste and failure to look at other metrics to calculate compensation is abdication of the directors' fiduciary duty.

SHAREHOLDER OPPOSITION TO DEFENDANTS' COMPENSATION

82. Despite Defendants' public protestations, there has been substantial shareholder opposition to their compensation practices.

83. For instance, in a November 23, 2009 *Journal* article by Susanne Craig, "*Goldman Holders Miffed at Bonuses*," the paper reported that "[s]ome of the largest shareholders in Goldman Sachs Group Inc. have urged the Wall Street firm to reduce the size of its bonus pool, arguing that it should pass along more of its blockbuster earnings to investors . . ." And in a December 1, 2009 *Bloomberg.com* article by Alice Schroeder, "*Arming Goldman With Pistols Against Public*," the website reported that Goldman bankers were even buying firearms to defend themselves against a "populist uprising" over its obscene bonuses.

84. In response to shareholder opposition to the size of the Company's bonus pool, Goldman began meeting with large shareholders in an effort to ward off investor backlash. For

instance, in a December 4, 2009 *Journal* article by Susanne Craig, "*Goldman Takes Offensive on Pay*," the paper reported that top Goldman officials scheduled a series of meetings with large investors to explain the Company's pay levels. According to the same article, these meetings "are a first for Goldman[.]"

85. The December 4, 2009 article also hints at a possible ulterior motive for the Company in meeting with its shareholders to discuss compensation levels. According to people familiar with these discussions, "Goldman has also been asking investors how they make voting decisions on shareholder proposals . . . Some investors say the questions suggest Goldman is developing a strategy to navigate any shareholder proposals aimed at reining in pay." Thus, while Goldman is purporting to be concerned with shareholder feedback on its compensation policies, the Company is actually using discussions with its shareholders to aid its efforts to avoid compensation reform.

86. On December 10, 2009, Goldman Sachs announced some superficial "reforms" to its compensation practices that do nothing to actually reign in pay or in fact tie executive compensation to employee performance. In addition to committing to providing shareholders with an annual advisory vote on executive compensation, Goldman Sachs announced that for 30 employees (out of a total of over 14,000 in the United States) the Company would only pay incentive based compensation in the form of equity with an extended vesting period. These "reforms," however, are largely window dressing and do not reflect any effort by the Company's Board to tie compensation to the actual performance of firm employees. Indeed, in announcing these reforms, CEO Blankfein explained that the goal of the Company's compensation policy is designed to ensure that "compensation accurately reflects the *firm's* performance" (emphasis supplied), wholly ignoring the actual performance or merit of the individual employees. The

Company's December 10 announcement, therefore, just reconfirms the Defendants' breach of their fiduciary duties.

DERIVATIVE AND DEMAND ALLEGATIONS

87. Plaintiffs bring this action derivatively in the right and for the benefit of Goldman to redress the breaches of fiduciary duty and other violations of law by Defendants.

88. Plaintiffs have not made a demand upon the board of Goldman to take remedial action on behalf of Goldman against the Defendants because the board participated in, approved, and/or permitted the wrongs alleged herein and is therefore not is not disinterested and lacks sufficient independence to exercise business judgment.

89. Plaintiffs will adequately and fairly represent the interests of Goldman and its shareholders in enforcing and prosecuting its rights.

90. The Board currently consists of the following twelve (12) individuals: defendants Blankfein, Cohn, Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons. Plaintiffs have not made any demand on the present Board to institute this action because such a demand would be a futile, wasteful and useless act, for the following reasons:

a. During the Relevant Period, defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons each served as members of the Compensation Committee. Pursuant to the Company's Compensation Committee Charter, members of the Compensation Committee are responsible for, *inter alia*, determining and approving the compensation of the Company's CEO and other executive officers and making recommendations to the Board with respect to incentive compensation and equity-based plans that are subject to Board approval. Further, the Compensation Committee Defendants drafted and

approved the various compensation philosophies enumerated above. Defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons breached their fiduciary duties of due care, loyalty, and good faith, because the Compensation Committee, *inter alia*, made compensation decisions that were wholly divorced from the performance of the Company as detailed herein. Accordingly, their personal potential liability for the acts alleged herein casts doubt about their ability to disinterestedly evaluate a demand. Thus, demand was not required upon Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons;

b. The Compensation Committee Defendants also breached their fiduciary duties by engaging in conduct which is not protected by the business judgment rule. Specifically, as discussed herein, the Compensation Committee Defendants have elected to award 2009 bonuses by applying the same model as they have in prior years. Applying the same model to 2009 "earnings" (which were directly subsidized by U.S. taxpayers) as was used historically was an act devoid of appropriate business judgment done in bad faith as a primary source of "earnings" for the Company came from federal taxpayer monies through the bailout of AIG and not through the performance of Goldman employees. Accordingly, their personal potential liability for the acts alleged herein casts doubt about their ability to disinterestedly evaluate a demand. Thus, demand was not required upon Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal, Schiro, and Simmons;

c. During the Relevant Period, defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro served as members of the Audit Committee. Pursuant to the Company's Audit Committee Charter, members of the Audit Committee are responsible for, *inter alia*, overseeing the integrity of the financial statements of the Company and overseeing the Company's internal controls. Defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro breached their fiduciary duties of due care, loyalty, and good faith, because the Audit Committee, *inter alia*, allowed or permitted the above-failures to occur in the Company's internal controls and allowed or permitted the above false and misleading statements to be issued. Therefore, defendants Bryan, Dahlback, Friedman, George, Gupta, Johnson, Juliber, Mittal and Schiro face a substantial likelihood of liability for their breach of fiduciary duties and any demand upon them is futile;

d. The principal professional occupation of defendant Blankfein is his employment with Goldman as its CEO, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. Thus, defendant Blankfein lacks independence, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action; and

e. The principal professional occupation of defendant Cohn is his employment with Goldman as its President and COO, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits. Thus, defendant Cohn lacks independence, rendering him incapable of impartially considering a demand to commence and vigorously prosecute this action.

91. As a direct and proximate result of Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

COUNT I
AGAINST DIRECTOR DEFENDANTS FOR WASTE

92. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

93. The Defendants are liable for waste for approving bonuses in 2009 to Goldman employees in an amount so disproportionately large as to be unconscionable.

94. No person acting in good faith on behalf of Goldman could approve such a large amount of bonuses to Goldman employees.

95. Goldman's performance was not based on the performance of its employees, but rather on the largesse of U.S. tax payers. Thus, to pay Goldman employees almost 50% of net revenues constitutes waste.

96. Goldman and its stockholders have suffered and will continue to suffer harm as a result of the Defendants' wasteful conduct.

COUNT II
AGAINST DIRECTOR DEFENDANTS FOR BREACH OF THE DUTY OF LOYALTY

97. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

98. Defendants had a fiduciary duty to continually assess Goldman's compensation scheme to ensure that it reasonably compensated employees and was not wasteful.

99. Defendants wholly failed to carry out their duty to analyze Goldman's compensation practices, but instead robotically, without analysis, set aside a percentage of net revenues (roughly 44% to 49%) for compensation regardless of employee performance.

100. In 2009, because large portion of its “revenue” came from the U.S. government via AIG, paying oversized bonuses to Goldman employees elevates the interests of senior Goldman employees over the interests of the Company and its shareholders, and is not a product of the valid exercise of business judgment.

101. Furthermore, in 2009 nearly 70% of Goldman’s revenue came from trading and principal investments. The U.S. government, provided capital to purchase these assets and then pumped money in the economy to inflate the value of these assets is responsible for this revenue.

102. The largesse of U.S. taxpayers, not the performance of executives, contributed to net revenue at Goldman Sachs. Failure to apply true business judgment and to reanalyze Goldman’s compensation scheme in light of these facts constitutes an abdication of Defendants’ fiduciary duties.

103. Defendants wholly abdicated their fiduciary duty ensure a compensation packaged that did not harm shareholders.

104. Goldman and its stockholders have suffered and will continue to suffer harm as a result of the Defendants’ breach of fiduciary duty.

105. Goldman and its stockholders have suffered and will continue to suffer harm as a result of the Defendants’ breach of fiduciary duty.

COUNT III
AGAINST EXECUTIVE OFFICER DEFENDANTS
FOR UNJUST ENRICHMENT

106. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

107. By their wrongful acts and omissions, the Executive Officer Defendants received payments from Goldman in the form of compensation that was unwarranted and was the product

of the breach of fiduciary duty by themselves and the other members of Goldman's Board of Directors. By accepting such payments, the Executive Officer Defendants were unjustly enriched at the expense of and to the detriment of Goldman.

108. Plaintiffs, as shareholders and representatives of Goldman, seek restitution from the Executive Officer Defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits and other compensation obtained by them, and each of them, from their wrongful conduct and fiduciary breaches.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment as follows:

A. Against all Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties;

B. Directing Goldman to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company's By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board

C. Awarding to Goldman restitution from the Executive Officer Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by the Defendants;

D. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: December 14, 2009

GRANT & EISENHOFER P.A.

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