UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE PENN WEST PETROLEUM LTD. SECURITIES LITIGATION	Master File No. 14-cv-6046-JGK **JURY TRIAL DEMANDED**

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

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1. Lead Plaintiffs The City of Miami Fire Fighters' and Police Officers' Retirement Trust and Avi Rojany (collectively "Lead Plaintiffs" or "Plaintiffs"), by their undersigned attorneys, bring this action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), and SEC Rule 10b-5 promulgated thereunder, on behalf of themselves and all other similarly situated purchasers of the securities of Penn West Petroleum Ltd. ("Penn West" or the "Company") from February 18, 2010 through July 29, 2014, inclusive (the "Class Period").

2. Lead Plaintiffs allege the following upon personal knowledge as to themselves and their own acts, and upon information and belief as to all other matters. Lead Plaintiffs' information and belief is based on, among other things, the independent investigation of court-appointed Co-Lead Counsel Bernstein Litowitz Berger & Grossmann LLP and Glancy Binkow & Goldberg LLP. This investigation included, among other things, a review and analysis of: (i) public filings by Penn West with the U.S. Securities and Exchange Commission (the "SEC"), including the Company's July 29, 2014 announcement of its intention to restate its financial results and its September 18, 2014 restatement of financial results; (ii) public reports and news articles; (iii) research reports by securities and financial analysts; (iv) economic analyses of securities movement and pricing data; (v) transcripts of Penn West's investor calls; (vi) consultations with relevant experts; and (vii) other publicly available material and data identified herein. Co-Lead Counsel's investigation into the factual allegations contained herein is continuing, and many of the facts supporting the allegations contained herein are known only to the Defendants or are exclusively within their custody or control. Lead Plaintiffs believe that further substantial evidentiary support will exist for the allegations contained herein after a reasonable opportunity for discovery.

I. PRELIMINARY STATEMENT

3. This case is about an intentional accounting fraud perpetrated over seven years by Penn West's most senior officers. Penn West is one of the largest oil producers in Canada. As alleged in detail below, prior to and during the Class Period, Penn West struggled to keep its operating costs under control. This was a serious problem for Penn West, as operating expense was one of the critical financial metrics that investors look to when gauging the value of an oil company. Since the price of oil is set by the market, one of the only ways an oil company can differentiate itself and increase its profit margin is by lowering its costs and producing oil more efficiently than its competitors. The Company's poor cost structure also had a material negative impact on two of its other key financial metrics, both of which deteriorated as operating costs increased: (1) its "funds flow," which generally represented its cash flow from operating activities; and (2) its "netbacks," which reflected the amount of revenue the Company realized per barrel of oil, minus the costs associated with bringing that barrel of oil to market. For much of the Class Period, the Company's operating costs, and thus its funds flow and netbacks, lagged behind its competitors.

4. The Company's struggle to control its operating costs caused investor concern, making it imperative for Penn West to show improvement in these areas. As analysts reported, during the Class Period, "Penn West was under intense pressure . . . to show that it was slashing its operating costs and improving its operations." Accordingly, the Company's most senior executives repeatedly assured investors that reducing operating costs was their paramount focus. For instance, during investor conference calls, the Company's CEO, Defendant David Roberts ("Roberts"), stated that reducing costs was "critically important," he "recognize[d] we've got a problem," and thus he had "a ***laser focus*** on that."

5. Unfortunately for investors, rather than decrease operating costs through legitimate means, Penn West's senior officers turned to fraud. Beginning in 2007, the Company's senior executives, including its former CFO, Defendant Todd Takeyasu ("Takeyasu"), undertook an accounting scheme by which they systematically underreported the Company's operating expenses in dozens of SEC filings issued between 2007 and the first quarter of 2014. As the Company would ultimately admit in its July 29, 2014 press release announcing the need to restate its financial results, the fraud was driven principally by a scheme to improperly "reclassify" at least $625 million worth of operating expenses as either capital expenditures (which were expenditures to develop new oil wells) or royalties (which were payments to the Canadian government for the use of its land).[1]

6. In other words, after Penn West accounting staff had correctly entered the Company's operating expenses in the Company's books, senior executives intentionally altered these accounting entries by reclassifying hundreds of millions of dollars of operating expenses as either capital expenditures or royalties. This scheme artificially reduced the Company's operating costs and, in turn, falsely increased its reported funds flow, netbacks, and other measures of profitability. Moreover, this misconduct artificially inflated the Company's capital expenditures, thus making it appear as though Penn West was investing more money in oil wells to drive future production.

7. Notably, Defendants opportunistically increased the size of the fraud when the Company encountered challenging market conditions that put upward pressure on its costs and squeezed its margins. For example, in 2009, as the Company's operations were strained by the plunging price of oil caused by the financial crisis, the only way Penn West could improve its

[1] Unless otherwise indicated, all dollar amounts are in Canadian dollars.

bottom line was by slashing costs. Accordingly, the Company improperly reclassified at least $118 million of operating expenses as capital expenditures in 2009 – an amount which represented a substantial increase in the size of Defendants' fraud from previous years. And after Penn West faced new operational difficulties beginning in mid-2011, the Company again increased the size of the fraud, improperly reclassifying nearly $200 million of operating expenses in 2012, and did the same in 2013. These accounting improprieties had a material impact on Penn West's key financial metrics, causing its operating expenses to be underreported by as much as 26%, net income to be inflated by as much as 82%, capital expenditures to be inflated by as much as 64%, funds flow to be inflated by as much as 12% and netbacks to be inflated by as much as 8%.

8. Through the fraud, Defendants not only hid the true extent of Penn West's problems, but also repeatedly generated investor optimism that the Company was making significant progress and putting its financial house in order. For example, in announcing its year-end 2013 financial results, Penn West emphasized that as a result of its purported "relentless cost control," it had successfully cut operating costs by more than 25% in the past year. Similarly, the Company heralded its first quarter 2014 results as "a clear step forward," and underscored that its increased "[f]unds flow for the first quarter of 2014 . . . is mainly due to . . . lower operating and general and administrative costs." Analysts remarked on the Company's supposed improvement, reporting that "Costs Are Improving – A Positive Sign," praising the Company for its "higher than expected cash flow," and noting that "Cost Savings and Improved Operating Efficiencies Remain[] [the] Primary Focus" of Penn West's renewal.

9. As unsuspecting investors would soon learn, however, Penn West's "recovery story" was largely an accounting fiction. On March 24, 2014, Penn West unexpectedly announced that, after two decades with the Company and nine years as its CFO, Defendant Takeyasu was

"stepping down" from his position as CFO effective immediately. No reason was given for his sudden departure, and Takeyasu currently remains unemployed. The Company also announced that David Dyck, an outsider, would take Takeyasu's place as Penn West's CFO, effective May 1, 2014.

10. Dyck discovered the fraud almost immediately. On July 29, 2014, Penn West shocked the market by announcing that, based on information that "came to [Dyck's] attention" shortly after he took over, the Company's Audit Committee determined that Penn West was required to restate its financial statements for at least 2012, 2013, and the first quarter of 2014. As Penn West explained, the restatement was necessary because the Audit Committee, prompted by Dyck, had discovered several hundred million dollars' worth of improper operating expense reclassifications made during at least "2014 and the four previous fiscal years."

11. Significantly, in its July 29 announcement and the restatement later issued on September 18, 2014 (the "Restatement"), Penn West left no doubt that the fraud was committed at the highest levels of the Company – and pointed the finger squarely at Defendant Takeyasu, among others. As the Company admitted, its "***senior finance and accounting personnel*** [were] ***responsible*** for the ***adoption and use***" of the "***practices***" through which the Company misstated its financial results, and explained that those senior executives "have ceased to be employed by the Company." As the Company further admitted, all of the reclassifications of operating expense to capital expenditure "***occurred at the corporate level***" and lacked justification or support. Indeed, as Penn West stated, for many of the reclassifications, "***little if any analysis was performed at the time of the entries*** to determine which items ought to be capitalized. In some cases, there appeared to be ***no contemporaneous support for the decision to reclassify operating expenses*** . . . ."

12. The market reacted with astonishment. Analysts reported that "[o]ur review of how Penn West misstated its numbers is ***disconcerting, to say the least***," called the misconduct "***very troubling***," noted that it "affects most of the cash-based metrics that oil and gas investors care about" and concluded that it had "***the appearance of a concerted effort to 'make the numbers.'***" The financial press quoted Lynn Turner, who served as the chief accountant for the SEC, as stating that "Penn West's accounting 'is like what happened at both WorldCom and Health South,'" two notorious accounting frauds that also involved the reclassification of operating expense as capital expenditures. Market commentators also reported that the revelation of these accounting improprieties completely changed their assessment of the Company, stating, "***[W]hile I did turn bullish on Penn West after the very solid [recent] performance, this news has made me do a 180 degree turn***."

13. In response to the disclosure of Defendants' fraud, Penn West's stock price immediately collapsed the next trading day, falling 15% on the year's highest volume, from USD $9.15 per share to close at USD $7.85 per share on July 30, 2014. This stock price decline destroyed hundreds of millions of dollars in shareholder equity in a single day.

14. The Company has not recovered from the fraud alleged herein. On November 5, 2014, Penn West announced a surprise loss for the third quarter of 2014, accompanied by a dramatic 22% decline in its funds flow. Most recently, on December 17, 2014, the Company announced that it was slashing its 2015 capital budget by approximately $215 million and cutting its 2015 dividend by approximately $160 million "[i]n order to maintain financial flexibility" in the face of declining oil prices, and indefinitely suspending its dividend reinvestment program. The Company's stock price also has never recovered and, as of the filing of this Complaint, trades at USD $2.33 per share.

II. JURISDICTION AND VENUE

15. The claims asserted herein arise pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

16. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

17. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act, 15 U.S.C. § 78aa(c) as the Company's trust units and later its common stock traded on the New York Stock Exchange ("NYSE") at all relevant times.

18. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the mails, interstate telephone communications, and the facilities of a national securities exchange.

III. THE PARTIES

A. Plaintiffs

19. On October 29, 2014, the Court appointed The City of Miami Fire Fighters' and Police Officers' Retirement Trust (the "Retirement Trust") and Avi Rojany as Lead Plaintiffs. The Retirement Trust is a public retirement system that provides defined benefit pension payments to the retired fire fighters and police officers of Miami, Florida. As of December 31, 2013, the Retirement Trust held nearly $1.5 billion on behalf of its beneficiaries. As set forth in the certification already on file with the Court and attached as Exhibit 1 to this Complaint, the Retirement Trust purchased Penn West common stock during the Class Period, and suffered damages as a result of the violations of federal securities laws alleged herein.

20. Avi Rojany is a resident of Los Angeles, California. As set forth in the amended certification attached as Exhibit 2 to this Complaint, Mr. Rojany purchased or otherwise acquired Penn West common stock and call options and sold/wrote Penn West put options during the Class Period, and suffered damages as a result of the violations of federal securities laws alleged herein.

B. Defendants

21. Defendant Penn West is one of the largest conventional oil and natural gas producers in Canada. The Company is headquartered in Calgary, Alberta. Prior to January 1, 2011, Penn West operated as an income trust, and its "trust units" were cross-listed on the NYSE under the ticker symbol "PWE" and on the Toronto Stock Exchange ("TSX") under the ticker symbol "PWT." On January 1, 2011, Penn West changed its corporate form and began to operate as a corporation, and its trust units were converted to shares of common stock. Thereafter, its common stock continued to be cross-listed on NYSE under the symbol "PWE" and on the TSX under the ticker symbol "PWT." As Defendants were aware, during the Class Period, U.S. analysts routinely attended Penn West's live and telephonic conferences, published Defendants' statements, and reported on Penn West's financial condition. Also, as Defendants were aware, during the Class Period, the majority of Penn West's publicly available securities were held by U.S. investors. As Defendant Andrew told investors in August 2010, "65% of our shareholders are actually south of the 49th parallel." During the Class Period, the volume of the Company's securities traded on the NYSE was consistently higher, often twice as high, as the volume traded on the TSX.

22. Defendant William E. Andrew ("Andrew") served as CEO of Penn West from May 2005 through August 10, 2011, and President of Penn West from 1995 through January 10, 2008. Andrew certified Penn West's materially false and misleading SEC filings from the beginning of

the Class Period through May 5, 2011, and he made materially false and misleading statements on numerous conference calls with investors during the same period.

23. Defendant Murray R. Nunns ("Nunns") served as CEO of Penn West from August 10, 2011 to June 19, 2013, as President from February 8, 2008 through June 19, 2013, and Chief Operating Officer from February 8, 2008 through August 10, 2011. From 2005 until the time of his tenure as CEO, Nunns also served on the Board of Directors of Penn West. Prior to joining Penn West, Nunns served at numerous oil companies, including Rio Alto Exploration Ltd. and Monterey Exploration, Ltd. Nunns certified Penn West's materially false and misleading SEC filings from August 10, 2011 through May 2, 2013, and he made materially false and misleading statements on numerous conference calls with investors from the beginning of the Class Period through May 2, 2013.

24. Defendant David E. Roberts ("Roberts") has served as Penn West's President, CEO, and as a director since June 19, 2013. Roberts has had a lengthy career in the oil and gas industry. Prior to becoming Penn West's CEO, Roberts served as COO and Executive Vice President of Marathon Oil Corporation. He also held numerous positions at Texaco for approximately two decades, including Director of Strategic Management of Texaco's Worldwide Upstream operations. Roberts certified Penn West's materially false and misleading SEC filings from August 8, 2013 through the end of the Class Period, and he made materially false and misleading statements on conference calls with investors during the same period.

25. Defendant Todd H. Takeyasu ("Takeyasu") served as Penn West's CFO from 2005 through March 24, 2014. According to a Penn West press release issued on February 8, 2008, "Mr. Takeyasu is an integral member of Penn West's senior management team and has been employed with Penn West in various senior roles since 1994." Prior to becoming CFO, he was

Penn West's Treasurer from 2001 to 2005. While holding these positions, Takeyasu also served as Vice President, and then was promoted to Senior Vice President, Finance and later to Executive Vice President, Finance. Takeyasu is a Certified Internal Auditor. Takeyasu certified Penn West's materially false and misleading SEC filings from the beginning of the Class Period through March 7, 2014, and participated in conference calls with investors, on which numerous false and misleading statements were made, during the same period.

26. Defendant Jeffery Curran ("Curran") served as Penn West's interim CFO from March 24, 2014 through May 1, 2014, and as a Vice President of Accounting and Reporting from 2005 through June 2014. He is a chartered accountant. Curran certified Penn West's materially false and misleading May 1, 2014 Form 6-K and participated in conference calls with investors, on which numerous false and misleading statements were made, from the beginning of the Class Period through May 1, 2014.

27. Defendants Andrew, Nunns, Roberts, Takeyasu, and Curran are collectively referred to herein as the "Individual Defendants." The Individual Defendants and Defendant Penn West are collectively referred to as "Defendants."

IV. SUMMARY OF THE FRAUD

A. Penn West's Key Financial Metrics

28. As noted above, investors were extremely focused on Penn West's costs because they were a critical driver of the Company's financial performance. The two most important categories of Penn West's costs are its capital expenditures (or "capex") and its operating expenses (or "opex").

29. A capital expenditure is made to develop or acquire a new revenue-generating asset, such as the cost of drilling a new oil well. In its financial statements, Penn West booked capital expenditures as an asset on its balance sheet, and then depreciated the value of the asset over its

useful life. Penn West maintained a line item for "Property, Plant & Equipment" ("PP&E") assets associated with its capital expenditures. PP&E assets were capital expenditures associated with developing wells that have more than a 50% chance of producing oil.

30. In contrast to capital expenditures, operating expenses are incurred in the course of producing oil from established wells. Operating expenses include, for example, the cost of running the well. Unlike capital expenditures, operating expenses were charged dollar-for-dollar against the Company's income during the financial reporting period in which they were incurred.

31. During the Class Period, investors paid careful attention to both operating expenses and capital expenditures because Penn West's outlays in these categories indicated whether the Company was operating its business efficiently, and whether it was spending its money wisely to drive future production. Investors generally viewed operating expenses as an expense category that should be strictly minimized, because it ate away at Penn West's profitability and operating cash flow without generating any new assets.

32. Thus, Penn West's senior executives repeatedly assured investors that decreasing the Company's operating costs was a top priority on which they were closely focused. For instance, during an August 10, 2012 conference call, Penn West Chief Operating Officer Hilary Foulkes ("Foulkes"), assured investors, "[W]e've been very active in addressing our costs, both capital expenditures and operating expenses." In a November 2013 press release, Penn West stated that its "long-term plan is centered on . . . effective cost control," and during a November 2013 investor call, Defendant Roberts emphasized that "[a] key focus of our go-forward business plan" was achieving "better costs." In March 2014, the Company's Investor Relations Manager, Clayton Paradis ("Paradis"), stated on a conference call with investors, "As we continue to execute on the

long-term plan, focusing on reducing these costs further and improving the overall profitability of the enterprise ***remains critically important.***"

33. In contrast to operating expenses, investors generally viewed Penn West's capital expenditures – and particularly its PP&E expenditures – as an important investment in the Company's future. This is because increased capital spending meant that the Company was drilling new oil-producing wells, thus building future oil production and revenues. For example, upon learning on January 10, 2013 that Penn West intended to reduce its capital expenditures budget, analysts at National Bank Financial reported that "Lower Capex Drives Lower Production and Cash Flow."

34. Penn West's operating costs directly impacted the Company's other key financial metrics. Most importantly, these expenditures affected Penn West's "funds flow," which the Company and its management sometimes referred to as "cash flow" in their public statements.[2] As noted above, funds flow essentially referred to the cash that the Company generated from its operating activities net of expenses.[3] As Penn West explained in its financial statements, funds flow was a "key financial metric" for several reasons. First, it measured the cash that Penn West generated from its operating activities, a critical barometer for any business. Second, the Company used its funds flow to fund its capital program, *i.e.*, its investments in new wells. Third, the

[2] On conference calls, Defendants often used the term "cash flow" interchangeably with "funds flow." Defendant Andrew described the Company's decision prior to the start of the Class Period to use the term "funds flow" instead of "cash flow" in reporting its quarterly results to be merely a change in terminology, stating, "It's because the powers that be in the accounting world said it's no longer cash flow. It's funds flow. That's all it is."

[3] Penn West's SEC filings provide the following definition: "Funds flow is cash flow from operating activities before changes in non-cash working capital and decommissioning expenditures. Funds flow is a measure of cash provided by operations during the period as an indicator of amounts which are, or are forecast to be, available to fund capital expenditures and dividend payments."

Company used its funds flow to fund its dividend, which was one of the features that made Penn West stock attractive to investors. Fourth, the Company used its funds flow to meet and retire its debt obligations, which was very important because Penn West was highly leveraged relative to its peers and operated in an industry generally characterized by higher debt levels. As Defendant Roberts aptly summarized on a November 6, 2013 conference call with investors, "***To be clear, our business is cash flow.***"

35. Operating expenses had a direct impact on the Company's funds flow. Specifically, operating expenses were deducted from funds flow. Thus, as operating expenses increased, funds flow decreased; conversely, as operating expenses decreased, funds flow increased. Capital expenditures, in contrast, were not factored into the calculation of funds flow, and therefore had no impact on Penn West's funds flow.

36. Another key financial metric for Penn West was the "netback" it achieved for its oil and gas sales. Netback was the revenue the Company realized per barrel of oil, minus the costs associated with bringing that barrel of oil to market, including operating costs and royalties. Royalties were payments that the Company made to the Canadian government to drill for oil on government land. This was a critical financial metric because it measured Penn West's net revenue production and the efficiency of its oil-producing operations.

37. Just as with funds flow, increased operating expenses had a direct impact on netbacks – the higher the operating costs, the lower the netback, and vice-versa. Capital expenditures, in contrast, did not impact the calculation of netbacks.

38. Penn West repeatedly acknowledged that these were its most important financial metrics. For example, during a November 6, 2013 conference call with investors, Defendant Roberts characterized "net backs per barrel and cash flow generation as two of the most important

of our core metrics." Penn West repeatedly stated in its financial statements that "[m]anagement utilizes cash flow, netbacks and operating netbacks to assess financial performance, to allocate its capital among alternative projects and to assess our capacity to fund distributions and future capital programs." During the Class Period, Penn West stated that the financial metrics summarized above had a direct impact on its stock price, and improving them was therefore the focus of the Company's "strategic plan." For example, Investor Relations Manager Paradis stated in March 2014 that:

> Our strategic plan is to focus on what we believe are ***four key drivers of shareholder value*** -- production per share growth, ***funds flow per share growth, netback per barrel growth, and solid capital structure*** and debt to fund flow metrics. All other inputs we are driving -- ***operating costs***, G&A costs, capital efficiency and portfolio rationalization -- ***are tied to these outcomes***.

39. When evaluating the financial position of oil and gas companies, analysts focus on metrics such as funds flow and operating cash flow instead of net income. Without adequate future cash, an oil and gas company would be financially inflexible, and if difficulties arose (including a significant decline in commodities prices), it could be unable to cover its debt obligations. In addition, oil and gas companies report very high levels of costs associated with non-cash items, such as depreciation, depletion, amortization, and deferred taxes, which reduce net income. For all of these reasons, funds flow and operating cash flow were more meaningful financial metrics than net income for Penn West investors.

B. Under Intense Pressure To Show Improving Cost Control, Penn West And Its Senior Officers Undertake A Massive Accounting Fraud

40. Prior to and during the Class Period, Penn West was under intense pressure to report improvements in the financial metrics summarized above. Penn West experienced significant difficulty reducing its operating expenses through legitimate means. As Roberts remarked in a January 23, 2014 conference call with investors, Penn West lacked basic processes and procedures

that were commonly used in the industry to keep operating costs in check: "[T]his is a company that did not have systematic operating costs control programs that I'm used to around things like chemicals, just basic procurement processes, power, so on and so forth." Thus, Defendant Roberts stated on November 6, 2013, Penn West had "been criticized, often fairly, for not" keeping its operating costs in line with the industry.

41. During the Class Period, Penn West's operating costs were often a drag on its operating cash flow and financial performance. For example, in August 2012 and January 2013, Penn West had to cut its capital expenditures budget when its cash flow was insufficient to fund its planned capital expenditures. In addition, Penn West was propping up its cash flow through asset sales, a strategy that Barclays Equity Research declared on August 13, 2012 to be necessary to minimize the impacts of its "ongoing funding deficit," but "not [] sustainable." In June 2013, Penn West was also forced to slash its dividend by 48%, from $0.27 per share to $0.14 per share, as a result of its strained cash flow. And in the first eight months of 2013, Penn West was forced to cut 25% of its workforce in an effort to reign in its costs. The consequences of the Company's high operating costs would have been much more severe during the Class Period but for its fraudulent accounting practices.

42. Penn West's senior management was acutely aware of this problem and highly motivated to show improving cost control. Defendant Roberts observed in an article published on November 21, 2014, after the end of the Class Period, that when he became CEO in June 2013, "You walked in the door here and you literally were not even in the same postal code with the []leaders in terms of drilling and completion costs and operating costs," concluding, "***It was almost a source of embarrassment***." In an August 8, 2013 conference call with investors, Roberts stated, "I clearly recognize we've got a problem and clearly I have got a laser focus on that." As analysts

at Veritas Investment Research reported on July 30, 2014, after the Company admitted it had falsified its key financial metrics for years, "Certainly, Penn West was under intense pressure over the last few years to show that it was slashing its operating costs and improving its operations."

43. To persuade investors that Penn West was making improvements in controlling its operating expenses and in important metrics such as funds flow and netbacks – and often to hide the fact that its performance was significantly worse than it appeared – Penn West and its most senior officers undertook a multi-year fraud through which they materially misstated the Company's core financial results. As Penn West admitted in the Restatement, the fraud began no later than fiscal year 2007 and involved three principal components – each of which was designed and implemented by the Company's "senior finance and accounting personnel."

44. First, as Penn West admitted in the Restatement, the Company's senior executives improperly "reclassified" hundreds of millions of dollars' worth of operating expenses as PP&E capital expenditures. In other words, after Penn West accounting staff had correctly classified these expenses as operating expenses in the Company's books, senior executives intentionally (and wrongly) changed these entries, or made adjusting entries, to reclassify them as PP&E. Penn West admitted in the Restatement that these reclassifications were not the work of rogue or low-level employees, but rather were part of a scheme directed by senior management. As Penn West stated, "senior finance and accounting personnel" were "responsible" for "the adoption and use of [] accounting practices" pursuant to which the reclassifications were made. Penn West further admitted that all of the reclassifications over the seven-year period were made "at the corporate level."

45. These reclassifications were made on a huge scale. Penn West has acknowledged that its senior executives improperly reclassified, ***at a minimum, $405 million*** of operating

expenses were improperly reclassified as PP&E capital expenditures over the seven-year period between the start of 2007 and the first quarter of 2014. This misconduct had a material impact on the Company's financial statements. For example, in 2012, Penn West abused this practice to decrease its operating expenses by $94 million, an amount equal to 75% of its restated net income for the year, and 9% of its total annual operating budget.

46. Significantly, in the July 29, 2014 Press Release disclosing the fraud, Penn West admitted that these reclassifications were not accidentally or negligently made – rather, they were intended to create the false impression that Penn West's operating expenses were lower than they actually were, and that its assets and capital investments were greater than they actually were. As Penn West stated, these reclassifications were "made to reduce operating costs and increase the Company's reported capital expenditures," and to "increase[e] the reported capital assets of the Company." Further, these fraudulent reclassifications of operating expenses resulted in misstatements of Penn West's other key financial metrics. Because Penn West artificially decreased its operating expenses, it was able to report artificially inflated funds flow, operating cash flow and netbacks – metrics that, as noted above, were positively impacted by decreased operating costs, but were unaffected by increased capital expenditures.

47. Notably, Penn West has further admitted that senior management had no support for these reclassifications. In the Restatement, Penn West stated that, during much of the time between 2007 through 2014, "it appears that little if any analysis was performed at the time of the entries to determine which items ought to be capitalized. In some cases, there appeared to be no contemporaneous support for the decision to reclassify operating expenses as property, plant and equipment."

48. Second, Penn West further artificially decreased its operating expenses by improperly reclassifying hundreds of millions of dollars' worth of additional operating costs as royalties. When Penn West leased oil and gas rights from a property holder such as the Canadian government, it was required to pay a royalty to the property holder, often in the form of a portion of the oil or gas derived from the property. To make its operating expenses appear lower than they were, Penn West's senior management unilaterally decided that the costs associated with the royalty-holder's share of production should be misclassified as a royalty payment – even though Penn West itself had unquestionably incurred the expenses, even though the Company ***never paid this money out as a royalty***, and even though applicable accounting guidance provides that royalties are "free of cost." As with the fraudulent booking of Penn West's operating expenses as capital expenditures, these changes were also reclassifications: After the expenses at issue had properly been booked by accounting staff as operating expenses, senior management went into the books (or caused others to go into the books) and improperly reclassified them as royalty payments.

49. Again, Penn West has admitted that its senior executives were responsible for this practice. As the Company stated in the Restatement, its "senior finance and accounting personnel" were "responsible for" the "adoption and use" of the "practice of incorrectly reclassifying a portion of operating expenses as royalties."

50. This aspect of the fraud was also quite substantial in scope. For example, in each of 2012 and 2013, Penn West admitted that it improperly reclassified $101 million worth of operating expenses as royalties, for a total of more than $200 million in improperly reclassified operating expenses over two years. In 2012, the $101 million of fraudulently reclassified operating expenses represented 81% of the Company's net income for the year.

51. Third, Penn West artificially inflated its capital expenditures, and thus its assets, by booking capital expenditures that it had never actually made. Specifically, the Company booked its entire capital budget as a capital expenditure each year, regardless of whether the entire budgeted amount had actually been spent. At the end of each year, once the Company determined the final figures for its actual total capital expenditures, it was required to reverse any so-called capital expenditures that had not actually been spent during the course of the year. Rather than doing so, Penn West kept these phantom capital expenditures recorded on its books, which caused its assets and capital expenditures to be artificially inflated. In the Restatement, Penn West disclosed that this practice had been taking place "in recent years," and that it had overstated its PP&E assets by $56 million as a result of the fraud in its financial statements for the year ended December 31, 2013.

52. Again, the Company admitted that "senior accounting management" had "adopte[ed]" and approved of this practice. Further, on multiple occasions, Penn West's senior accounting management ***intentionally overrode*** the Company's accounting systems when those systems required that the capital accruals on its balance sheet be reversed. Specifically, the Company admitted that during 2013 and 2014, "***senior accounting management overrode the outcomes from such processes*** and did not record the correct amounts in the appropriate period."

53. Combined, the fraudulent accounting practices summarized above had a material impact on Penn West's key financial metrics during the Class Period. For example, for 2013, Penn West artificially reduced its operating expenses by 20%, inflated its funds flow by more than 7%, artificially increased netbacks by 5%, and overstated capital expenditures by 44%. Although the principal purpose of the fraud was not aimed at Penn West's net income (but rather was focused

on decreasing operating expenses), the fraud also distorted the Company's income, often by material amounts. In 2009, for example, Penn West understated its net loss for the year by 85%.

54. Set forth below is a summary of Penn West's accounting fraud from its inception through the end of the Class Period. As explained below, during times when Penn West was struggling, it perpetrated the scheme in greater amounts in order to boost its reported financial metrics to an even greater degree – conduct which strongly indicates fraudulent intent.

C. Struggling To Control Its Rising Operating Costs, Penn West Begins Falsifying Its Key Financial Metrics By No Later Than 2007

55. On June 23, 2006, Penn West, which was already trading on the TSE, also began trading on the NYSE. Around the time that Penn West was trying to persuade a new American market to invest in its stock, Penn West was facing rising operating costs. Throughout 2006 and 2007, Penn West reported increasing operating costs, but assured investors that it was taking steps to minimize these costs. For example, in its SEC filings for the third quarter of 2007, the Company disclosed, "Over the last 18 months, Penn West has worked on initiatives to limit increases to its operating costs. Operating costs escalation was occurring industry-wide . . . ."

56. Lacking the ability to bring its operating costs down legitimately, Penn West began fraudulently reclassifying its operating costs as capital expenditures by no later than 2007. At the same time it was engaging in this misconduct, Penn West and its senior officers heralded their purportedly successful cost control efforts to investors. For instance, on February 21, 2008, after the close of market trading, Penn West released its 2007 fourth quarter and year-end financial results. During its investor conference call on February 22, 2008, Defendant Andrew, Penn West's former CEO, highlighted Penn West's efforts to control its operating costs, stating, "We're continuing our efforts to control rising operating costs in the face of a strong demand for services. If you look at our trend over the last few quarters, we believe that our efforts are bearing fruit as

we are seeing a flattening of our quarter-over-quarter operating costs." He also trumpeted a 17% increase in Penn West's combined netback and a 17% increase in the company's per unit cash flow.

57. Market analysts reacted positively to these results. For example, CIBC World Markets reported, "Operating costs of $11.35/boe [barrel of oil equivalent] represented an increase of just 2% over Q3/07 levels and a 7% increase over Q4/06 levels, which we expect will represent lower than group average inflation levels in 2007." UBS reported that "Penn West reported Q4/07 cash flow of $1.44 per unit, up 17% year-over-year and in line with our estimates." Scotia Capital Daily Edge also praised these results as "an in-line fourth quarter with cash flow from operations . . . up 12%."

58. Unbeknownst to investors, Penn West's purportedly successful cost control initiatives were based on fraud. As the Company admitted in the Restatement, during 2007 and 2008, Penn West improperly reclassified $78 million worth of operating expenses as capital expenditures – thus cumulatively understating its operating expenses by approximately 6% during this period. As explained below, when the financial markets experienced severe turmoil during 2009 and the price of oil plunged, Penn West substantially increased the size of the fraud leading into the beginning of the Class Period.

D. <u>As The Class Period Begins, Penn West Increases The Size Of The Fraud In Response To The Global Market Collapse</u>

59. On September 15, 2008, Lehman Brothers filed for bankruptcy, plunging global financial markets into turmoil. Oil prices plummeted from USD $101.18 per barrel on September 12, 2008 to a low of USD $33.87 on December 19, 2008, nearly a 67% decline. Not surprisingly, Penn West's business suffered significantly and its unit price was decimated. On March 9, 2009,

Penn West's unit price closed at USD $7.14, nearly a 73% decline from its close on the last trading day before the Lehman Brothers bankruptcy.

60. In a time of declining commodities prices, Penn West needed to materially decrease its costs in order to maintain its margins. But Penn West continued to find that operating costs remained stubbornly high. As Andrew stated on November 12, 2008, during an investor conference call at the beginning of the financial crisis, "We are caught in a funny period right now, because commodity prices have come off sharply, and the capital costs, the operating cost structure hasn't reacted yet." Thus, in its November 11, 2008 Form 6-K reporting 2008 third quarter financial results, signed by Defendant Takeyasu, Penn West stated that it would focus on lowering costs: "Cost reduction strategies and internal optimization projects continue to be a focus of Penn West as inflationary pressures persist."

61. As 2009 progressed, Penn West falsely represented to investors that this focus was beginning to lead to success, and it was bringing its operating costs in line. In its November 5, 2009 Form 6-K reporting its 2009 third quarter results, Penn West represented, "Operating costs per boe in the third quarter of 2009 remained relatively flat in comparison to the second quarter of 2009, reflecting continued and ongoing efforts by Penn West to manage our cost structure." On a November 5, 2009 conference call to discuss the Company's financial results, Defendant Nunns promised that as Penn West started to concentrate its new production efforts in existing fields, it would hold its costs steady, thus bringing down its per unit operating costs significantly. As Nunns stated, the Company "will start to bring our Op cost down in a lot of these key operating areas. So that, we see as the next logical step and we think that can bring a 10% to 15%, maybe 20% compression on Op cost."

62. Analysts reacted positively to these statements. UBS Investment Research wrote, "[W]e believe that Penn West will be able to hold operating costs in the $15.00/boe range – therefore we have reduced our operating cost outlook by 4%, leading to stronger cash flow going forward." Cormark Securities reported, "Operating costs were $15.12/BOE in the quarter, in line with our estimate of $15.00/BOE and slightly higher than last quarter. Penn West expects operating costs to remain relatively range-bound until the development of its light oil resource assets (with existing infrastructure) lower operating costs by up to 20% over the next 2-3 years."

63. On February 18, 2010, the first day of the Class Period, Penn West reported its fourth quarter and full year financial results for 2009, including strong funds flow and netbacks. On its conference call with investors that same day, Defendant Nunns touted these results as "exceeding expectations." In response to an analyst question about "cost pressure," Nunns highlighted Penn West's ability not only to control, but to reduce its costs, stating, "Frankly, we believe . . . we see an efficiency gain of between 30% to 40% in terms of cost reduction."

64. The market again reacted positively to these results. For example, UBS Investment Research declared Penn West to be a "recovery story." Credit Suisse deemed Penn West's results "[b]etter than expected" and highlighted that Penn West's "operating cash flow . . .[was] above our [] estimate and the consensus." Cormark Securities also remarked that cash flow exceeded expectations, praised Penn West's operating costs as "in line with our estimate" and repeated Nunns' claims that the Company could "lower operating costs . . . by up to 30% over the next 2-3 years."

65. In reality, the Company had increased the magnitude of its accounting improprieties in order to prop up its purported "recovery story." Unbeknownst to investors, in 2009, Penn West had fraudulently reclassified at least $118 million of operating expenses as capital expenditures,

causing the Company to understate its operating expenses by 12% and overstate its funds flow and netbacks by 8% and 7%, respectively.

E. Faced With Operational Challenges In 2012, Penn West Increases The Size Of The Fraud

66. As explained further below, beginning in 2011 and continuing through 2012, the Company experienced conditions that put upward pressure on its operating costs, downward pressure on its margins, and strained its funds flow. In response, Penn West's senior executives hid the true extent of the difficulties this caused at Penn West by continuing to artificially reduce its operating costs and inflate its reported funds flow and netbacks.

67. After reaching a peak in April 2011, the price of oil began to decline. At the same time, Penn West began to face operational challenges. On April 29, 2011, the Rainbow oil pipeline in Alberta, which Penn West used to pipe a portion of its oil, sprung a leak, leading to the largest oil spill that Alberta had experienced in 36 years. Then, on May 16, 2011, Penn West reported that certain of its properties were facing operational difficulties as a result of wildfires in Alberta, while others in Manitoba and Saskatchewan were hindered by flooding. During the Company's conference call with investors discussing its first quarter 2012 financial results, Defendant Nunns highlighted the "challenges" that the company faced during the last year: "Forest fires, significant flooding, CAD75 oil, a euro debt crisis, sub CAD2 natural gas, and now CAD30 differentials on oil for a short time during the quarter."

68. These issues began to put upward pressure on Penn West's operating costs and lower the Company's oil production, which strained its cash flow. As Penn West explained in its August 10, 2011 Form 6-K reporting its 2011 second quarter results, which was, signed by Defendant Takeyasu,

> Production volumes were significantly impacted during the second quarter of 2011 by temporary interruptions resulting from the wild

> fires in the Slave Lake region of Northern Alberta, flooding throughout Southern Saskatchewan and Manitoba and third-party facility outages. . . . [T]hese events led to operational delays and higher costs, notably from operating in adverse conditions and unplanned workovers, which led to delays bringing wells on-production.

69. During Penn West's August 10, 2011 conference call, Defendant Nunns stressed to investors that the rise in operating costs was temporary. He encouraged investors to look ahead to a future of lower operating costs, stating, "I'd say the other things we're looking forward in the long run, as we get more and more of our volume from the horizontal drilling we're getting more concentrated in our operations. We believe that'll be a long-term positive on our operating costs."

70. Although analysts were inclined to attribute Penn West's higher operating costs to factors beyond its control, it became critically important for the Company to lower its operating costs. As BMO Capital Markets noted on November 4, 2011, "Operational setbacks in Q2/11 led PWT to becoming somewhat of a 'show-me' story."

71. Accordingly, Penn West's most senior officers represented to investors that, although the Company was experiencing operational challenges, they were reining in the Company's operating expenses and delivering better than expected cash flow. For example, in an August 10, 2012 press release, the Company highlighted to investors that it was "driving service cost reductions as industry activity levels slow." In addition, the Company announced 2012 second quarter results that included cash flow per share ahead of estimates driven by lower than expected operating costs. During the Company's second quarter earnings conference call that same day, COO Foulkes, stated that the Company had taken steps to bring operating expenses into line: "While weakness in the commodity prices is outside our control, we've been very active in addressing our costs, both capital expenditures and operating expenses." Also, on August 10, 2012, the Company told investors it was taking further steps to improve its operating efficiencies

by disposing of cost-intensive assets, which would generate proceeds between $1 billion and $1.5 billion.

72. In response to the Company's second quarter results, analysts, while cognizant of the challenges the Company was facing, were cautiously optimistic. For instance, Desjardins Capital Markets reported that Penn West's "cash flow beat (relative to our estimate) was primarily attributable to stronger-than-forecast production, higher realized oil & liquids prices . . . and lower operating costs."

73. As 2012 progressed, Defendants continued to back up their assurances that Penn West was taking meaningful action to control its cost structure with quarterly results purportedly showing improved operating costs. On November 2, 2012, in a press release reiterating the Company's commitment to "optimizing capital and operational efficiencies," Penn West reported better than expected operating costs, which, in fact, offset lower than expect pricing due to the softening oil market. In response, Macquarie Equity Research remarked that Penn West's reported opex was "its best result since 1Q11," and viewed this improvement as "encouraging."

74. Penn West likewise reported improving operating costs in the fourth quarter of 2012, stating in the Company's Forms 6-K and 40-F filed with the SEC on November 2, 2012 that its cost control measures were "***all showing early signs of success***": "[O]perating costs were lower than the comparative periods in 2011 due to our focus on cost savings, lower electricity costs and acquisition and disposition activity." Analysts characterized these reported results as "credible initial steps to restoring investor confidence" and said they would "look to the 1Q13 and 2Q13 results for signs of improvement."

75. Again, however, these purportedly "credible initial steps" were the product of fraud, as Penn West had continued to understate its operating expenses at an even greater clip than

it had before. During 2012, for example, Penn West fraudulently reclassified $94 million of operating costs as capital expenditures, and another $101 million of operating costs as royalties. Together, these accounting improprieties artificially reduced operating expenses by 16%.

F. <u>In The First Half Of 2013, Penn West Convinces The Market That It Is "Turning Towards the Correct Course"</u>

76. As the Company moved into 2013, it continued to face operational difficulties that pressured its operating cash flow. Indeed, on January 9, 2013, Penn West announced that its 2013 capital budget would be $900 million, an amount that was significantly less than its 2012 capital budget of $1.3 billion. This announcement caused investor anxiety. For example, National Bank Financial reported that "Lower Capex Drives Lower Production and Cash Flow."

77. As noted above, analysts reported that they were "look[ing] to 1Q13 and 2Q13 results" for signs of continued improvement. It was therefore important for Penn West to report results that would comfort the market and assuage any investor concern. On May 2, 2013, the Company did just that, reporting 2013 first quarter results that met consensus expectations, and telling investors that these results were evidence that the Company was continuing its stricter approach to cost control. As Senior Vice President of Exploration Rob Wollmann ("SVP Wollmann") explained during a conference call with investors that day, "Operating costs in Q1 were on budget. Initiatives such as infrastructure consolidation in older fields are being implemented to reduce operating costs in the future." Analysts took comfort from the fact that Penn West was staying within its budgeted operating expenses, with RBC Capital Markets reporting that the results "reflect that the company has raised its game when it comes to operating performance and efficiency."

78. That same day, Penn West also announced management changes designed to communicate to the market that the Company was doing everything possible to reduce costs and

improve performance. Specifically, Penn West announced that its long-time Chairman of the Board, John Brussa, was stepping down. During the conference call with investors that day, Defendant Nunns characterized the change in the Board's leadership as "part of a Board renewal" that will spark an "ongoing discussion" regarding "the future direction of the Company," and emphasized that a major part of shaping that future direction would be "get[ting] the balance sheet right."

79. A month later, on June 4, 2013, Penn West announced another significant management change: Defendant Nunns would be stepping down as CEO, and Defendant Roberts would be taking his place at the end of the month. Then, on July 18, 2013, the Company announced the departure of three senior executives: Dave Middleton, Executive Vice President, Operations Engineering; Bob Shepherd, Senior Vice President, Enhanced Oil Recovery; and SVP Wollmann. Analysts viewed the departures as "reinforce[ing] the message that the company is serious about making the necessary changes to right the ship."

80. Almost immediately, Penn West's new CEO, Defendant Roberts, assured investors that his principal focus was on continuing to bring its operating costs down. In the June 4, 2013 press release announcing Roberts appointment as CEO, Penn West stated, "The Company, under a new Board and a new CEO, will focus on operating the business in a more efficient manner, significantly reducing General and Administrative expenses as well as field operating costs. . . . The Company will focus its efforts on execution across the board . . . and improving the netbacks it receives on each barrel produced."

81. To further reassure investors that it was bringing its operating costs down, Penn West announced that it would be forming a "Special Committee to explore strategic alternatives" and formulate a new long-term, turnaround plan to improve Penn West's financial performance,

which would be announced in the coming months. In addition, Penn West announced that it was cutting its quarterly dividend by 48%, from $0.27 per share to $0.14 per share, stating that the reduction was necessary to "increase[] financial flexibility."

82. Analysts were encouraged by the new management's focus on improving operating costs. On June 5, 2013, BMO Capital Markets observed, "We are encouraged that the company appears to be making the difficult organizational and financial changes needed." It further noted that "the company's turnaround will hinge on improving its operational efficiency and consistency." Desjardins Capital Markets predicted that these changes would go a long way towards reassuring the market, and that "as Penn West's corporate turnaround progresse[d]," Penn West's stock would "stabilize and potentially rally over the coming weeks."

83. On August 8, 2013, Penn West announced its financial results for the 2013 second quarter, the first reporting period under its new CEO, that purportedly demonstrated Roberts' success in decreasing operating costs. In a press release issued that day, the Company touted that "***[o]ur operating costs have decreased*** from the comparative periods in 2012," and promised to "continue to focus on ***cost saving initiatives*** and take further steps to allow us to achieve our goal to deliver ***best in class operating performance*** and shareholder returns." On an August 8, 2013 conference call to discuss these results, Defendant Roberts continued to emphasize that reducing operating costs was his focus, and a central part of the Company's turn-around strategy, stating that "I clearly recognize we've got a problem [with operating costs] and clearly I have got a ***laser focus*** on that."

84. Analysts reacted positively to Penn West's release of its 2013 second quarter results. CIBC heralded a "Slight Q2 Beat" that was evidence of "Green Shoots of Cost Control."

Dundee Capital Markets observed, "The Ship is Turning Towards the Correct Course," and Barclays reported that "operating costs continue to show a positive trend."

G. Penn West Partially Reveals That Its Operating Cost Structure Is Worse Than Believed, But Continues To Mislead Investors

85. On November 6, 2013, Penn West announced poor third quarter results driven in part by higher than expected operating costs, and the results of the Company's long-awaited strategic review. In a press release and during an investor conference call that day, Penn West announced that senior management had conducted a "focus[ed]," detailed review of the Company's operating costs. On that investor call, and in materials distributed prior to it, Roberts provided investors with a detailed breakdown of the Company's operating costs and the drivers of those costs. Roberts stated that he and senior management had concluded that while Penn West was already implementing cost control measures, the Company would have to go much further, taking dramatic action over the course of an entire year to meaningfully improve Penn West's operating costs, netbacks, and funds flow.

86. In particular, Roberts stated that to generate cash flow and improve its balance sheet, Penn West would be forced to sell off between $1.5 billion to $2 billion worth of the Company's most cost-intensive properties, and actually stop production at others (a move Roberts called "never before seen st[u]ff at Penn West"). Along with stripping out the Company's most cost-intensive assets, Penn West would also need to implement several additional cost reduction measures throughout the Company to improve Penn West's key financial metrics, including funds flow and netbacks. This plan would cause production to drop 25% through 2014, which would now have to be a "transition year."

87. The market was surprised to learn that the Company's cost structure was so poor that it would take another year for the Company to significantly improve it. For instance, BMO

Capital analysts stated, "While we are encouraged by a concrete turnaround plan, the timeline is longer than anticipated, and consequently the disappointing reception in the market." Credit Suisse analysts stated, "While we acknowledge the need for changes in the organization, PWT's new strategy will require time to execute. Long time investors who were perhaps expecting a quicker turnaround will likely be disappointed, given 2014 will be another transitional year for the company." National Bank Financial downgraded Penn West's stock to "[u]nderperform" given "the longer than expected transition period and our lower production forecasts," and Macquarie stated that "a transition back to production growth will take time and we believe that the company will remain range bound between ~C$10–11/sh until further asset sales are completed and concrete evidence of improvements in opex and capital efficiencies are realized."

88. In response to Penn West's November 6, 2013 disclosure, the Company's stock price tumbled on the year's highest trading volume, declining more than 15%, from USD $11.09 to close at USD $9.35 per share.

89. While Penn West had partially revealed that its cost structure was worse than previously disclosed, Defendants continued to mislead investors about Penn West's true operating costs and financial performance. Among other things, Defendant Roberts assured investors that Penn West was already experiencing success in decreasing operating expenses and that this trend would continue as the Company began to execute its "turnaround plan" in the coming months. For example, Defendant Roberts stated on Penn West's November 6, 2013 conference call that, "***Our cost structure is in control and moving downward***, and we're having success in what has been termed a very soft market." He further assured investors that, as the Company executed its plan, "Our cost per barrel will be going down," which would lead to "***dramatic improvement in net backs***." Likewise, in a presentation distributed to investors in advance of Penn West's November

6, 2013 third quarter earnings conference call, Penn West projected "continued improvement in costs per barrel" and claimed that its "[f]ield netback[s] [were] expected to increase ~40%."

90. Based on Defendants' reassuring statements, analysts stated that the turnaround plan had promise, but its success would have to be judged by several consecutive quarters of performance. For example, TD Securities analysts stated that "it is too early to understand whether this can be successfully executed, but the special review committee seems headed down the correct path, in our view." Barclays analysts stated, "While the company seems to be willing to take drastic measures to address its many challenges, we believe the market will continue to take a wait-and-see approach." JPMorgan analysts stated, "It is clear that management has executed an in-depth review of its operating costs . . . . [W]e would like to see several quarters of sustained cost reduction before becoming more constructive on management's ability to reduce costs meaningfully over the long term while still maintaining growing production from key areas."

91. It was therefore critical for Penn West to show investors that its "turnaround" plan was succeeding. Through the remainder of the Class Period, Defendants did just that, announcing strong financial results and emphasizing the supposed success Penn West was having in reducing its operating costs. On March 7, 2014, the Company announced strong results for the fourth quarter of 2013. On a conference call that day, Defendant Roberts emphasized that "***we reduced operating expenses by approximately CAD166 million***," and stated that "focusing on reducing these costs further . . . remains critically important."

92. Analysts reacted positively to this apparent progress. BMO Capital Markets analysts noted, for instance, that "[o]ver the past year, management has reduced operating costs by -~26% through various initiatives." Pleased that "[c]ost improvement[s] [were] starting to shine through," Macquarie Equity Research analysts reported that "the company has recognized . . .

operating cost reductions of C$166m," and observed that "cost reductions [were] not done yet" because "[m]anagament stated on its conference call that it sees the potential for incremental opex and G&A savings." On March 7, 2014, Penn West stock closed at USD$8.50, up 7% from its previous closing price of USD$7.92.

93. On May 1, 2014, the Company announced positive first quarter 2014 results, including further cost reductions and cash flow results nearly 10% ahead of consensus estimates. As Investor Relations Manager Paradis stated on the Company's May 1, 2014 earnings conference call, these results were driven by a large reduction in operating costs from the prior quarter:

> We continue to work hard on reducing costs in the business and ***realized a CAD28 million decrease in operating expenses, which represents a 14% reduction from the fourth quarter of 2013***.

94. Analysts again praised the Company's operating cost reductions. National Bank Financial reported that "Penn West reported Q1 results with CFPS [cash flow per share] of $0.57 coming in 8% above consensus $0.53 and 4% above our $0.55. ***The beat was driven by higher netbacks*** prompted by a combination of marginally higher oil weighting (boosting realized pricing) and ***lower cash costs*** (7%)." Credit Suisse analysts noted, "Costs Are Improving - A Positive Sign: In our last note, we indicated that continued execution on the cost reduction front would be positive to our view." TD Securities analysts also stated that "Cost Savings and Improved Operating Efficiencies Remains Primary Focus," and repeated Penn West management's misleading claim "that it currently is 'completing two externally supported business process reviews to assist in further reducing operating and overhead cost structures.'"

95. However, Penn West's apparent progress in improving its operating costs over the final quarter of 2013 and first quarter of 2014 was, in fact, a product of Defendants' decision to increase the magnitude of their accounting fraud. While Defendants had understated operating costs in the third quarter of 2013 by 10%, in the fourth quarter of 2013 and first quarter of 2014

they ramped up the fraud, understating operating expenses by 20% and 16% in those quarters, respectively – thereby achieving the purported reductions that Roberts told investors he was setting out to achieve through supposedly legitimate and "relentless cost control."

H. Defendants' Fraud Is Finally Revealed

96. In the first half of 2014, Penn West began to clean out its finance and accounting departments, dismissing the "senior" personnel it would later blame for the "adoption and use" of the practices through which the Company committed its accounting fraud. In the Restatement, Penn West stated that "[a]s a result of that restructuring [beginning in early 2014], the senior finance and accounting personnel who were at the Company and involved in the adoption and use of the accounting practices that led to the restatement . . . ceased to be employed by the Company."

97. The first such individual to be terminated was none other than the Company's longtime CFO, Defendant Takeyasu. On March 24, 2014 Penn West unexpectedly announced that, after 20 years with the Company, Defendant Takeyasu was "stepping down" from his position as CFO and leaving Penn West effective immediately. No reason was given for his abrupt departure. Defendant Takeyasu had not accepted employment elsewhere at the time of his resignation, and currently remains unemployed. The Company also announced that David Dyck, an outsider, would take Takeyasu's place as Penn West's CFO, effective May 1, 2014. Jeff Curran, the Company's Vice President of Accounting and Reporting, would serve as interim CFO until that time.

98. Defendants' fraud was so egregious that it took Dyck, who was completely new to the Company, only a matter of weeks to uncover it. A November 21, 2014 *Financial Post* article reported that Dyck had just been appointed as CFO when members of his team "express[ed] concerns about accounting practices going back several years." After evidence of the fraud came to Dyck's attention, the Company's Audit Committee launched an investigation, retaining

independent legal counsel and an independent forensic accounting firm to aid the Audit Committee in its inquiry.

99. While the Audit Committee's investigation was ongoing, at least sixteen additional Penn West accounting and finance personnel, many of them in senior and managerial roles, were terminated by or left the Company. These individuals included: (1) most notably, Defendant Curran, who was let go as of June 2014, notwithstanding the fact that the Company had asked him to serve as its interim CFO only two months earlier; (2) Operations Controller Wally Grab (as of June 2014); (3) Supervisor of Production Accounting Kim Skirten (as of August 2014); (4) Manager of Joint Venture Accounting Kevin Jack; (5) Manager of A&D Financial Allan Post (as of July 2014); (6) Manager of Budgets and Planning Carla Penney (as of September 2014); (7) Joint Venture Representative and former Senior Joint Venture Auditor Gary Hale (as of June 2014); (8) Supervisor of Royalty Income Cash Receipts and Road Use Jeffary Chung (as of June 2014); (9) Production Accountant Jumar Cancel (as of June 2014); (10) Revenue Production Accountant Flor De Souza (as of June 2014); (11) Operations/Capital Expenditures Analyst Garrett Hendricks (as of September 2014); (12) Operations Analyst and former Equalizations/Projects Accountant Mitchell Layden (as of April 2014); (13) Production/Revenue Accountant Cindy Penner (as of June 2014); (14) Capital Accountant Christine Seto (as of July 2014); (15) Planning Analyst Kari Wilson (as of April 2014); and (16) Production Accountant Richard Smith.

100. Then, on July 29, 2014, after the close of the market, Penn West shocked investors by announcing that the Company's Audit Committee had concluded that the Company "must" restate its financial statements for at least the full years 2012 and 2013, and the first quarters of 2013 and 2014. As the Company explained, its investigation to date had uncovered a total of

approximately $400 million worth of accounting reclassifications made during 2012 and 2013 "which appear to have been made to reduce operating costs and increase the Company's reported capital expenditures and royalty expense, and that appear to have been made without adequate supporting documentation." As discussed, Penn West disclosed that "senior finance and accounting personnel [were] believed responsible for the adoption and use of these practices," and explained that those senior executives "have ceased to be employed by the Company."

101. Based on the figures provided in Penn West's July 29, 2014 disclosure, it was clear that the Company's Restatement would have a dramatic impact on the Company's key financial metrics for 2012 and 2013, including by (i) increasing operating costs by 21% in 2012 and 20% in 2013; (ii) decreasing funds flow by 9% in 2012 and 7% in 2013; and (iii) decreasing netbacks by 7% in 2012 and 5% in 2013. Also importantly, Penn West's July 29, 2014 press release admitted that the fraudulent accounting practices occurred before 2012. Penn West stated that the practices used to effectuate the reclassifications of operating costs as capital expenditures or as royalties "***appear to have existed in prior years***, with the amounts varying from year to year," but did not provide figures for the prior years.

102. Penn West's July 29, 2014 press release also disclosed that its accounting fraud would likely cause it to cut its 2014 guidance. The Company disclosed that the Restatement of the Company's historical operating expenses could "increase its operating cost assumptions for 2014 from those originally disclosed in November 2013," and "may also require Penn West to reduce its capital expenditure guidance and royalty expense assumptions." Penn West further disclosed that these adjustments to its 2014 forecast "would in turn reduce the Company's 2014 funds flow assumptions."

103. The Company also announced that there could be a delay in filing its unaudited comparative financial statements for the three and six month periods ended June 30, 2014, which ultimately proved to be the case. The Company further disclosed that it had informed the Alberta Securities Commission and the SEC about the matters being investigated by the Audit Committee.

104. Analysts and the financial press reacted with shock to Penn West's July 29, 2014 disclosure, reporting that the Company's accounting improprieties were troubling, impacted the Company's key financial metrics, and caused them to materially change their view of the Company's performance and prospects. For example, analysts from Veritas Investment Research stated that "Penn West's disclosure last night that it will be forced to restate its financials back to at least 2012 has sent the stock plummeting today. ***Our review of how Penn West misstated its numbers is disconcerting, to say the least***." The analysts noted:

> ***This is not merely an earnings misstatement***: The mistaken classification of $381 million of operating costs in fiscal 2012 and 2013 as capital costs or, even more bizarrely, as royalties, ***affects most of the cash-based metrics that oil and gas investors care about***. The errors: 1) reduce operating costs per boe (down 17% on a two-year basis); 2) show higher apparent capital spending (up 8%); and 3) inflate netbacks, EBITDA and operating cash flows (up 7%, 8% and 9%, respectively).
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> * * *
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> We also cannot rule out that this shift of costs to royalties was ***deliberate***. Certainly, Penn West was under intense pressure over the last few years to show that it was slashing its operating costs and improving its operations.

105. Analysts immediately revised their estimates of Penn West's performance downward by significant amounts. AltaCorp Capital analysts placed their target price and rating of Penn West under review, and revised their estimate of Penn West's 2014 operating costs up by 26%, and their estimates of cash flow per share down by at least 13%. TD Securities analysts cut their target price for the Company's stock by 17%.

106. Similarly, a July 30, 2014 *Financial Post* article reported that the July 29, 2014 disclosure caused analysts to change their view of the Company: "'It was a disappointment – that was the biggest reaction,' said Jeremy McCrea, an analyst at Calgary-based AltaCorp Capital Inc. 'On the one hand you had operations that seemed to be improving in a big way and ***the turnaround seemed real, but now you have the accounting restatements that puts a lot of doubt into potentially how widespread this is throughout the company***.'" And on July 30, 2014, *Seeking Alpha* stated, "To put it mildly, this is a major negative event for Penn West. . . ***[W]hile I did turn bullish on Penn West after the very solid Q1 performance, this news has made me do a 180 degree turn***."

107. In response to Penn West's July 29, 2014 disclosures, the Company's stock declined dramatically on the next trading day, July 30, on the year's highest trading volume. Penn West's stock price fell by more than 14%, from USD $9.15 per share to close at USD $7.85 per share, wiping out hundreds of millions of dollars in shareholder value.

108. In the wake of the July 29, 2014 disclosure, analysts and the financial media continued to report that the accounting improprieties at Penn West bore the hallmarks of an intentional fraud. For instance, an August 8, 2014 article in *The Globe and Mail*, Canada's second-largest newspaper, quoted Lynn Turner, who served as chief accountant for the SEC, as explaining that "Penn West's accounting 'is like what happened at both WorldCom and Health South,'" as in all three cases the accounting fraud reclassified expenses in order to make operating numbers look better. Turner also questioned the suspicious circumstances of Takeyasu's departure, stating:

> You bring in a new CEO, and a year later, the CFO goes, the question becomes: Why did he go, and ***was there a reason the CEO knew about but wasn't transparent with respect to? Did we have a situation where the CEO wasn't comfortable*** and said, "You've got to go, I'm going to bring my own CFO in." There are a lot of

> unanswered questions here, probably more than have been raised than have been answered.

109. The article further reported that:

> ***"All the irregularities that have been identified [] served to inflate key metrics that investors use to evaluate the performance of an energy company,"*** says Anthony Sclipoti, CEO of accounting-focused firm Veritas Investment Research. He says Penn West's operating cash flow and its netbacks, a measure of the profitability of one unit of oil, were enhanced by the accounting choices. ***"That is very troubling."***
>
> Mr. Sclipoti is ***particularly disturbed*** by the classification of operating expenses as royalties because it would seem to be difficult to make inadvertent errors in that accounting. "Royalties are paid to a partner or the government. Generally, it's pretty clear what the amount is and what it's for."

110. Similarly, an August 16, 2014 *Seeking Alpha* article reported that Penn West's July 29, 2014 disclosure showed the Company "***was basically fudging with its numbers,*** lowering operating costs and increasing capital expenditures. This has the net effect of ***improperly boosting key metrics*** such as FFO [i.e., operating cash flow], ***while hiding cost overruns***."

I. <u>Penn West Issues The Restatement</u>

111. On September 18, 2014, before the market opened, Penn West announced the findings of the Audit Committee's investigation and issued its Restatement. Significantly, under applicable financial reporting and accounting standards, a restatement is a term of art. Under the relevant accounting standards, Penn West's Restatement was an admission that its financial statements were misstated when issued, and that the misstatements were material. *See* International Financial Reporting Standards, Standard 8. Further, a restatement constitutes an admission that the accounting misstatements were not the product of subjective estimates, projections, or errors that become apparent only with the application of hindsight. *Id*. Instead, under the applicable financial reporting and accounting standards, a restatement must reflect the

information that "would have been available when the financial statements for that prior period were authorised for issue." *Id*.

112. The Restatement confirmed what the Company had announced to the market on July 29, 2014: Accounting entries "appear to have been made to reduce operating expenses and increase the Company's reported capital expenditures and royalties and appear to have been made without adequate supporting documentation." Again, the Company confirmed, in line with its July 29, 2014 announcement, that for the period 2012 through the first quarter of 2014, its restatement of these accounting misstatements increased Penn West's operating costs by $367 million (a cumulative increase of 17% from reported financial results).

113. Echoing its July 29, 2014 press release, the Company admitted that the fraud was perpetrated by senior management. For instance, the Company reiterated that "[t]hroughout all period under review, the reclassification of expenditures from operating expense to property plant and equipment ***occurred at the corporate level***." Similarly, in Penn West's September 18, 2014 press release, the Board acknowledged that the Company's misstatements were the product of ethical failings at the Company's most senior levels, thus requiring the Board to usher in "***a new era of enhanced corporate governance and ethics to address our past***."

114. Penn West also confirmed that its accounting fraud occurred in, and affected reported financial results for, periods prior to those it was required to fully restate. Specifically, Penn West's Restatement acknowledged that the Company's practice of accounting for transactions so as "to reduce operating expenses and increase the Company's reported capital expenditures and royalties" went as far back as 2007, and admitted that this practice had impacted the Company's financials from that time forward. Penn West acknowledged, for instance, that in 2009, it understated its net loss by $118 million (or by 82% of reported results) and overstated

PP&E, as defined above, by $158 million. However, the Restatement did not disclose the impact of its accounting fraud on any of Penn West's reported financial results in years 2007 to 2011, apart from impact on net income and PP&E. This is because, under applicable financial reporting and accounting rules, Penn West was required to fully restate only its annual financial statements for 2012 and 2013 and quarterly results for 2013 and first quarter 2014, notwithstanding the fact that the fraud admittedly existed since 2007. *See* International Accounting Standard 8. For periods before 2012, even though material misstatements existed, Penn West was required to restate only "the opening balances of assets, liabilities and equity." *Id*. Thus, while Penn West acknowledged the accounting improprieties were implemented during the period from 2007 to 2011, it has not disclosed the impact of the fraud during this time period on the Company's operating expenses, netbacks, funds flow, operating cash flow, royalties, and other key metrics.

115. Penn West also revised its guidance in line with analysts' estimates in the wake of the Company's July 29, 2014 disclosure, increasing operating cost estimates by approximately 12%.

116. In the Restatement, the Company also admitted that its senior management was responsible for creating three troubling material weaknesses in its internal controls over financial reporting, each of which facilitated the fraud. First, in what Penn West described as a "control environment and supervisory material weakness," the Company acknowledged that its senior management created a culture that condoned improper accounting and discouraged those with knowledge of the accounting fraud from publicly exposing it. As Penn West stated, "senior accounting management ***did not adequately establish and enforce a strong culture of compliance and controls*** . . . necessary to present financial statements in accordance with IFRS [International Financial Reporting Standards]." Consequently, "[t]here was a ***lack of awareness or willingness***

of some staff with knowledge of improper accounting practices to utilize the Company's independently administered whistle blower hotline . . . ." In other words, the fraudulent accounting practices were widely understood within the corporate accounting department, but senior management created a culture in which Penn West employees were unwilling to blow the whistle outside the Company on the executives who were implementing the scheme.

117. Second, in what the Company described as a "[j]ournal entry material weakness," the Company admitted that the fraudulent accounting practices flatly violated the Company's own policy requiring that "each journal entry [] include appropriate supporting documentation and analysis to ensure it is made in accordance with IFRS." Contrary to this basic requirement, as noted above, the Company admitted that, with respect to many of the fraudulent reclassifications at issue here, "it appears that little if any analysis was performed at the time of the entries to determine which items ought to be capitalized. In some cases, there appeared to be no contemporaneous support for the decision to reclassify operating expenses as property, plant and equipment."

118. Third, in what the Company described as a "[m]anagement override material weakness," the Company admitted that, when Penn West's accounting systems correctly calculated the Company's financial results, its senior management intentionally overrode the Company's accounting systems to produce a false but desired result:

> Two of the accounting adjustments identified in our review ***are a result of senior accounting management overriding the Company's processes*** related to capital cost accruals and the recording of adjustments to oil and natural gas sales and associated volumes related primarily to closing adjustments on asset divestments and equalizations adjustments. In both these cases, ***the Company's processes generated the correct financial statement treatment*** of these items. However, ***senior accounting management overrode the outcomes from such processes and did not record the correct amounts in the appropriate period***.

119. After Penn West issued the Restatement, Veritas Investment Research analysts reported that "[c]ollectively, ***the accounting errors have the appearance of a concerted effort to 'make the numbers,' rather than just poor procedure***." The analysts further noted that:

> **The entries were high level**: The misstatements occurred at the corporate level, where senior management would likely have had more direct oversight;
>
> **Internal procedures were adjusted**: The current review found that the process to classify expenses was changed over time; and
>
> **There was little or no support for much of the accounting treatments**: The review concluded that, in many cases, the booking of costs was done with little analysis, support or documentation.

120. The Company has not recovered from the fraudulent conduct detailed herein, and has continued to struggle financially. On November 5, 2014, Penn West announced its third quarter 2014 results, in which the Company reported "a surprise quarterly loss," with funds flow falling by 22% from the Company's third quarter 2013 results. As of December 18, 2014, the day before the filing of this Consolidated Amended Complaint, Penn West's stock closed at USD $2.33, a small fraction of its Class Period high of USD$28.90 (on February 28, 2011) and far below the stock's July 29, 2014 closing price of USD$9.15, just before the truth was disclosed.

V. ADDITIONAL SCIENTER ALLEGATIONS

121. Numerous facts set forth above and summarized below give rise to the strong inference that Defendants intentionally engaged in the accounting fraud set forth herein, or acted with severe recklessness in making the materially false and misleading misstatements and omissions alleged in detail in Section VI below.

122. First, the Company has admitted that the fraud was designed and executed at the highest levels of Penn West. As noted above, the Company admitted in the Restatement that its "senior finance and accounting personnel" and "senior accounting management" were "responsible" for "the adoption and use of [] accounting practices" that comprised the fraud. Penn

West further admitted that all of the fraudulent reclassifications at issue were made "at the corporate level." In addition, Penn West placed responsibility for the fraud on the numerous individuals who "ceased to be employed" with the Company in early 2014 – including, most prominently, the Company's longtime CFO, Defendant Takeyasu.

123. Second, the nature of the accounting violations supports a strong inference of scienter. The accounting violations here involved going into the Company's books and improperly changing – "reclassifying" – accounting entries that had been made correctly in the first instance. Such misconduct is intentional by definition. Further, the Company has admitted that these improper reclassifications were no mistake. Indeed, they were made for the purpose of misstating the Company's key metrics – that is, they were specifically "made to reduce operating costs and increase the Company's reported capital expenditures." In addition, many of these reclassifications lacked any supporting documentation. As Penn West admitted, "little if any analysis was performed at the time of the entries to determine which items ought to be capitalized," and "there appeared to be no contemporaneous support for the decision to reclassify operating expenses as property, plant and equipment" in many instances. Moreover, the Company admitted that its "senior accounting management overrode the outcomes" of the Company's accounting processes when the accounting system generated a correct result that they wanted to falsify. Finally, the decision to reclassify operating expenses as royalties violated basic accounting principles. As set forth below in Section VIII, applicable accounting guidance explicitly state that royalties shall ***not*** include any costs and, as analysts specifically reported, it is "bizarre" to think that Penn West's senior management could mistake a royalty payment as a cost expense. In sum, it is completely implausible that the misconduct at issue here was done by accident or through mere negligence.

124. Third, the Company materially misstated it most critical financial metrics at a time when these exact metrics were the focus of investor attention and concern. As alleged above, throughout the Class Period, investors consistently focused on operating costs, funds flow and netbacks as the most important barometers of Penn West's financial condition – and this focus intensified during times when the Company was facing challenges, as it was during portions of the Class Period. The Company recognized that these metrics were among the "four key drivers of shareholder value" and its "most important . . . core metrics," and that showing improvement in these metrics was "critically important" to investors. Yet Defendants materially misstated each of these metrics, including, for example, by artificially reducing operating costs by as much as 26%, and inflating funds flow by as much as 12%. As analysts specifically remarked once the fraud was finally revealed, the fact that Penn West consistently falsified its most important metrics at a time when investors were focused on these precise issues demonstrates "a concerted effort to 'make the numbers,' rather than just poor procedure."

125. Fourth, throughout the Class Period, the Individual Defendants repeatedly assured investors that reducing costs was their principal "focus," and thus, they were intimately familiar with the Company's operating expenses and the drivers of its reported expense figures. Defendant Roberts, for example, stated that he had a "laser focus" on reducing operating costs, assured investors that cost reduction was the centerpiece of his turn-around plan announced in 2013, and represented that he had personal knowledge of the factors influencing the Company's reported expense figures. Yet, while they were making these repeated assurances, Roberts and the other Individual Defendants issued a host of false statements in which they disguised the fraud and claimed to be improving the Company's costs through purportedly legitimate means. Either Roberts and the other Individual Defendants possessed the detailed personal knowledge of the

Company's operating expenses that they claimed to have, in which case they knew about its massive fraud, or they lacked personal knowledge of the Company's operating expenses, in which case their repeated statements on this subject were severely reckless at a minimum.

126. Fifth, the size and duration of the fraud support a strong inference of scienter. As noted above, the fraud lasted for more than seven years, and was massive in scope. The Company's senior executives improperly reclassified at least $625 million worth of operating expenses during this time period, and misstated the Company's quarterly and annual financial results on literally dozens of occasions. Financial misstatements of this size and duration do not occur by accident, and they do not occur without direction from the Company's highest levels.

127. Sixth, the Company's senior management increased the size of the fraud when the Company faced operational difficulties that put upward pressure on its operating costs and downward pressure on its operating cash flow. For instance, as set forth above, Penn West's senior executives dramatically increased the size of the fraud in 2009, when Penn West was being adversely impacted by the collapse of the financial markets and concomitant sharp decrease in oil prices. Further, in 2012, after Penn West had experienced a series of unexpected operational difficulties, the Company's executives again increased the size of the fraud over prior periods. The fact that the magnitude of the financial misstatements increased when Penn West was most in need of an artificial boost is highly indicative of fraudulent intent.

128. Seventh, Dyck's discovery of the fraud within weeks of joining the Company as its new CFO is evidence that the fraud was egregious and well-known within Penn West. The fact that an outsider discovered the fraud so quickly demonstrates that it was obvious to anyone who cared to look.

VI. DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS

129. During the Class Period, Defendants made a host of materially false and misleading statements and omissions in Penn West's SEC filings and during investor conference calls. Defendants' materially false and misleading statements and omissions fall into three categories: (1) misstated financial results, which were contained in the Company's quarterly and annual earnings press releases and its quarterly and annual SEC filings; (2) false and misleading statements concerning Penn West's operating costs and financial results made during investor conference calls; and (3) false and misleading certifications of the adequacy of the Company's internal controls and the accuracy of its financial results, which were contained in the Company's quarterly and annual SEC filings.

130. As noted above, in the Restatement, Penn West admitted that its senior management began implementing the fraudulent accounting practices described above in 2007, and that these practices occurred until the first quarter of 2014. However, as explained above at paragraph 114, under applicable accounting rules, Penn West was required to fully restate its financial results for only year-end 2012, year-end 2013, the first through third quarters of 2013, and the first quarter of 2014. For these periods, Plaintiffs are able to precisely allege the impact of the fraud on the Company's reported financial results, and have done so below. For other periods, most notably 2010, 2011, and almost all quarterly reporting periods at issue, Penn West did not fully restate its financial results, and provided only limited information about the impact of the fraud, notwithstanding the fact that the Company's improper accounting practices impacted its financial results for these reporting periods. When it was possible to determine the ***minimum*** impact of the fraud based on the limited information provided by the Company, Lead Plaintiffs have done so below; because Penn West has provided only limited information with respect to certain affected

financial reports, the impact of Defendants' fraud is, in many instances, likely substantially greater than the estimates provided below.

A. Defendants' False and Misleading Statements Regarding Penn West's 2009 Financial Results

131. The Class Period began on February 18, 2010. On that date, Penn West issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2009 and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. For fiscal year 2009, Penn West announced: (1) operating expenses of $966 million, or $14.93 per barrel of oil equivalent (defined above as "boe"); (2) netbacks of $26.32/boe; (3) funds flow of $1.493 billion; (4) operating cash flow of $1.401 billion; (5) capital expenditures of $319 million (net of dispositions); (6) royalties of $495 million; and (7) a net loss of $144 million.

132. Analysts from Cannacord Adams, focusing on the Company's most recent quarter, rated the Company a "buy," noted that Penn West's operating cash flow was ahead of consensus estimates and praised the Company's use of "excess cash generated from operations" to reduce its net debt level. On February 18, 2010, Penn West stock closed at USD $19.38, up 3% from its previous closing price of USD $18.90.

133. On March 22, 2010, Penn West filed its 2009 annual report and consolidated financial statements, which included the financial results enumerated above, on Form 40-F with the SEC. Defendant Andrew signed the Form 40-F.

134. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶131 for Penn West's operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, royalties, and net income were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and

materially overstated capital expenditures, funds flow, operating cash flow, netbacks, royalties, and net income. Based on the limited information provided in the Restatement for 2009, Lead Plaintiffs were able to calculate the impact of Penn West's fraud on the Company's 2009 full year financial results as follows:[4]

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$966 million	$1.084 billion	12%
Netbacks/boe	$26.32	$24.53	(7%)
Funds Flow	$1.493 billion	$1.375 billion	(8%)
Operating Cash Flow	$1.401 billion	$1.283 billion	(8%)
Net Income	($144 million)	($262 million)	(82%)
Capital Expenditures	$319 million	$201 million	(37%)

135. On February 18, 2010, Penn West held a conference call to discuss its 2009 fourth quarter and full year results. On that call, an analyst asked Penn West management, "[A]re you guys seeing any cost pressure? We're hearing from some of the other producers that they may be seeing some uptick in costs, especially from the pressure pumpers and the like[?]" Defendant Nunns responded to the analyst's question as follows:

> ***On an overall basis, no***. We have seen occasional equipment pinches, but they seem to be very localized and very short term. What we are seeing actually is the other side of the equation. ***What we're seeing is, as you start to ramp up these programs, your real gain is on the efficiency side***, the ability to go to a manufacturing model and execute continuously. Frankly, we believe, on the average play from first well to 10th well, ***we see an efficiency gain***

[4] Above, Lead Plaintiffs calculated the ***minimum*** impact of Defendants' fraudulent reclassification of operating expenses as capital expenditures during 2009 on some of the Company's core metrics based on the incomplete information made available in the Company's disclosures. The full impact of the fraud is likely greater.

> ***of between 30% to 40% in terms of cost reduction. So frankly, we're seeing the opposite trend.***

136. These statements were materially false and misleading when made. It was materially false and misleading for Defendant Nunns to represent that Penn West was controlling and improving its costs through legitimate means, including "ramp[ing] up" the Company's activity and exploiting its existing infrastructure, when the Company's senior management was artificially decreasing its operating costs through the fraudulent accounting scheme described above.

137. In addition, Defendants Andrew and Takeyasu both signed certifications filed with the Company's Form 40-F affirming the accuracy of the Company's financial statements and the adequacy of its internal controls in several respects. These affirmations represented that Andrew and Takeyasu had reviewed Penn West's filing and, based on their knowledge, the Form 40-F: (i) "fairly presents, in all material respects the financial condition and results of operations of the Company;" and (ii) disclosed "[a]ny fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting." These affirmations also certified that: (i) Defendants Andrew and Takeyasu "designed" Penn West's internal reporting controls to provide "reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes;" and (ii) the Form 40-F disclosed "[a]ll significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the issuer's ability to record, process, summarize and report financial information."

138. Penn West's Form 40-F also contained an "additional disclosure" certifying that its internal controls over financial reporting were effective, as follows:

> As of the end of Penn West Energy Trust's ("Penn West") fiscal year ended December 31, 2009, ***an evaluation of the effectiveness of Penn West's "disclosure controls and procedures"*** (as such term is defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) ***was carried out by the management of Penn West Petroleum Ltd., the administrator of Penn West, with the participation of the Chief Executive Officer ("CEO") and the Executive Vice President and Chief Financial Officer ("CFO") of Penn West Petroleum Ltd., who also perform such functions for Penn West. Based upon that evaluation, the CEO and CFO have concluded that as of the end of that fiscal year, Penn West's disclosure controls and procedures are effective*** to ensure that information required to be disclosed by Penn West in reports that it files or submits under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and (ii) accumulated and communicated to Penn West's management, including its principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure.
>
> * * *
>
> Management is responsible for establishing and maintaining adequate internal control over ***Penn West's financial reporting. Penn West's internal control system was designed to provide reasonable assurance that all transactions are accurately recorded, that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles,*** and that Penn West's assets are safeguarded.
>
> Management has assessed the effectiveness of Penn West's internal control over financial reporting as at December 31, 2009. In making its assessment, management used the Committee of Sponsoring Organizations of the Treadway Commission ("COSO") framework in Internal Control – Integrated Framework to evaluate the effectiveness of Penn West's internal control over financial reporting. ***Based on this assessment, management has concluded that Penn West's internal control over financial reporting was effective as of December 31, 2009.***

(Collectively, the "Form 40-F Certifications").

139. As Penn West admitted in connection with its Restatement, the statements set forth in ¶138 were materially false and misleading when issued. Contrary to the representations that

Penn West's internal controls over financial reporting were "effective" and were designed to provide "reasonable assurance regarding the reliability of financial reporting," Penn West lacked adequate internal controls over its financial reporting, and its financial statements were materially misstated as a result of the fraud described above. Further, contrary to the representations that the Form 40-F "fairly present[ed] . . . the financial condition and results of operations of" Penn West, and disclosed "[a]ny fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal control over financial reporting," the Company's financial results were materially misstated through the undisclosed fraudulent accounting scheme described above.

B. <u>Defendants' False and Misleading Statements Regarding Penn West's 2010 and 2011 Financial Results</u>

(1) <u>2010 Financial Results</u>

140. On February 17, 2011, Penn West issued a press release announcing its financial results for the year ended December 31, 2010 and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. For fiscal year 2010, Penn West announced: (1) operating expenses of $944 million (or $15.71/boe); (2) netbacks of $25.07/boe; (3) funds flow of $1.185 billion; (4) operating cash flow of $1.217 billion; (5) capital expenditures of $1.187 billion; (6) royalties of $545 million; and (7) net income of $226 million.

141. On March 22, 2011, Penn West filed its 2010 annual report and consolidated financial statements, including the false statements enumerated above, on Form 40-F with the SEC. Defendant Andrew signed the Form 40-F.

142. As alleged above, Penn West admitted in its Restatement that its senior executives continued to engage in the accounting fraud described above during 2010. As a result of this

fraudulent conduct, during this timeframe, Penn West's reported financial results for 2010 were misstated.

143. In addition to issuing false financial results, Penn West and its senior management made materially false and misleading statements about the Company's operating costs during conference calls held to discuss its 2010 financial results. For instance, on May 5, 2010, Penn West held a 2010 first quarter earnings conference call. On that call, an analyst asked Penn West management, "do you have a sense for what kind of cost reductions you should be able to achieve over the next 12 or 16 months as you get into more efficient sort of industrial development, pad drilling and what not at these [light oil] plays[?]" Defendant Nunns responded to the analyst's question as follows:

> The general pattern in anticipation as we scale up to a manufacturing model on these plays is fundamentally that we generally tend to see a 30% to 40% cost reduction from initial tests of the plays, and we believe we can achieve that. On some of them, we believe we have got some of that in the bag. On others, we will add that as we scale up our projects.

144. These statements were materially false and misleading when made. It was materially false and misleading for Defendant Nunns to represent that Penn West was controlling and improving its costs through legitimate means, including "scal[ing] up" its projects "to a manufacturing model," when the Company's senior management was artificially decreasing its operating costs through the fraudulent accounting scheme described above.

145. On that same May 5, 2010 earnings call, Defendant Andrew stated that Defendants Takeyasu and Curran had helped Penn West achieve legitimate cost savings, stating, "Todd [Takeyasu] and Jeff Curran and his guys look around to where there's some cost savings and they really help Mark and the people in the field that make the Company run, and we're looking at little

bits of efficiencies. You get to the point where CAD0.10 or CAD0.15 in operating costs, that's starting to throw a little more cash back into the Company and things we can use to repay debt."

146. These statements were materially false and misleading when made. It was materially misleading for Defendant Andrew to represent that Defendants Takeyasu and Curran were controlling and improving the Company's costs through legitimate means, including "looking at little bits of efficiencies," when 'these Defendants were artificially decreasing the Company's operating costs through the fraudulent accounting scheme described above.

147. On February 17, 2011 Penn West held a fourth quarter 2010 earnings conference call. On that call, Defendant Andrew stated, "We're not seeing massive cost pressure in the industry. We're seeing selective attempts. But we have enough buying power that we have been able to balance this across the Company in terms of activity levels. So we're not seeing anything on that side of the equation driving the overall cost structure."

148. These statements were materially false and misleading when made. It was materially false and misleading for Andrew to state that the Company was controlling costs legitimately through its "buying power" when, in reality, the Company's senior management was artificially decreasing its operating costs through the fraudulent accounting scheme described above.

149. Further, throughout fiscal 2010, Defendants Andrew and Takeyasu repeatedly certified the purported accuracy of Penn West's reported financial statements and the supposed effectiveness of its internal controls. Defendants Andrew and Takeyasu signed certifications filed with the Company's quarterly financial results on Form 6-K on May 6, 2010, August 6, 2010, and November 8, 2010. These certifications affirmed that these Defendants had reviewed Penn West's quarterly filings and, based on knowledge gained in the exercise of "reasonable diligence," they

contained no "untrue statement of material facts or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made"; "fairly present[ed] in all material respects the financial condition, results of operations, and cash flows" of Penn West; and disclosed any material changes to Penn West's internal controls over financial reporting. These certifications also stated that Defendants Andrew and Takeyasu had "designed" Penn West's internal reporting controls to: (1) provide reasonable assurance that "material information relating to" Penn West is "made known" to them; and (2) provide "reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes" (the "Form 6-K Certifications").

150. Penn West's Form 40-F filed March 22, 2011 also contained Form 40-F Certifications signed by Defendants Takeyasu and Andrew, taking substantially the same form as described in paragraph 138 above, except as to the year in which the relevant assessment of internal controls is represented to have taken place. As noted above, like the Form 6-K Certifications, the Form 40-F Certifications affirmed that the Company's internal controls were effective and its financial statements were accurate.

151. As Penn West admitted in connection with its Restatement, the Form 6-K Certifications and the Form 40-F Certifications described in ¶¶149-50 were materially false and misleading when made. Contrary to the affirmations that Penn West's internal controls over financial reporting were effective, and that Penn West's reported financial results were accurate, Penn West lacked adequate internal controls over its financial reporting, and its financial statements were materially misstated as a result of the undisclosed fraud described above.

(2) <u>2011 Financial Results</u>

152. On February 16, 2012, Penn West issued a press release announcing its financial results for the year ended December 31, 2011 and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. For fiscal year 2011, Penn West announced operating expenses of $1.036 billion (or $17.40/boe) and royalties of $661 million.

153. On March 16, 2012, Penn West filed its 2011 annual report and audited consolidated financial statements, including the false statements enumerated above, on Form 40-F with the SEC. Defendant Nunns signed the Form 40-F.

154. As alleged above, Penn West admitted in its Restatement that its senior executives continued to engage in the accounting fraud described above during 2011. As a result of this fraudulent conduct, during this timeframe, Penn West's reported financial results for 2011 were misstated.

155. In addition, Defendants issued materially false and misleading Form 6-K and Form 40-F Certifications in connection with the filing of the Company's 2011 financial results. Defendants Andrew and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described in paragraph 149 above) filed with the Company's quarterly financial results on Form 6-K on May 6, 2011. Defendants Nunns and Takeyasu signed Form 6-K Certifications (taking substantially the same form as described in paragraph 149 above) filed with the Company's quarterly financial results on Form 6-K on August 11, 2011, and November 4, 2011.

156. Penn West's Form 40-F filed on March 16, 2012 also contained Form 40-F Certifications signed by Defendants Takeyasu and Nunns, taking substantially the same form as

described in paragraph 138 above, except as to the year in which the relevant assessment of internal controls is represented to have taken place.

157. As Penn West admitted in connection with its Restatement, the Form 6-K Certifications and the Form 40-F Certifications described in ¶¶155-56 were materially false and misleading when made. Contrary to the affirmations that Penn West's internal controls over financial reporting were effective, and that Penn West's reported financial results were accurate, Penn West lacked adequate internal controls over its financial reporting, and its financial statements were materially misstated as a result of the undisclosed fraud described above.

C. Defendants' False and Misleading Statements Regarding Penn West's First Quarter 2012 Financial Results

158. On May 4, 2012 the Company issued a press release announcing its financial results for the first quarter of 2012 (ended March 31, 2012) and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. For the first quarter of 2012, Penn West announced: (1) operating expenses of $273 million ($17.93/boe); (2) netbacks of $27.34/boe; (3) funds flow of $337 million; (4) operating cash flow of $234 million; (5) capital expenditures of $338 million; (6) royalties of $10.59/boe; and (7) net income of $59 million.

159. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶158 for Penn West's operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, royalties, and net income were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, royalties, and net income. Based on the limited information provided in the Restatement, Lead Plaintiffs

were able to calculate the impact of Penn West's fraud on certain of the Company's first quarter 2012 financial results as follows:[5]

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$273 million	$282 million	3%
Funds Flow	$337 million	$328 million	(3%)
Operating Cash Flow	$234 million	$225 million	(4%)
Net Income	$59 million	$51 million	(14%)

160. Also on May 4, 2012, Penn West held a first quarter 2012 earnings conference call. On that conference call, Defendant Takeyasu stated "our aim is to provide the Company with funds flow certainty to fund our growth and dividend."

161. This statement concerning the Company's goal to provide "funds flow certainty" was false and misleading because it failed to disclose that the Company was artificially inflating its reported funds flow through the fraudulent accounting scheme described above.

162. In response to a question from an analyst concerning "cost creep on [Penn West's] operating side," Defendant Nunns stated:

> On the ops cost side, I think there's two factors that are holding our ops costs a little persistently higher than we like to see it. Well, three really. The first being, we've seen higher electrical costs . . . . [T]he second portion, and this is an important one, is now that we've got a set of 700 to 800 horizontal wells producing within the context of the Company, there's a pattern to repair maintenance with these that we're still learning about . . . . The third is we're undertaking a significant program of automation in our fields.

[5] Above, Lead Plaintiffs calculate the ***minimum*** impact of Defendants' fraudulent reclassification of operating expenses as capital expenditures during the first quarter of 2012 on the Company's operating expenses based on the incomplete information made available in the Company's disclosures. The full impact of the fraud is likely greater.

163. This statement was materially false and misleading. It was materially misleading to state that the Company's costs were "higher than we like" without disclosing that the true costs were actually higher than reported, while the reported operating costs were artificially reduced by the fraudulent accounting scheme described above.

164. On that same May 4, 2012 conference call, an analyst asked whether, "as [Penn West has] to build up in inventory going into next year, as well, are you going to actually have to look at asset sales in order to meet your CapEx guidance." Defendant Nunns responded, "To meet our CapEx guidance, no. We believe we have the capacity internally to do that."

165. This representation that Penn West had the ability to "internally" meet its "CapEx guidance" without "look[ing] at asset sales" was materially false and misleading when made because it failed to disclose that Penn West's reported capital expenditures were artificially inflated by the Company's fraudulent accounting practices.

166. Defendants Nunns and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described in paragraph 149 above) filed with the Company's May 4, 2012 Form 6-K. As Defendants admitted in connection with their restatement of Penn West's historical financial results, Defendants' Form 6-K Certifications were false and misleading when made because Penn West, in fact, lacked adequate internal controls over its financial reporting, and its financial results were materially misstated as a result of the accounting fraud described herein.

D. <u>Defendants' False and Misleading Statements Regarding Penn West's Second Quarter 2012 Financial Results</u>

167. On August 10, 2012, Penn West issued a press release announcing its financial results for the second quarter of 2012 (ended June 30, 2012) and filed those results on Form 6-K with the SEC. Penn West Corporate Secretary Sherry Wendt signed the Form 6-K. In its press

release, Penn West framed its second quarter results by highlighting to investors that the Company was "driving service cost reductions as industry activity levels slow."

168. This statement was false and misleading when made. It was materially misleading for Penn West to state that it was legitimately "driving service cost reductions" when the Company's senior management was artificially reducing the Company's costs through the fraudulent accounting scheme described above.

169. For the second quarter of 2012, Penn West announced operating expenses of $255 million ($17.16/boe) and royalties of $9.84/boe.

170. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶169 for Penn West's operating expenses and royalties were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated its royalties.

171. On August 10, 2012, Penn West held a second quarter 2012 earnings conference call. Defendants Nunns and Takeyasu participated in the call. On that conference call, COO Foulkes stated:

> ***[W]e've been very active in addressing our costs***, both capital expenditures and operating expenses. . . . We've been successful in leveraging our size and activity levels to ensure top-tier status with our service providers. Beyond efficiencies and relationships, when commodity prices result in lower activity levels, there are also absolute service cost savings that need to be realized.

172. These statements were materially false and misleading when made. It was materially false and misleading for the Company to represent that it was actively "addressing our costs" through legitimate means, including "successfully" "leveraging" its "size and activity

levels" to drive down its costs, when the Company's senior management was artificially decreasing its operating costs through the fraudulent accounting scheme described above.

173. Defendants Nunns and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described in paragraph 149 above) filed with the Company's August 10, 2012 Form 6-K. As Penn West admitted in connection with its Restatement, Defendants Form 6-K Certifications were false and misleading when made because Penn West lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of the fraudulent accounting scheme described above.

E. <u>Defendants' False and Misleading Statements Regarding Penn West's Third Quarter 2012 Financial Results</u>

174. On November 2, 2012, Penn West issued a press release announcing its financial results for the third quarter of 2012 (ended September 30, 2012) and filed those results on Form 6-K with the SEC. Penn West Corporate Secretary Sherry Wendt signed the Form 6-K. For the third quarter of 2012, Penn West announced: (1) operating expenses of $260 million ($16.78/boe); (2) netbacks of $28.28/boe; (3) funds flow of $344 million; (4) operating cash flow of $238 million; (5) capital expenditures of $405 million; (6) royalties of $9.74/boe; and (7) net loss of $67 million. Analysts noted that Penn West's third quarter 2012 results were in line with estimates and praised the Company's "lower-than-expected opex."

175. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶174 for Penn West's operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, royalties, and net income were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, royalties,

and net income. Based on the limited information provided in the Restatement for 2012, Lead Plaintiffs were able to calculate the impact of Penn West's fraud on the Company's third quarter 2012 financial results as follows:[6]

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$260 million	$283 million	9%
Funds Flow	$344 million	$321 million	(7%)
Operating Cash Flow	$238 million	$215 million	(10%)
Net Income	($67) million	($80) million	(19%)

176. Also in Penn West's Form 6-K, the Company stated that, "operating costs decreased from 2011 primarily due to reduced power costs and acquisition and disposition activity."

177. This statement was materially false and misleading when made. It was materially false and misleading for Penn West to represent that its "decreased operating costs" were primarily driven by reduced power costs and other legitimate factors without disclosing that the Company was artificially reducing its operating costs through the fraudulent accounting scheme described above.

178. On November 2, 2012, Penn West held its third quarter 2012 earnings conference call. On that conference call, Defendant Nunns stated, "[w]e are committed to optimizing capital and operational efficiencies while providing dividend income for our shareholders . . . . We have indicated to our shareholders - shareholder base - before that in the softer portions of the

[6] Above, Lead Plaintiffs calculated the ***minimum*** impact of Defendants' fraudulent reclassification of operating expenses as capital expenditures during the third quarter of 2012 on the Company's operating expenses based on the incomplete information made available in the Company's disclosures. The full impact of the fraud is likely greater.

commodity price cycle, we aim to ensure consistency in the dividend. Over the last three years, we have taken appropriate measures to ensure that balance sheet integrity to support our endeavors."

179. This statement was materially false and misleading when made. It was materially misleading for Nunns to state that Penn West was "committed to optimizing capital and operational efficiencies," when Penn West was achieving its purported "operational efficiencies" through the fraudulent accounting scheme described above.

180. Defendants Nunns and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described above in paragraph 149) filed with the Company's November 2, 2012 Form 6-K. As Penn West admitted in connection with its Restatement, Defendants' Form 6-K Certifications were false and misleading because Penn West, in fact, lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of the fraudulent accounting scheme described above.

F. <u>Defendants' False and Misleading Statements Made in Connection with Penn West's 2013 Capital Budget Conference Call</u>

181. On January 10, 2013, Penn West held its 2013 Capital Budget Conference Call. Defendants Nunns and Takeyasu participated in the call. On that conference call, Penn West's Executive Vice President of Operations Engineering, Dave Middleton, stated in response to an analyst's question about costs:

> I am going to talk about two things, and those ***two things impact both operating costs and production***. And Murray mentioned previously in regard to production liability, so the first thing we've done we've realigned how we do repairs, things that go down in the field, and we get back onto them very quickly. So we've reorganized in that I call it 911 repair, so our goal is to do this very efficiently and reduce the cycle time though production is down.
>
> So doing it efficiently means reducing the costs associated with doing it many times, becoming very fluent in that process.

> And second is we get production back online sooner, and as a result that impacts operating cost from both the cost and volume side. The second thing is about I am going to say about planning as well. We do a number of turnarounds, and associated with that you have production down you normally do that in the summer months. So we have time and we've made it a focused effort to improve the planning associated with the turnarounds we do. We are prioritizing that to the big impact points.
>
> * * *
>
> I could probably go on here for about another hour telling you all the initiatives that the field staff has come up with. ***Those are two that we are going to see some true benefits***.

182. The statements referenced in ¶181 were materially false and misleading when made. It was materially false and misleading for Defendant Penn West to represent that it was reducing operating costs through legitimate means, including by doing repairs "very efficiently" and "getting production back online sooner," without disclosing that the Company was artificially decreasing its operating expenses by engaging in the fraud described above.

G. <u>Defendants' False and Misleading Statements Regarding Penn West's Fourth Quarter and Fiscal Year 2012 Financial Results</u>

183. On February 14, 2013, Penn West announced its financial results for the fourth quarter and year ended December 31, 2012 and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. For the fourth quarter of 2012, Penn West announced: (1) operating expenses of $243 million ($17.16/boe); (2) netbacks of $26.84/boe; (3) funds flow of $295 million; (4) operating cash flow of $441 million; (5) capital expenditures of $916 million; (6) royalties of $10.10/boe; and (7) net loss of $53 million.

184. For fiscal year 2012, Penn West announced: (1) operating expenses of $1.019 billion ($17.26/boe); (2) netbacks of $26.58/boe; (3) funds flow of $1.248 billion; (4) operating cash flow of $1.193 billion; (5) capital expenditures of $137 million (net of dispositions); and (6) royalties of $10.07/boe.

185. Analysts from BMO Capital Markets and CIBC World Markets noted that fourth quarter and full year 2012 results were generally in line with expectations, and analysts from Desjardins Capital Markets reported that the Company's "cash flow" exceeded expectations.

186. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶¶183-84 for Penn West's operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, and royalties were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, and royalties.

187. Based on the limited information provided in the Restatement for 2012, Lead Plaintiffs were able to calculate the impact of Penn West's fraud on the Company's fourth quarter 2012 financial results as follows:[7]

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$243 million	$278 million	14%
Funds Flow	$295 million	$260 million	(12%)
Operating Cash Flow	$238 million	$203 million	(15%)
Net Income	($53) million	($79) million	(49%)

188. The impact of Penn West's restatement of its fiscal year 2012 results on the Company's key financial results is as follows:

[7] Above, Lead Plaintiffs calculated the ***minimum*** impact of Defendants' fraudulent reclassification of operating expenses as capital expenditures during the fourth quarter of 2012 on the Company's operating expenses based on the incomplete information made available in the Company's disclosures. The full impact of the fraud is likely greater.

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$1.019 billion ($17.26/boe)	$1.186 billion ($20.10/boe)	16%
Netbacks/boe	$26.58	$25.45	(4%)
Funds Flow	$1.248 billion	$1.182 billion	(5%)
Operating Cash Flow	$1.193 billion	$1.127 billion	(6%)
Capital Expenditures	$137 million	$71 million	(48%)
Royalties/boe	$10.07	$8.36	(17%)

189. On March 15, 2013, Penn West filed its 2012 annual report and audited consolidated financial statements, including the false statements enumerated above, on Form 40-F with the SEC. Defendant Nunns signed the Form 40-F.

190. Also, in Penn West's Forms 6-K and 40-F, the Company stated:

> Funds flow was $295 million ($0.62 per share – basic) in the fourth quarter of 2012 compared to $437 million ($0.93 per share – basic) in the fourth quarter of 2011. Funds flow was lower in 2012 as a result of lower commodity price realizations and disposition activity;
>
> * * *
>
> Funds flow for 2012 was approximately $1.25 billion ($2.62 per share – basic) compared to $1.54 billion ($3.29 per share – basic) in 2011. The decline in funds flow was primarily attributed to lower commodity price realizations from wider Canadian crude oil differentials and lower natural gas prices.

191. Defendant Penn West's statements concerning its fourth quarter and full year 2012 funds flow were false and misleading when made. As Penn West admitted in connection with its Restatement, these reported funds flow results were materially inflated by Defendants' fraudulent accounting scheme described above. Further, it was materially misleading to represent that the

drivers and sources of the Company's funds flow results were "commodity price realizations" and "disposition activity" without disclosing that the Company's reported funds flow results were also driven by its fraudulent accounting scheme.

192. Also, in Penn West's Form 6-K, the Company stated:

> For the fourth quarter of 2012 and on an annual basis in 2012, operating costs were lower than the comparative periods in 2011 due to our focus on cost savings, lower electricity costs and acquisition and disposition activity.

193. Likewise, in Penn West's Form 40-F, the Company stated:

> Operating costs were lower in 2012 than 2011 due to our focus on cost savings, lower electricity costs and acquisition and disposition activity.

194. Defendant Penn West's statements set forth above were materially false and misleading when issued. It was materially false and misleading for Penn West to represent that its cost reductions were driven by legitimate factors, including "cost savings, lower electricity costs, and acquisition and disposition activity," while failing to disclose that the Company's reported costs were artificially reduced by its fraudulent accounting scheme described above.

195. Also, on February 14, 2013, Penn West held its fourth quarter 2012 earnings conference call. On that call, Defendant Nunns stated:

> ***Now turning to our highest priorities for 2013. Capital efficiency and production performance*** -- we are targeting improvements in capital efficiency through capital allocation and effectiveness in execution. ***For production performance, we are looking at all major functions in the operational and production interface to optimize cycle times and onstream performance. In addition, we've implemented organizational changes to obtain these objectives***. Let me give you a little color on these changes. We've consolidated the senior team responsibilities. We have moved the organization into cross-functional teams, and have restructured key elements of planning and operations functions. We are well along on the COO search and have a good roster of candidates we are in discussion with.

> ***We have been transitioning the company from a focus on oil resource growth to maximizing the effectiveness of our operations.*** This is an important change that will -- that we have implemented to fully realize the value inherent in our resources. And believe me, there is a strong sense of purpose around this imperative in the company.

196. Defendant Nunns' statements set forth above were materially false and misleading when made. It was materially false and misleading for Nunns to represent that the Company was taking legitimate steps to improve "production performance" and "maximize[e] the effectiveness of [Penn West's] operations," including "consolidating team responsibilities," without disclosing that the Company's purported efficiency gains were driven by Defendants' fraudulent accounting scheme described above.

197. Also on the February 14, 2013 earnings call, an analyst asked Penn West management: "Q4 CapEx – a little higher than we expected. Did you accelerate some capital to get a head start on the year, or was that always in your plans?" Defendant Nunns responded, "It was always in our plans . . . it was all with the intent of getting rigs on the – rigs going into the plays . . . . [T]here is nothing else, really, in that."

198. This statement was materially false and misleading when made. It was materially false and misleading for Defendant Nunns to represent that the Company's increased capital expenditures were due to "getting rigs on" and "nothing else," when, in reality, the Company's capital spending was artificially inflated by the fraudulent scheme described above.

199. Defendants Nunns and Takeyasu both signed the Form 40-F Certifications (taking substantially the same form as described in paragraph 138 above, except as to the year in which the relevant assessment of internal controls is represented to have taken place) filed with Penn West's March 15, 2013 Form 40-F. As Penn West admitted in connection with its Restatement, the Form 40-F Certifications were materially false and misleading when made because Penn West,

in fact, lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of the fraudulent accounting scheme described above.

H. Defendants' False and Misleading Statements Regarding Penn West's First Quarter 2013 Financial Results

200. On May 2, 2013, Penn West issued a press release announcing its financial results for the first quarter of 2013 (ended March 31, 2013) and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. That press release heralded the commencement of a "renewal process" for Penn West and reiterated the Company's focus on "maximizing the efficiency of our programs."

201. For the first quarter of 2013, Penn West announced: (1) operating expenses of $217 million ($16.88/boe); (2) netbacks of $27.76/boe; (3) funds flow of $267 million; (4) operating cash flow of $256 million; (5) capital expenditures of $427 million; (6) royalties of $9.30/boe; and (7) net loss of $97 million.

202. Analysts noted that Penn West's first quarter 2013 financial results were largely in line with expectations. UBS Investment Research reported that funds flow was ahead of consensus forecasts due to a "combination of better than forecast production . . . and lower operating costs ($16.88 vs $18.06/boe)," while Credit Suisse reported that cash flow "benefited from . . . lower opex."

203. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶201 for Penn West's operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, royalties, and net income were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, royalties,

and net income. The impact of Penn West's restatement of its first quarter 2013 results on the Company's key financial results is as follows:

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$217 million ($16.88/boe)	$272 million ($21.12/boe)	25%
Netbacks/boe	$27.76	$25.47	(8%)
Funds Flow	$267 million	$237 million	(11%)
Operating Cash Flow	$256 million	$226 million	(12%)
Capital Expenditures	$418 million	$376 million	(10%)
Royalties/boe	$9.30	$7.35	(21%)
Net Income	($97 million)	($115 million)	(19%)

204. Also in Penn West's Form 6-K, the Company stated, "Production and cost performance combined with improved light-oil price realizations compared to WTI prices resulted in first quarter funds flow in excess of internal expectations."

205. This statement was materially false and misleading when made. It was materially false and misleading for Penn West to represent that its funds flow was improved as a result of positive "production and cost performance" when, in reality, the Company's improved funds flow and "cost performance" were also the result of its fraudulent accounting scheme, described above.

206. Also in Penn West's Form 6-K, the Company stated, "Capital investment levels were on plan and production and capital guidance remains unchanged for 2013."

207. This statement was materially false and misleading when made. It was materially false and misleading for Penn West to represent that its "[c]apital investment levels were on plan,"

without disclosing that its capital expenditures were artificially inflated by the Company's fraudulent accounting scheme.

208. Also on May 2, 2013, Penn West held its first quarter 2013 earnings conference call. On that call, Defendant Nunns stated, "funds flow for the first quarter CAD267 million, or CAD0.55 per share, which was ahead of the internal expectations, primarily due to higher than budgeted light oil price realizations."

209. Defendant Nunns' statement that "funds flow for the first quarter CAD267 million, or CAD0.55 per share" was materially false and misleading when made because, as Penn West admitted in connection with its Restatement, funds flow for the first quarter of 2013 was $237 million -- 11% lower than the figure presented by Defendant Nunns. Further, Defendant Nunns' statement attributing those seemingly favorable funds flow results to "higher than budgeted light oil price realizations" was also materially false and misleading when made because it failed to disclose that the Company's funds flow results were also driven by its fraudulent accounting scheme, described above.

210. On that same May 2, 2013 earnings conference call, Defendant Nunns stated, "Penn West production is on plan, capital is on budget and cash flow is ahead of budget."

211. Defendant Nunns' statement that "capital is on budget," was materially false and misleading when made because Nunns materially misrepresented and failed to disclose that Penn West's capital spending was artificially inflated as a result of the fraudulent accounting scheme described above. Further, Defendant Nunns' statement that "cash flow is ahead of budget" was materially false and misleading when made because Nunns materially misrepresented and failed to disclose that Penn West's reported cash flow was artificially inflated by Defendants' fraudulent accounting scheme.

212. On that same May 2, 2013 earnings call, SVP Wollmann stated, "***[o]perating costs in Q1 were on budget***. Initiatives such as infrastructure consolidation in older fields are being implemented to reduce operating costs in the future."

213. Defendant Penn West's statement that "operating costs in Q1 were on budget" was materially false and misleading when made because it failed to disclose that the Company's reported operating costs were artificially reduced as a result of the accounting fraud described herein. Similarly, the statement describing the drivers and sources of the Company's efforts to reduce operating costs was also materially false and misleading when made because it failed to disclose that the Company's efforts to reduce reported cost results were actually also driven by its fraudulent accounting scheme.

214. Defendants Nunns and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described above in paragraph 149) filed with the Company's May 3, 2013 Form 6-K. As Penn West admitted in connection with its Restatement, Defendants' Form 6-K Certifications were materially false and misleading because Penn West, in fact, lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of the accounting fraud alleged herein.

I. Defendants' False and Misleading Statements Regarding Penn West's Second Quarter 2013 Financial Results

215. On August 8, 2013, Penn West issued a press release announcing its financial results for the second quarter of 2013 (ended June 30, 2013) and filed those results on Form 6-K with the SEC. Defendant Takeyasu signed the Form 6-K. In the Company's press release, Defendant Roberts characterized the Company's second quarter 2013 results as "deliver[ing] operating results in line with expectations as we focused on reliable and repeatable performance," and stated that the Company was taking "[f]urther steps to improve [its] focus, accountability, and

cost model to allow [it] to achieve [its] goal to deliver best in class operating performance and shareholder returns" in "the present quarter."

216. For the second quarter of 2013, Penn West announced: (1) operating expenses of $214 million ($16.83/boe); (2) netbacks of $30.68/boe; (3) funds flow of $278 million; (4) operating cash flow of $199 million; (5) capital expenditures of $83 million; (6) royalties of $10.32/boe; and (7) net loss of $40 million.

217. Analysts reacted positively to Penn West's release of its second quarter results. For instance, J.P. Morgan highlighted that the Company's improving funds flow stemmed from, among other things, "lower costs." Barclays analysts optimistically noted that "operating costs continue to show a positive trend, averaging $16.83/boe in Q2 (versus our $18/boe forecast)." CIBC analysts also reported that "PWT highlighted the success of cost-control measures during Q2."

218. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶216 for Penn West's operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, royalties, and net income were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, royalties, and net income. The impact of Penn West's restatement of its second quarter 2013 results on the Company's key financial results is as follows:

Financial Metric	**As Reported**	**As Restated**	**% Change**
Operating Expenses	$214 million ($16.83/boe)	$269 million ($21.15/boe)	26%
Netbacks/boe	$30.68	$28.30	(8%)

Funds Flow	$278 million	$249 million	(10%)
Operating Cash Flow	$199 million	$170 million	(15%)
Capital Expenditures	$83 million	$30 million	(64%)
Royalties/boe	$10.32	$8.38	(19%)
Net Income	($40 million)	($53 million)	(33%)

219. Also in Penn West's Form 6-K, the Company stated:

> ***We are actively streamlining and focusing our management and operating structure***. To date in 2013, we have reduced our workforce by over 10 percent of full time equivalents including a realignment of responsibilities and significant reduction of personnel, including at the executive and management level. ***We will continue to focus on cost saving initiatives and take further steps to allow us to achieve our goal to deliver best in class operating performance and shareholder returns***.

220. Defendant Penn West's statements describing the steps the Company was taking to reduce operating costs were materially false and misleading when made. It was materially false and misleading for Penn West to represent that it was pursuing legitimate "cost saving initiatives" by "actively streamlining" its operations to deliver "best in class operating performance" when, in reality, the Company was artificially reducing its operating costs through the fraudulent accounting scheme described herein.

221. Also in Penn West's Form 6-K, the Company stated, "Our operating costs have decreased from the comparative periods in 2012 due to our focus on operational efficiencies and acquisition and disposition activity that closed in late 2012. Operating costs for the second quarter of 2013 include a realized gain on electricity contracts of $7 million (2012 – $2 million loss) and for the six months ended 2013 include a realized gain of $8 million (2012 – $1 million loss)."

222. Defendant Penn West's statements describing the drivers and sources of the Company's purportedly "decreased" operating costs were materially false and misleading when made. It was materially false and misleading for Defendant Penn West to represent that it had reduced its operating costs through legitimate means, including a "focus on operational efficiencies" and "realized gain[s] on electricity contracts," when, in reality, the Company's operating costs were artificially reduced by the fraudulent accounting scheme described above.

223. Also in Penn West's Form 6-K, the Company stated, "For the second quarter of 2013, funds flow was higher than the comparative quarter due to narrowing WTI to Edmonton light sweet pricing differentials which was partially offset by lower production as a result of dispositions closed in late 2012."

224. Defendant Penn West's statements touting the Company's purportedly increased quarterly funds flow results were materially false and misleading when made. It was materially false and misleading for Defendant Penn West to attribute the seemingly favorable funds flow results to "narrowing" pricing differentials in benchmark oil prices when, in reality, the Company's funds flow results were artificially inflated by its fraudulent accounting scheme, described above.

225. Also on August 8, 2013, Penn West held its second quarter 2013 earnings conference call. On that call, Defendant Roberts stated, "operationally the quarter was solid if unspectacular, but given that at Penn West our production is on plan, ***capital is on budget***, and ***cash flow is ahead of budget***, we think this quarter gives us a lot to build on."

226. Defendant Roberts' statement that "capital is on budget" was materially false and misleading when made because it materially misrepresented and failed to disclose that the Company's capital spending was artificially inflated by the Company's fraudulent accounting scheme, described herein. Further, Defendant Roberts' statement that "cash flow is ahead of

budget" was also materially false and misleading when made because it failed to disclose that Penn West's reported cash flow was artificially inflated as a result of Defendants' fraudulent accounting scheme.

227. On that same August 8, 2013 conference call, an analyst asked Penn West management, "Where do you see some more efficiencies that you can end up gleaning from the Company on the all back size? And ultimately then, better netbacks?" Defendant Roberts responded, "we are probably between CAD3 and CAD5 out of range in terms of an OpEx per barrel metrics [sic]."

228. Defendants Roberts' statement that "we are probably between CAD3 and CAD5 out of range in terms of an OpEx per barrel metrics [sic]" was materially false and/or misleading when made. As Penn West admitted in connection with its Restatement, the Company's reported operating cost results were materially understated as a consequence of Defendants' fraudulent accounting scheme, and thus, Roberts materially understated the magnitude by which Penn West was "out of range in terms of an OpEx per barrel metrics [sic]."

229. Defendants Roberts and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described above in paragraph 149) filed with the Company's August 9, 2013 Form 6-K. As Penn West admitted in connection with its Restatement, Defendants' Form 6-K Certifications were false and misleading because Penn West, in fact, lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of Defendants' fraudulent accounting scheme.

J. Defendants' False and Misleading Statements Regarding Penn West's Third Quarter 2013 Financial Results

230. On November 6, 2013, Penn West issued a press release announcing its financial results for the third quarter of 2013 (ended September 30, 2013) and filed those results on Form

6-K with the SEC. Defendant Takeyasu signed the Form 6-K. In that press release, Defendant Roberts stated that "Penn West continues to transition to a business that has predictable results and importantly one that is cash flow focused." The press release also claimed that staff reductions completed during the quarter would "improv[e] go forward operating and general and administrative burdens."

231. Penn West issued another press release that same day touting its purported turnaround plan, described above at ¶¶85-86. In the press release, the Company praised the "results of its [B]oard strategic review process" on operating cost reduction and funds flow. The press release stated that "[t]he Board and senior management believe that the Company's new strategic focus and culture, improving corporate and operating cost structure and low-risk opportunities to increase oil-weighting will enable the Company to deliver production and funds flow per share growth and largely fund its dividend and capital program from internally generated funds flow."

232. For the third quarter of 2013, Penn West announced: (1) operating expenses of $218 million ($17.72/boe); and (2) royalties of $11.42/boe.

233. Analysts reacted positively to Penn West's pronouncements of lowered costs and improved netbacks. AltaCorp analysts, for example, noted that "Penn West is now benchmarking its core operations to ensure it is becoming the low cost operator; Field operations are challenged to find ways to improve costs and streamline operations; By reducing costs, Penn West can begin to slowly improve field netbacks and increase funds flow from operations; This approach has also been applied to the head office, where the headcount has been reduced 25% and overheads slashed in order to improve shareholder returns." J.P. Morgan analysts also noted that:

> PWT continues to focus on cost reductions in an effort to boost capital efficiencies and unit netbacks. It is clear that management

> has executed an in-depth review of its operating costs; ***PWT identified the top five operating cost drivers*** as labor, electrical power, workovers, chemicals, and operations, which in aggregate account for ~50% of total operating costs. PWT is targeting C$17.5/boe of opex in 2014E , and ***expects to see a steady decline in per unit opex*** to <C$16/boe by 2018E.

234. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶232 for Penn West's operating expenses and royalties were materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated royalties. The impact of Penn West's restatement of its third quarter 2013 results on these financial results is as follows:

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$218 million ($17.72/boe)	$240 million ($19.48/boe)	10%
Royalties/boe	$11.42	$9.37	(18%)

235. The Company's Form 6-K also "highlight[ed]" increases in netbacks in both the quarter and year-to-date relative to comparable periods in 2012. The Form 6-K attributed the year-to-date increase in netbacks to "an increase in crude oil prices, narrower light-oil pricing differentials and lower operating costs." The Form 6-K attributed the quarterly increase in netbacks to "higher crude oil prices and narrower Canadian light-oil pricing differentials which resulted in higher commodity price realizations."

236. Defendant Penn West's statements "highlight[ing]" increases in quarterly and year to date netbacks, describing the drivers and sources of those increases, and attributing the purported increase in "netbacks" to declining operating costs, were materially false and misleading when made. It was materially false and misleading for Defendant Penn West to represent that the

purported "increase" in netbacks was driven by legitimate factors, including "lower operating costs" when, in reality, the Company's netbacks were artificially inflated, and its operating costs were artificially reduced, by Defendants' fraudulent accounting scheme.

237. Also on November 6, 2013, Penn West held its third quarter 2013 earnings conference call. On that call, Defendant Roberts stated, ***"[o]ur cost structure is in control and moving downward***, and we're having success in what has been termed a very soft market, and tightening up our portfolio with asset divestitures."

238. Defendant Roberts' representations that Penn West's operating costs were moving "downward" as a result of legitimate factors, including the Company's "control" over its "cost structure," were materially false and misleading when made. It was materially false and misleading for Roberts to represent that the Company's costs were decreasing as a result of legitimate factors when, in reality, Penn West's operating costs were artificially reduced as a result of the Company's fraudulent accounting scheme.

239. Also during the call, Defendant Roberts referenced a slide presentation that the Company had distributed to analysts that described the Company's purported turnaround plan. Roberts stated, "[n]ow, the graph that everyone will focus on is on the lower left. ***Our cost per barrel will be going down***, aided by production growth, to be sure, but ***largely driven by our control of the gross expense number***." Defendant Roberts further stated, "[t]he key takeaways here are that ***we are maintaining cost control while liquids waiting*** [sic] ***is going up, which leads to the view of dramatic improvement in net backs per barrel in the period***."

240. This statement was materially false and misleading when made. It was materially false and misleading for Defendant Roberts to represent that the Company was legitimately reducing costs in order to create a "dramatic improvement" in netbacks when, in reality, Penn

West's reported operating costs were artificially reduced, and its netbacks were artificially inflated, by Defendants' fraudulent accounting scheme.

241. Defendants Roberts and Takeyasu both signed Form 6-K Certifications (taking substantially the same form as described above in paragraph 149) filed with the Company's November 7, 2013 Form 6-K. As Penn West admitted in connection with its Restatement, Defendants' Form 6-K Certifications were false and misleading because Penn West, in fact, lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of the fraudulent accounting scheme described herein.

K. Defendants' False and Misleading Statements Regarding Penn West's Fourth Quarter and Fiscal Year 2013 Financial Results

242. On March 7, 2014, Penn West issued a press release announcing its financial results for the fourth quarter and year ended December 31, 2013 and filed those results on Form 6-K with the SEC. Penn West Corporate Secretary Sherry Wendt signed the Form 6-K. In that press release, the Company reiterated its "new vision for Penn West," which included "application of best-in-class operating practices" and "relentless cost control," and stated that a "cornerstone of our business plan is to operate in a continuous and deliberate manner to drive cost efficiencies."

243. Analysts hailed the Company's efforts to reduce operating costs, echoing Defendants' false and misleading statements concerning the magnitude and drivers of those reductions. BMO Capital Markets analysts noted, for instance, that "[o]ver the past year, management has reduced operating costs by -~26% through various initiatives including (i) labour force optimization, (ii) electrical power management, (iii) workover changes, and (iv) better spending awareness." Macquarie research analysts likewise repeated the Company's false statement that "cost reductions not done yet" and observed that "the company has recognized G&A cost savings of C$12m and operating cost reductions of C$166m. Of the operating cost reductions,

~40% are due to improvements with the organization while the remainder are from asset sales." On March 7, 2014, Penn West stock closed at USD $8.50, up 7% from its previous closing price of USD $7.92.

244. The statements set forth in ¶242 concerning Penn West's purportedly "relentless cost control" were materially false and misleading when made. It was materially misleading for the Company to emphasize that it was employing "relentless cost control" and "operat[ing] in a continuous and deliberate manner to drive cost efficiencies" when, in reality, its senior management was artificially reducing its operating costs through the accounting fraud described above, and indeed, the Company's *actual* operating costs had ***increased*** from the previous quarter, just before the announcement of the Company's turnaround plan.

245. As noted above, the Form 6-K also announced the Company's financial results for the fourth quarter and full year 2013. For the fourth quarter of 2013, Penn West announced: (1) operating expenses of $204 million ($17.86/boe); (2) netbacks of $26.66/boe; (3) funds flow of $216 million; (4) operating cash flow of $329 million; (5) capital expenditures of $265 million; and (6) royalties of $10.13/boe.

246. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶245 for Penn West's quarterly operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, and royalties were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, and royalties. The impact of Penn West's Restatement on the Company's key fourth quarter 2013 results' is as follows:

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$204 million ($17.86/boe)	$244 million ($21.32/boe)	20%
Netbacks/boe	$26.66	$25.30	(5%)
Funds Flow	$216 million	$203 million	(6%)
Operating Cash Flow	$329 million	$314 million	(5%)
Capital Expenditures	($265 million)	($301 million)	14%[8]
Royalties/boe	$10.13	$7.88	(22%)

247. For fiscal year 2013, Penn West announced: (1) operating expenses of $853 million ($17.30/boe); (2) netbacks of $29.69/boe; (3) funds flow of $1.054 billion; (4) operating cash flow of $1.039 billion; (5) capital expenditures of $291 million (net of dispositions); and (6) royalties of $10.29/boe.

248. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶247 for Penn West's full year 2013 operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, and royalties were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, and royalties. The

[8] In this quarter, Penn West earned $477 million in property dispositions, but reported $208 million in exploration and development capital spending, causing capital expenditures to swing to a negative expenditure (i.e., a gain) of $265 million. When Penn West restated its exploration and development capital spending as only $176 million (a 15% decrease in spending from the reported figure of $208 million), this exacerbated the negative balance on Penn West's net capital spending.

impact of Penn West's restatement of its fiscal year 2013 results on the Company's key financial results is as follows:

Financial Metric	As Reported	As Restated	% Change
Operating Expenses	$853 million ($17.30/boe)	$1,025 million ($20.77/boe)	20%
Netbacks/boe	$29.69	$28.24	(5%)
Funds Flow	$1,054 million	$985 million	(7%)
Operating Cash Flow	$1,039 million	$968 million	(7%)
Capital Expenditures	$291 million	$164 million	(44%)
Royalties/boe	$10.29	$8.23	(20%)

249. On March 7, 2014, Penn West filed its 2013 annual report and audited consolidated financial statements, which included the false financial results enumerated above, on Form 40-F with the SEC. Defendant Roberts signed the Form 40-F.

250. Penn West's Form 40-F also stated, "One of the key strategies in our long-term plan is cost reduction to realize improvements in our netbacks which, in turn drives higher funds flow. The 2013 increase in netbacks compared to 2012 was primarily due to higher commodity prices while the decrease between 2012 and 2011 was attributed to lower commodity prices."

251. This statement was materially false and misleading when made. It was materially misleading for Defendant Penn West to represent that the purported "2013 increase in netbacks" was due to "higher commodity prices" when, in reality, Penn West had materially overstated its netbacks through the fraudulent accounting scheme described herein.

252. Penn West's Form 40-F also stated, "The reduction in operating costs in 2013 compared to 2012 is attributed to the asset dispositions that closed late in 2012 along with field staff reductions and other cost reduction initiatives in 2013 aimed at streamlining our operations."

253. This statement was materially false and misleading when made. It was materially misleading to describe the drivers of Penn West's purported "reduction in operating costs in 2013" as legitimate factors, including "asset dispositions," "field staff reductions" and "other cost reduction initiatives," when, in reality, Penn West's operating costs were artificially reduced by Defendants' fraudulent accounting scheme.

254. Also on March 7, 2014, Penn West held a conference call to discuss its 2013 year-end results. Defendant Roberts participated in the call. On that call, Penn West Investor Relations Manager Clayton Paradis stated:

> On the cost side, through organizational changes implemented primarily in the back half of 2013, and dispositions, ***we reduced operating expenses by approximately CAD166 million***, and G&A expenses by approximately CAD12 million year over year. ***Of the CAD166 million in operating cost reduction, approximately 60% is attributed to dispositions over this period, with staff reductions and other cost reduction initiatives in 2013 aimed at streamlining our operations accounting for the balance***. As we continue to execute on the long-term plan, focusing on reducing these costs further and improving the overall profitability of the enterprise remains critically important.

255. This statement was materially false and misleading when made. It was materially misleading to represent that Penn West "reduced operating expenses by approximately CAD166 million" due to legitimate factors such as "dispositions," "staff reductions and other cost reduction initiatives," when, in reality, Penn West's operating costs were artificially reduced by Defendants' fraudulent accounting scheme.

256. On that same March 7 earnings call, an analyst asked Penn West management about the operating cost reductions reflected in its accompanying slide show presentation, asking "Slide

7 where ***you have shown the 26% reduction in operating costs***, do you think you have a lot more to squeeze there? Or how are you feeling on the progression of that curve?" In response, Defendant Roberts stated:

> I think what we would say is we are [in the] very early days. We have, candidly, hit this place with a sledgehammer in the first six months that we have been here. And I think now we're going to go at this stuff with a lot more precision. ***I do believe that there are a lot more cost savings that we can take out of the business both on an operating side and a G&A side.***

257. Defendant Penn West's slide showing that the Company had reduced operating costs by 26% over 2013 was materially false and misleading when made because, in reality, Penn West's reported operating costs were artificially reduced as a consequence of the Company's fraudulent accounting scheme. Further, Defendant Roberts' representation that the Company had legitimately reduced its operating costs was materially false and misleading when made because Roberts failed to disclose that the Company was artificially reducing its operating costs through the fraudulent accounting scheme described above.

258. In addition, Defendants Roberts and Takeyasu both signed the Form 40-F Certifications filed with Penn West's March 7, 2014 Form 40-F, which were in substantially the same form as described above in paragraph 138, except as to the year in which the relevant assessment of internal controls is represented to have taken place. As Penn West admitted in connection with its Restatement, Defendants' Form 40-F Certifications were false and misleading because Penn West, in fact, lacked adequate internal controls over its financial reporting, and its reported financial results were materially misstated, as a result of the fraudulent accounting scheme described above.

L. <u>Defendants' False and Misleading Statements Regarding Penn West's First Quarter 2014 Financial Results</u>

259. On May 1, 2014, Penn West issued a press release announcing its financial results for the first quarter of 2014 (ended March 31, 2014) and filed those results on Form 6-K with the SEC. Penn West Corporate Secretary Sherry Wendt signed the Form 6-K. In that press release the Company characterized its first quarter results as "a clear step forward toward achieving the goals in our long-term plan" and assured investors the Company was "taking active steps to improve our business processes and cost structure."

260. For the first quarter of 2014, Penn West announced: (1) operating expenses of $176 million ($17.66/boe); (2) netbacks of $36.67/boe; (3) funds flow of $279 million; (4) operating cash flow of $232 million; (5) capital expenditures of ($8 million) (net of dispositions); and (6) royalties of $12.05/boe.

261. Analysts viewed Penn West's first quarter 2014 results positively. National Bank Financial reported that "Penn West reported Q1 results with CFPS [cash flow per share] of $0.57 coming in 8% above consensus $0.53 and 4% above our $0.55. ***The beat was driven by higher netbacks*** prompted by a combination of marginally higher oil weighting (boosting realized pricing) and ***lower cash costs*** (7%)." Analysts also hailed the Company's efforts to reduce costs. For example, Credit Suisse analysts noted, "Costs Are Improving - A Positive Sign: In our last note, we indicated that continued execution on the cost reduction front would be positive to our view." TD Securities analysts also stated that "Cost Savings and Improved Operating Efficiencies Remains Primary Focus," and repeated Penn West management's claim "that it currently is 'completing two externally supported business process reviews to assist in further reducing operating and overhead cost structures.'" On May 2, 2014, Penn West stock closed at USD $9.43, up from its closing price of USD $9.06 prior to Penn West's release of its first quarter 2014 results.

262. As Penn West admitted in connection with its Restatement, the financial results set forth in ¶260 for Penn West's quarterly operating expenses, netbacks, funds flow, operating cash flow, capital expenditures, and royalties were all materially false and misleading when issued. As a consequence of Defendants' fraudulent accounting scheme described above, Penn West's reported financial results materially understated the Company's operating costs, and materially overstated capital expenditures, funds flow, operating cash flow, netbacks, and royalties. The impact of Penn West's restatement of its first quarter 2014 results on the Company's key financial results is as follows:

Financial Metric	**As Reported**	**As Restated**	**% Change**
Operating Expenses	$176 million ($17.66/boe)	$204 million ($20.35/boe)	16%
Netbacks/boe	$36.67	$35.52	(3%)
Funds Flow	$279 million	$269 million	(4%)
Operating Cash Flow	$232 million	$222 million	(4%)
Capital Expenditures	($8 million)	($18 million)	(125%)9
Royalties/boe	$12.05	$10.12	(16%)

263. Also in its Form 6-K, the Company stated, "Funds flow for the first quarter of 2014 was $279 million compared to $267 million in the comparative period in 2013. The increase in funds flow is mainly due to higher commodity prices, a stronger US dollar, and lower operating and general and administrative costs."

[9] In this quarter, Penn West earned $213 million in property dispositions, but reported $205 million in exploration and development capital spending, causing capital expenditures to swing to a negative expenditure (i.e., a gain) of $8 million. When Penn West restated its exploration and development capital spending as only $195 million, this exacerbated the negative balance on Penn West's net capital spending.

264. Penn West's statements concerning its first quarter 2014 funds flow were materially false and misleading when made. As noted above, these reported funds flow results were materially inflated by the fraudulent accounting scheme described herein. Further, Defendant Penn West's statements identifying purportedly legitimate drivers of its funds flow results, including "commodity prices, a stronger US dollar, and lower operating and general and administrative costs," were also materially false and misleading when made because they failed to disclose that the Company's reported funds flow results, and the lower operating costs driving them, were both a product of its fraudulent accounting scheme.

265. Also in its Form 6-K, the Company stated, "Operating costs were lower in 2014 compared to 2013 primarily due to lower labour, vehicle and electricity costs."

266. Defendant Penn West's statement was materially false and misleading when made. It was misleading to describe the drivers of Penn West's purportedly "lower" operating costs as legitimate factors, including "lower labour, vehicle and electricity costs," when the Company's reported operating costs were artificially reduced by Defendants' fraudulent accounting scheme.

267. Also on May 1, 2014, Penn West held its first quarter 2014 earnings conference call. Defendant Roberts was present. On that call, Paradis stated:

> Penn West first quarter of 2014 proved to be very solid by all accounts. Fund flow of CAD279 million, or CAD0.57 per share in the quarter, was modestly ahead of analyst consensus, and we realized that 38% improvement in our netbacks from the fourth quarter 2013.
>
> * * *
>
> [F]unds flow increased approximately 30% quarter over quarter to CAD279 million. ***While funds flow has improved with a stronger commodity price environment, cost control was a positive factor as well.***

268. Defendant Penn West's statements concerning its first quarter 2014 funds flow results were materially false and misleading when made. As noted above, these reported funds flow results were materially inflated by Defendants' fraudulent accounting scheme described herein. Further, Defendant Penn West's statements identifying the drivers of its funds flow results as legitimate factors, including "stronger commodity price environment" and "cost control," were materially false and misleading when made because they failed to disclose that the Company's reported funds flow results were artificially inflated by the Company's fraudulent accounting scheme. In addition, Defendant Penn West's statements claiming a "38% improvement in our netbacks from the fourth quarter 2013" were materially false and misleading when made because the Company's reported netbacks were materially inflated by Defendants' fraudulent accounting scheme.

269. Also on that May 1, 2014 earnings conference call, Paradis stated:

> We continue to work hard on reducing costs in the business and ***realized a CAD28 million decrease in operating expenses, which represents a 14% reduction from the fourth quarter of 2013***.

270. This statement was materially false and misleading when made. It was materially misleading to state that the Company had realized a significant "decrease in operating expenses," when the Company's reported cost results were materially understated by Defendants' fraudulent accounting scheme described above.

271. Defendants Roberts and interim CFO Jeffrey Curran both signed Form 6-K Certifications (taking substantially the same form as described above in paragraph 149) filed with the Company's May 1, 2014 Form 6-K. As Penn West admitted in connection with its Restatement, Defendants' Form 6-K Certifications were materially false and misleading because Penn West, in fact, lacked adequate internal controls over its financial reporting and its financial results were materially misstated as a result of Defendants' fraudulent accounting scheme.

VII. LOSS CAUSATION

272. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Lead Plaintiffs and the Class. Throughout the Class Period, Penn West's stock price was artificially inflated as a result of Defendants' materially false and misleading statements and omissions that created the false impression, among other things, that (i) Penn West's reported financial results during the Class Period were accurate and in accordance with IFRS and/or Canadian Generally Accepted Accounting Principles ("GAAP"); (ii) Penn West's controls over financial reporting were effective and provided reasonable assurance that the Company's statements about its financial results during the Class Period were accurate and in accordance with IFRS and/or Canadian GAAP; (iii) the sources and drivers of the Company's reported financial results, including operating costs, operating cash flow, funds flow, netbacks, capital expenditures, and net income results, were legitimate, transparent, and publicly known; (iv) to the extent the Company was experiencing reduced or improved operating costs, these improvements reflected the Company's legitimate efforts to ameliorate its intrinsic efficiency and profitability; and (v) that the Company's investments in revenue generating assets were accurately stated and were otherwise supporting the Company's stated production goals. As a result of Defendants' materially false and misleading statements and omissions, the market price of Penn West's common stock was inflated throughout the Class Period.

273. Two separate disclosures on these topics revealed to the market on a piecemeal basis the false and misleading character of Defendants' statements and omissions. First, on November 6, 2013, Penn West announced (1) poor third quarter results driven in part by higher than expected operating expenses; and (2) that the Company's long-awaited strategic review had revealed that the Company's cost structure and controls were so poor that the Company would

have to take dramatic action over the course of an entire year to meaningfully improve Penn West's operating costs, net backs, and funds flow.

274. As described above, prior to the Company's November 6, 2013 disclosure the market had been encouraged by Penn West's apparently improving costs. When the partial truth about the magnitude of the problem Penn West was facing with respect to its operating costs began to be revealed to the market on November 6, 2013 through the Company's announcement (1) that Penn West's operating costs were so poor that cost cutting measures it was already implementing would be insufficient; (2) that Penn West would have to implement far more dramatic cost cutting measures than before – measures that would reduce the Company's profitability during 2014 by causing production to fall by 25% that year – to rehabilitate the Company's key financial metrics; and (3) that the Company's operating cost structure was so poor that it would take a full year for even this dramatic cost cutting plan to effectuate meaningful change with respect to Penn West's financial performance, the price of the Company's common stock declined in response, as some of the artificial inflation caused by Defendants' material false and misleading statements and omissions was removed from the price of Penn West's common stock, thereby causing damage to Lead Plaintiffs and other members of the Class. Specifically, on November 6, 2013, the Company's stock price tumbled on the year's highest trading volume, declining more than 15%, from USD $11.09 to close at USD $9.35 per share, wiping out hundreds of millions of dollars of shareholder value.

275. However, the Company's November 6, 2013 disclosure did not reveal the full truth to investors. For instance, the Company did not disclose that it was materially misstating its reported financial results and, indeed, continued to misstate its financial results on, and after, November 6, 2013. Further, Defendants mitigated the impact of Penn West's November 6, 2013

disclosures and prevented the full truth from being revealed by making contemporaneous false and misleading statements that minimized or denied the true facts. Among other things, Defendant Roberts assured investors that although additional improvement was needed, Penn West was already experiencing success in decreasing operating expenses and that this trend would continue as the Company began to execute its "turnaround plan" in the coming months. For example, as explained above, during Penn West's November 6, 2013 third quarter earnings conference call, Defendant Roberts stated, "Our cost structure is in control and moving downward, and we're having success in what has been termed a very soft market." As described above, through these continuing omissions and misleading assurances, Defendants successfully prevented the full truth from being revealed to the market, and the price of Penn West's stock remained artificially inflated.

276. Second, on July 29, 2014, as discussed above, Penn West announced that it was required to restate certain of its historical financial results, including those for at least 2012 and 2013. In response to Penn West's July 29, 2014 disclosures, the price of Penn West's common stock declined significantly.

277. Specifically, in response to Penn West's July 29, 2014 press release disclosing, among other things, that "senior finance and accounting personnel" at Penn West were responsible for implementing or directing the Company's fraudulent practice of accounting for transactions so as "to reduce operating costs and increase the Company's reported capital expenditures and royalty expense" without "adequate supporting documentation," the Company's common stock declined dramatically on the year's highest trading volume, falling more than 14% from USD $9.15 per share to close at USD $7.85 per share, and wiping out hundreds of millions of dollars in shareholder value. Accordingly, as a result of their purchases of Penn West's securities during the Class Period, Lead Plaintiffs and other members of the Class suffered economic loss and damages.

278. It was entirely foreseeable that Defendants' materially false and misleading statements and omissions discussed herein would artificially inflate the price of Penn West's securities. It was also foreseeable to Defendants that the revelation of the truth about Penn West's financial results, its financial reporting controls, and the real sources and drivers of its reported financial results would cause the price of the Company's securities to drop as the artificial inflation caused by Defendants' misstatements and omissions was removed. Thus, the stock price declines described above were directly and proximately caused by Defendants' materially false and misleading statements and omissions.

VIII. PENN WEST'S ACCOUNTING FRAUD VIOLATED GAAP

279. During the Class Period, two sets of accounting standards applied to Penn West. Canadian GAAP governed the Company's reporting obligations from the start of the Class Period through December 31, 2010. Canada then switched to the International Financial Reporting Standards ("IFRS") on January 1, 2011, after which time IFRS governed the Company's reporting obligations through the end of the Class Period.

280. As described above, Defendants engaged in a fraudulent accounting scheme, in which they: (1) improperly reclassified at least $200 million in operating expenses as property, plant, and equipment "without adequate supporting documentation" during the period from January 1, 2012 to the first quarter of 2014 and additional amounts in prior years, going back to 2007; (2) improperly reclassified at least $220 million in operating expenses as royalties "without adequate supporting documentation" during the period from January 1, 2012 to the first quarter of 2014 and additional amounts in prior years, going back to 2007; and (3) from 2012 to the first quarter of 2014, improperly accrued at least $56 million in capital expenditures in excess of the amounts expended in the relevant year by failing to reverse unused accruals to zero at year-end. Each of these improper accounting practices was a clear violation of IFRS and Canadian GAAP.

A. <u>Improper Reclassification of Operating Expenses as Capital Expenditures</u>

281. During the Class Period, Defendants improperly reclassified production costs associated with Penn West's business (such as costs associated with running its wells) primarily as "drilling and completions" capital expenditures (such as expenditures made for the purpose of generating a producing well). At all times during the Class Period, applicable accounting standards provided clear guidelines establishing the circumstances under which an expenditure must be expensed and when it may be capitalized. Under Section 1000 of Canadian GAAP, for instance, "an expense is recognized immediately in the income statement when an expenditure produces no future benefits or when, and to the extent that, future economic benefits do not qualify, or cease to qualify, for recognition in the balance sheet as an asset." Expenses incurred in running a well are clearly not directed at producing "future benefit." Rather, they are incurred for the present purpose of pumping oil in the normal course of operation.

282. After 2011, Penn West represented in its public filings that it recognized capital expenditures "as PP&E when it is ***probable*** that future economic benefits associated with the investment will flow to Penn West and the cost can be reliably measured," consistent with IFRS. IFRS, *The Conceptual Framework of Financial Reporting*, at §4.44. Section 4.45 provides a corollary to this principle: a transaction results in the recognition of an expense when "the degree of certainty that economic benefits will flow to the entity beyond the current accounting period is insufficient to warrant the recognition of an asset." Likewise, International Accounting Standard 16 provides that "the cost of an item of PP&E shall be recognized as an asset ***if, and only if***: (1) It is probable that future economic benefits associated with the item will flow to the entity; and (2) The cost of the item can be reliably measured."

283. Even standing alone, Penn West's admission that documentation for the reclassified operating expenses was either entirely absent or otherwise wholly inadequate to support the

reclassifications demonstrates that the accounting personnel responsible for reclassifying the relevant entries could not have concluded in good faith that the evidence available to Penn West supported a conclusion that it was "probable" that future economic benefits would flow to Penn West as a result of the transaction and that the cost could be "reliably measured."

B. Improper Reclassification of Operating Expenses as Royalties

284. Penn West's reclassification of operating expenses as royalties throughout the Class Period is a particularly egregious violation of GAAP and strongly demonstrates that the Company's reclassifications could not have been made in good faith. Again, Penn West's own public filings represented that the Company was following straightforward guidelines relating to the calculation and accounting treatment of royalties: "Royalties from production on Crown lands ***are determined by governmental regulation*** and are generally calculated as a percentage of the value of gross production. The rates of royalties payable generally depends in part on prescribed reference prices, well productivity, geographical location, field discovery date, method of recovery and the type or quality of the petroleum product produced." This is consistent with industry guidance, which defines a royalty as "the government's share of the natural resources exploited and ***are a share of the production free of cost,*** " PWC, *Financial Reporting in the Oil and Gas Industry* (2011) (emphasis added), and "the right to a share of oil and gas production free from cost," AICPA *Audit and Accounting Guide for Entities with Oil and Gas Producing Activities*, section 6.17 (2014).

285. As analysts and other commentators pointed out, because royalty expenses consist of fixed amounts actually paid to the government, there is no room for subjective judgment in accounting for such entries, and, thus, little chance of inadvertent error. For example, as one analyst explained in an August 8, 2014 article in *The Globe and Mail*, "Royalties are paid to a partner or the government. Generally, it's pretty clear what the amount is and what it's for."

286. Instead of adhering to these clear principles, according to Penn West's restated public filings, the Company's senior accounting personnel "developed" the view that expenses incurred producing a royalty-holder's share of production could be booked as royalties, rather than operating expenses. Not only was this treatment at odds with Penn West's own characterizations of royalties in its public filings, it was inconsistent with the Company's historical practice and flatly contrary to relevant guidance.

287. Penn West never disclosed its all-too-convenient "view" to investors in contravention of, among other things, the mandate of both Section 1000 of Canadian GAAP and IFRS QC4 to "faithfully represent" transactions affecting Penn West. As Penn West's accounting treatment of these operating expenses departed substantially from accepted definitions and common understandings of royalties, that treatment did not "faithfully represent" the transactions affecting Penn West.

C. Improper Over-accrual of Capital Expenditures

288. As described above, Penn West accrued its capital expenditures in excess of amounts expended in 2012 and 2013, carrying over unused accruals into the following year instead of reversing those accruals to zero when it became clear that the full amount of the accruals had not been expended. This treatment violated the mandate of both Section 1000 of Canadian GAAP and IFRS QC4 to "faithfully represent" transactions affecting Penn West. Penn West's accounting treatment of these over-accruals did not faithfully represent Penn West's investments in revenue generating assets, but instead inflated reported PP&E investments.

289. Moreover, IAS 16, cited above, requires that the cost PP&E be measured reliably for it to be recorded. As Penn West's over-accruals of PP&E reflected investments that were never actually made, the cost of those non-existent investment could not have been reliably measured.

IX. PRESUMPTION OF RELIANCE

290. At all relevant times, the market for Penn West's securities was efficient for the following reasons, among others:

(a) Penn West's stock met the requirements for listing, and was listed and actively traded on NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Penn West filed periodic reports with the SEC and NYSE;

(c) Penn West regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Penn West was followed by numerous securities analysts employed by major brokerage firms who wrote reports which were distributed to those brokerage firms' sales force and certain customers. Each of these reports was publicly available and entered the public market place.

291. As a result of the foregoing, the market for Penn West stock promptly digested current information regarding Penn West from all publicly available sources and reflected such information in Penn West's stock price. Under these circumstances, all purchasers of Penn West securities during the Class Period suffered similar injury through their purchase of Penn West securities at artificially inflated prices, and a presumption of reliance applies.

292. In addition, Plaintiffs are entitled to a presumption of reliance under *Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128 (1972), because the claims asserted herein are predicated in part upon material omissions of fact that Defendants had a duty to disclose.

X. INAPPLICABILITY OF THE STATUTORY SAFE HARBOR AND BESPEAKS CAUTION DOCTRINE

293. The statutory safe harbor and/or bespeaks caution doctrine applicable to forward looking statements under certain circumstances do not apply to any of the false and misleading statements pleaded in this Complaint.

294. None of the statements complained of herein was a forward-looking statement. Rather, they were historical statements or statements of purportedly current facts and conditions at the time the statements were made, including statements about Penn West's financial results, its reported operating costs, capital expenditures, royalty expenses, funds flow, and netbacks, among others.

295. Further, the statutory safe harbor does not apply to statements included in financial statements that purportedly were made in accordance with Canadian GAAP and IFRS, including Penn West's Forms 6-K and Forms 40-F issued throughout the Class Period.

296. To the extent that any of the false and misleading statements alleged herein can be construed as forward looking, those statements were not accompanied by meaningful cautionary language identifying important facts that could cause actual results to differ materially from those in the statements. As set forth above in detail, then existing facts contradicted Defendants' statements regarding Penn West's financial results, its reported operating costs, capital expenditures, royalty expenses, funds flow, and netbacks, among others. Given the then-existing facts contradicting Defendants' statements, any generalized risk disclosures made by Penn West were not sufficient to insulate Defendants from liability for their materially false and misleading statements.

297. To the extent that the statutory safe harbor does apply to any forward looking statements pleaded herein, Defendants are liable for those false forward looking statements

because at the time each of those statements was made, the particular speaker knew that the particular forward looking statement was false, and/or the false forward looking statement was authorized and/or approved by an executive officer of Penn West who knew that the statement was false when made.

XI. CLASS ACTION ALLEGATIONS

298. Lead Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3) on behalf of a class consisting of all those who (i) purchased or otherwise acquired Penn West securities traded on the NYSE or another domestic exchange, or (ii) purchased or otherwise acquired call options or sold/wrote Penn West put options in the United States or on a domestic exchange, between February 18, 2010 and July 29, 2014, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of Penn West at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

299. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Penn West common shares were actively traded on NYSE. As of December 31, 2013, Penn West had approximately 489,077,284 shares of common stock outstanding. While the exact number of Class members is unknown to Lead Plaintiffs at this time and can only be ascertained through appropriate discovery, Lead Plaintiffs believe that there are hundreds or thousands of members of the proposed Class. Class members who purchased Penn West common shares may be identified from records maintained by Penn West or its transfer agent(s), and may be notified of this class action using a form of notice similar to that customarily used in securities class actions.

300. Lead Plaintiffs' claims are typical of Class members' claims, as all members of the Class were similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

301. Lead Plaintiffs will fairly and adequately protect Class members' interests and have retained competent counsel experienced in class actions and securities litigation.

302. Common questions of law and fact exist to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of fact and law common to the Class are:

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition and internal controls of Penn West;

(c) whether Defendants acted with scienter; and

(d) to what extent the members of the Class have suffered damages, as well as the proper measure of damages.

303. A class action is superior to all other available methods for the fair and efficient adjudication of this action because joinder of all Class members is impracticable. Additionally, the damage suffered by some individual Class members may be relatively small so that the burden and expense of individual litigation makes it impossible for such members to individually redress the wrong done to them. There will be no difficulty in the management of this action as a class action.

XII. CLAIMS FOR RELIEF

COUNT I

FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND SEC RULE 10b-5 PROMULGATED THEREUNDER (Against Defendants Penn West, Takeyasu, Andrew, Nunns, Roberts, and Curran)

304. Lead Plaintiffs repeat and re-allege each and every allegation set forth above as if fully set forth herein.

305. This Count is asserted on behalf of all members of the Class against Defendants Penn West, Takeyasu, Andrew, Nunns, Roberts, and Curran for violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

306. During the Class Period, Defendants disseminated or approved the false statements specified below, among others, which Defendants knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

307. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that it: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Lead Plaintiffs and others similarly situated in connection with their purchases of Penn West common stock during the Class Period. As detailed herein, the misrepresentations contained in, or the material facts omitted from, those statements included, but were not limited to, Penn West's financial results, its reported operating costs, capital expenditures, royalty expenses, funds flow, and netbacks at each reporting period from the full year of 2009 through May 5, 2014, statements of compliance with Canadian GAAP and IFRS in preparing Penn West's financial statements, and statements of the effectiveness of Penn West's internal controls over financial reporting.

308. Defendants, individually and in concert, directly and indirectly, by the use of means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct that operated as a fraud and deceit upon Lead Plaintiffs and the Class; made various untrue and/or misleading statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; made the above statements intentionally or with a severely reckless disregard for the truth; and employed devices and artifices to defraud in connection with the purchase and sale of Penn West securities, which were intended to, and did: (a) deceive the investing public, including Lead Plaintiffs and the Class, regarding, among other things, Penn West's financial results, its reported operating costs, capital expenditures, royalty expenses, funds flow, and netbacks, and the Company's failure to comply with Canadian GAAP and IFRS and failure to maintain effective internal controls over financial reporting; (b) artificially inflate and maintain the market price of Penn West securities; and (c) cause Lead Plaintiffs and other members of the Class to purchase Penn West securities at artificially inflated prices and suffer losses when the true facts became known.

309. Defendant Penn West is liable for all materially false and misleading statements made during the Class Period, as alleged above, including the false and misleading statements in:

(a) Penn West's SEC filings, including:

i. Penn West's Fourth Quarter 2009 Earnings Release filed on Form 6-K on February 18, 2010;

ii. Penn West's 2009 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 22, 2010;

iii. Penn West's Fourth Quarter 2010 Earnings Release filed on Form 6-K on February 17, 2011;

iv. Penn West's 2010 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 22, 2011;

v. Penn West's Fourth Quarter 2011 Earnings Release filed on Form 6-K on February 16, 2012;

vi. Penn West's 2011 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 16, 2012;

vii. Penn West's First Quarter 2012 Earnings Release and Quarterly Financial Statement filed on Form 6-K on May 4, 2012;

viii. Penn West's Second Quarter 2012 Earnings Release and Quarterly Financial Statement filed on Form 6-K on August 10, 2012;

ix. Penn West's Third Quarter 2012 Earnings Release and Quarterly Financial Statement filed on Form 6-K on November 2, 2012;

x. Penn West's Fourth Quarter and Full Year 2012 Earnings Release filed on Form 6-K on February 15, 2013;

xi. Penn West's 2012 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 15, 2013;

xii. Penn West's First Quarter 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on May 3, 2013;

xiii. Penn West's Second Quarter 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on August 9, 2013;

xiv. Penn West's Third Quarter 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on November 6, 2013;

xv. Penn West's Strategic Review press release filed on Form 6-K on November 18, 2013;

xvi. Penn West's Fourth Quarter and Full Year 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on March 7, 2014; and

xvii. Penn West's First Quarter 2014 Earnings Release and Quarterly Financial Statement filed on Form 6-K on May 1, 2014.

(b) Statements made during Penn West's conference calls, including:

i. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2009 Earnings Results conference call on February 18, 2010;

ii. Defendants Nunns and Andrews' false statements made during the First Quarter 2010 Earnings Results conference call on May 5, 2010;

iii. Defendant Andrew's false statements made during the Fourth Quarter and Full Year 2010 Earnings Results conference call on February 17, 2011;

iv. Defendant Nunns' false statements made during the First Quarter 2012 Earnings Results conference call on May 4, 2012;

v. COO Foulkes' false statements made during the Second Quarter 2012 Earnings Results conference call on August 10, 2012;

vi. Defendants Takeyasu and Nunns' false statements made during the Third Quarter 2012 Earnings Results conference call on November 2, 2012;

vii. EVP Middleton's false statements made during the 2013 Capital Budget Conference call on January 10, 2013;

viii. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2012 Earnings Results conference call on February 14, 2013;

ix. Defendant Nunns and SVP Wollmann's false statements made during the First Quarter 2013 Earnings Results conference call on May 2, 2013;

x. Defendant Roberts' false statements made during the Second Quarter 2013 Earnings Results conference call on August 8, 2013;

xi. Defendant Roberts' false statements made during the Third Quarter 2013 Earnings Results conference call on November 6, 2013;

xii. Defendant Roberts and Investor Relations Manager Paradis' false statements made during the Fourth Quarter and Full Year 2013 Earnings Results conference call on March 7, 2014; and

xiii. Investor Relations Manager Paradis' false statements made during the First Quarter 2014 Earnings Results conference call on May 1, 2014.

(c) Certifications of Filings, including:

i. Defendants Takeyasu and Andrew's Form 40-F Certifications filed in connection with Penn West's 2009 Annual Report and Consolidated Financial Statements filed March 22, 2010;

ii. Defendants Takeyasu and Andrew's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 6, 2010, August 6, 2010, and November 8, 2010;

iii. Defendants Takeyasu and Andrew's Form 40-F Certifications filed in connection with Penn West's 2010 Annual Report and Consolidated Financial Statements filed March 22, 2011;

iv. Defendants Takeyasu and Andrew's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 6, 2011;

v. Defendants Takeyasu and Nunns' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on August 11, 2011 and November 4, 2011;

vi. Defendants Takeyasu and Nunns' Form 40-F Certifications filed in connection with Penn West's 2011 Annual Report and Consolidated Financial Statements filed March 16, 2012;

vii. Defendants Takeyasu and Nunns' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 4, 2012, August 10, 2012, and November 2, 2012;

viii. Defendants Takeyasu and Nunns' Form 40-F Certifications filed in connection with Penn West's 2012 Annual Report and Consolidated Financial Statements filed March 15, 2013;

ix. Defendants Takeyasu and Nunns' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 3, 2013;

x. Defendants Takeyasu and Roberts' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on August 9, 2013 and November 7, 2013;

xi. Defendants Takeyasu and Roberts' Form 40-F Certifications filed in connection with Penn West's 2013 Annual Report and Consolidated Financial Statements filed March 7, 2014; and

xii. Defendants Roberts and Curran's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 1, 2014.

310. Defendant Takeyasu is liable for the false and misleading statements he made and for which he was responsible, including by failing to correct false and misleading statements made in his presence, as set forth above, including:

(a) Penn West's SEC filings, including:

i. Penn West's Fourth Quarter 2009 Earnings Release filed on Form 6-K on February 19, 2010;

ii. Penn West's 2009 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 22, 2010;

iii. Penn West's Fourth Quarter 2010 Earnings Release filed on Form 6-K on February 18, 2011;

iv. Penn West's 2010 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 22, 2011;

v. Penn West's Fourth Quarter 2011 Earnings Release filed on Form 6-K on February 17, 2012;

vi. Penn West's 2011 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 16, 2012;

vii. Penn West's First Quarter 2012 Earnings Release and Quarterly Financial Statement filed on Form 6-K on May 4, 2012;

viii. Penn West's Second Quarter 2012 Earnings Release and Quarterly Financial Statement filed on Form 6-K on August 10, 2012;

ix. Penn West's Third Quarter 2012 Earnings Release and Quarterly Financial Statement filed on Form 6-K on November 2, 2012;

x. Penn West's Fourth Quarter and Full Year 2012 Earnings Release filed on Form 6-K on February 14, 2013;

xi. Penn West's 2012 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 15, 2013;

xii. Penn West's First Quarter 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on May 3, 2013;

xiii. Penn West's Second Quarter 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on August 9, 2013;

xiv. Penn West's Third Quarter 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on November 7, 2013;

xv. Penn West's Strategic Review press release filed on Form 6-K on November 18, 2013; and

xvi. Penn West's Fourth Quarter and Full Year 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on March 7, 2014.

(b) Statements Takeyasu made or failed to correct when made in his presence during Penn West's conference calls, including:

i. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2009 Earnings Results conference call on February 18, 2010;

ii. Defendants Nunns and Andrews' false statements made during the First Quarter 2010 Earnings Results conference call on May 5, 2010;

iii. Defendant Andrew's false statements made during the Fourth Quarter and Full Year 2010 Earnings Results conference call on February 17, 2011;

iv. Defendants Takeyasu and Nunns' false statements made during the First Quarter 2012 Earnings Results conference call on May 4, 2012;

v. COO Foulkes' false statements made during the Second Quarter 2012 Earnings Results conference call on August 10, 2012;

vi. Defendant Nunns' false statements made during the Third Quarter 2012 Earnings Results conference call on November 2, 2012;

vii. EVP Middleton's false statements made during the 2013 Capital Budget Conference call on January 10, 2013;

viii. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2012 Earnings Results conference call on February 14, 2013;

ix. Defendant Nunns and SVP Wollmann's false statements made during the First Quarter 2013 Earnings Results conference call on May 2, 2013;

x. Defendant Roberts' false statements made during the Second Quarter 2013 Earnings Results conference call on August 8, 2013;

xi. Defendant Roberts' false statements made during the Third Quarter 2013 Earnings Results conference call on November 6, 2013; and

xii. Defendant Roberts and Investor Relations Manager Paradis' false statements made during the Fourth Quarter and Full Year 2013 Earnings Results conference call on March 7, 2014.

(c) Certifications of Filings, including:

i. Defendant Takeyasu's Form 40-F Certifications filed in connection with Penn West's 2009 Annual Report and Consolidated Financial

Statements filed March 22, 2010;

ii. Defendant Takeyasu's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 6, 2010, August 6, 2010, and November 8, 2010;

iii. Defendant Takeyasu's Form 40-F Certifications filed in connection with Penn West's 2010 Annual Report and Consolidated Financial Statements filed March 22, 2011;

iv. Defendant Takeyasu's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 6, 2011, August 11, 2011 and November 4, 2011;

v. Defendant Takeyasu's Form 40-F Certifications filed in connection with Penn West's 2011 Annual Report and Consolidated Financial Statements filed March 16, 2012;

vi. Defendant Takeyasu's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 4, 2012, August 10, 2012, and November 2, 2012;

vii. Defendant Takeyasu's Form 40-F Certifications filed in connection with Penn West's 2012 Annual Report and Consolidated Financial Statements filed March 15, 2013;

viii. Defendants Takeyasu's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 3, 2013, August 9, 2013, and November 7, 2013; and

ix. Defendants Takeyasu and Roberts' Form 40-F Certifications filed in connection with Penn West's 2013 Annual Report and Consolidated Financial Statements filed March 7, 2014.

311. Defendant Andrew is liable for the false and misleading statements he made and for which he was responsible, including by failing to correct false and misleading statements made in his presence, as set forth above, including:

(a) Penn West's SEC filings, including:

i. Penn West's 2009 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 22, 2010; and

ii. Penn West's 2010 Annual Report and Consolidated Financial

Statements filed on Form 40-F on March 22, 2011.

(b) Statements Andrew made or failed to correct when made in his presence during Penn West's conference calls, including:

i. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2009 Earnings Results conference call on February 18, 2010;

ii. Defendants Nunns and Andrews' false statements made during the First Quarter 2010 Earnings Results conference call on May 5, 2010; and

iii. Defendant Andrew's false statements made during the Fourth Quarter and Full Year 2010 Earnings Results conference call on February 17, 2011.

(c) Certifications of Filings, including:

i. Defendant Andrew's Form 40-F Certifications filed in connection with Penn West's 2009 Annual Report and Consolidated Financial Statements filed March 22, 2010;

ii. Defendant Andrew's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 6, 2010, August 6, 2010, and November 8, 2010;

iii. Defendant Andrew's Form 40-F Certifications filed in connection with Penn West's 2010 Annual Report and Consolidated Financial Statements filed March 22, 2011; and

iv. Defendant Andrew's Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 6, 2011.

312. Defendant Nunns is liable for the false and misleading statements he made and for which he was responsible, including by failing to correct false and misleading statements made in his presence, as set forth above, including:

(a) Penn West's SEC filings, including:

i. Penn West's Second Quarter 2012 Quarterly Financial Statement filed on Form 6-K on August 10, 2012;

ii. Penn West's Third Quarter 2012 Quarterly Financial Statement filed on Form 6-K on November 2, 2012;

iii. Penn West's 2012 Annual Report and Consolidated Financial Statements filed on Form 40-F on March 15, 2013; and

iv. Penn West's First Quarter 2013 Quarterly Financial Statement filed on Form 6-K on May 3, 2013.

(b) Statements Defendant Nunns made or failed to correct when made in his presence during Penn West's conference calls, including:

i. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2009 Earnings Results conference call on February 18, 2010;

ii. Defendants Nunns and Andrews' false statements made during the First Quarter 2010 Earnings Results conference call on May 5, 2010;

iii. Defendant Andrew's false statements made during the Fourth Quarter and Full Year 2010 Earnings Results conference call on February 17, 2011;

iv. Defendants Takeyasu and Nunns' false statements made during the First Quarter 2012 Earnings Results conference call on May 4, 2012;

v. COO Foulkes' false statements made during the Second Quarter 2012 Earnings Results conference call on August 10, 2012;

vi. Defendant Nunns' false statements made during the Third Quarter 2012 Earnings Results conference call on November 2, 2012;

vii. EVP Middleton's false statements made during the 2013 Capital Budget Conference call on January 10, 2013;

viii. Defendant Nunns' false statements made during the Fourth Quarter and Full Year 2012 Earnings Results conference call on February 14, 2013; and

ix. Defendant Nunns and SVP Wollmann's false statements made during the First Quarter 2013 Earnings Results conference call on May 2, 2013.

(c) Certifications of Filings, including:

i. Defendant Nunns' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on August 11, 2011 and November 4, 2011;

ii. Defendant Nunns' Form 40-F Certifications filed in connection with Penn West's 2011 Annual Report and Consolidated Financial

Statements filed March 16, 2011;

iii. Defendant Nunns' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 4, 2012, August 10, 2012, and November 2, 2012;

iv. Defendant Nunns' Form 40-F Certifications filed in connection with Penn West's 2012 Annual Report and Consolidated Financial Statements filed March 15, 2013; and

v. Defendants Nunns' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on May 3, 2013.

313. Defendant Roberts is liable for the false and misleading statements he made and for which he was responsible, including by failing to correct false and misleading statements made in his presence, as set forth above, including:

(a) Penn West's SEC filings, including:

i. Penn West's Second Quarter 2013 Quarterly Financial Statement filed on Form 6-K on August 9, 2013;

ii. Defendant Roberts' statements in Penn West's Second Quarter 2013 Earnings Release filed on Form 6-K on August 9, 2013;

iii. Penn West's Third Quarter 2013 Quarterly Financial Statement filed on Form 6-K on November 7, 2013;

iv. Defendant Roberts' statements in Penn West's Third Quarter 2013 Earnings Release filed on Form 6-K on November 7, 2013;

v. Penn West's Strategic Review press release filed on Form 6-K on November 18, 2013;

vi. Penn West's Fourth Quarter and Full Year 2013 Earnings Release and Quarterly Financial Statement filed on Form 6-K on March 7, 2014; and

vii. Penn West's First Quarter 2014 Earnings Release and Quarterly Financial Statement filed on Form 6-K on May 1, 2014.

(b) Statements Roberts made or failed to correct when made in his presence during Penn West's conference calls, including:

i. Defendant Roberts' false statements made during the Second Quarter 2013 Earnings Results conference call on August 8, 2013;

ii. Defendant Roberts' false statements made during the Third Quarter 2013 Earnings Results conference call on November 6, 2013;

iii. Defendant Roberts and Investor Relations Manager Paradis' false statements made during the Fourth Quarter and Full Year 2013 Earnings Results conference call on March 7, 2014; and

iv. Investor Relations Manager Paradis' false statements made during the First Quarter 2014 Earnings Results conference call on May 1, 2014.

(c) Certifications of filings, including:

i. Defendant Roberts' Form 6-K Certifications filed in connection with Penn West's quarterly financial results filed on August 9, 2013 and November 7, 2013;

ii. Defendant Roberts' Form 40-F Certifications filed in connection with Penn West's 2013 Annual Report and Consolidated Financial Statements filed March 7, 2014.

iii. Defendant Roberts' Form 6-K Certification filed in connection with Penn West's quarterly financial results filed on May 1, 2014.

314. Defendant Curran is liable for the false and misleading statements he made and for which he was responsible, including by failing to correct false and misleading statements made in his presence, as set forth above, including Penn West's First Quarter 2014 Quarterly Financial Statement filed on Form 6-K on May 1, 2014; Investor Relations Manager Paradis' false statements made during the First Quarter 2014 Earnings Results conference call on May 1, 2014; and Defendant Curran's Form 6-K Certification filed in connection with Penn West's quarterly financial results filed on May 1, 2014.

315. As described above, the Defendants acted with scienter throughout the Class Period, in that they either had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose the true facts, even though such facts were available to them.

316. The above allegations, as well as the allegations pertaining to the overall scope and breadth of the fraud at Penn West, which resulted in continuous and material overstatements of the Company's most important financial metrics, establish a strong inference that Defendants Takeyasu, Andrew, Nunns, Roberts, and Curran acted with scienter in making the materially false and misleading statements set forth above during the Class Period.

317. Lead Plaintiffs and the Class have suffered damages in that, in direct reliance on the integrity of the market, they paid artificially inflated prices for Penn West securities, which inflation was removed from the stock when the true facts became known. Lead Plaintiffs and the Class would not have purchased Penn West securities at the prices they paid, or at all, if they had been aware that the market price had been artificially and falsely inflated by these Defendants' false and misleading statements.

318. As a direct and proximate result of these Defendants' wrongful conduct, Lead Plaintiffs and the other members of the Class suffered damages attributable to the fraud alleged herein in connection with their purchases of Penn West securities during the Class Period.

<u>COUNT II</u>

FOR VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT (Against Defendants Takeyasu, Andrew, Nunns, Roberts, and Curran)

319. Lead Plaintiffs repeat and re-allege each and every allegation set forth above as if fully set forth herein.

320. This Count is asserted on behalf of all members of the Class against each of the Individual Defendants for violations of Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

321. During their tenures as officers and/or directors of Penn West, each of these Defendants was a controlling person of the Company within the meaning of Section 20(a) of the Exchange Act. By reason of their positions of control and authority as officers and/or directors of

Penn West, these Defendants had the power and authority to direct the management and activities of the Company and its employees, and to cause the Company to engage in the wrongful conduct complained of herein. These Defendants were able to and did control, directly and indirectly, the content of the public statements made by Penn West during the Class Period, thereby causing the dissemination of the false and misleading statements and omissions of material facts as alleged herein.

322. In their capacities as senior corporate officers of the Company, and as more fully described above, Defendants Takeyasu, Andrew, Nunns, Roberts, and Curran had direct involvement in the day-to-day operations of the Company, in reviewing and managing its regulatory and legal compliance, and in its accounting and reporting functions. Defendants Takeyasu, Andrew, Nunns, Roberts, and Curran signed the Company's SEC filings during the Class Period, and were directly involved in providing false information and certifying and/or approving the false statements disseminated by Penn West during the Class Period. Defendants Takeyasu and Curran, as CFO and interim CFO, respectively, were also directly responsible for controlling, and did control, the Company's violations of Canadian GAAP, IFRS and other relevant accounting rules, and was directly involved in providing false information and certifying and/or approving the false statements disseminated by Penn West during the Class Period. As a result of the foregoing, Defendants Takeyasu, Andrew, Nunns, Roberts, and Curran as a group and individually, were controlling persons of Penn West within the meaning of Section 20(a) of the Exchange Act.

323. As set forth above, Penn West violated Section 10(b) of the Exchange Act by its acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons of Penn West and as a result of their own aforementioned conduct, Defendants Takeyasu, Andrew,

Nunns, Roberts, and Curran are liable pursuant to Section 20(a) of the Exchange Act, jointly and severally with, and to the same extent as the Company is liable under Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, to Lead Plaintiffs and the other members of the Class who purchased or otherwise acquired Penn West common stock. Moreover, as detailed above, during the respective times these Defendants served as officers and/or directors of Penn West, each of these Defendants was culpable for the material misstatements and omissions made by Penn West, including such misstatements as the Company's false financial statements, including false statements concerning Penn West's reported operating costs, capital expenditures, royalty expenses, funds flow, and netbacks, among others, as set forth above.

324. As a direct and proximate result of these Defendants' conduct, Lead Plaintiffs and the other members of the Class suffered damages in connection with their purchase or acquisition of Penn West securities.

XIII. PRAYER FOR RELIEF

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

(a) Declaring the action to be a proper class action pursuant to Fed. R. Civ. P. 23;

(b) Awarding compensatory damages in favor of Lead 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 Lead Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including attorneys' fees and expert fees; and

(d) Awarding such equitable, injunctive and other relief as the Court may deem just and proper.

XIV. JURY DEMAND

Lead Plaintiffs hereby demand a trial by jury.

Dated: December 19, 2014

GLANCY BINKOW & GOLDBERG LLP

/s/ Peter A. Binkow
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Counsel for Lead Plaintiff The City of Miami Fire Fighters' and Police Officers' Retirement Trust and Co-Lead Counsel for the Class

EXHIBIT 1

CERTIFICATION PURSUANT TO
THE FEDERAL SECURITIES LAWS

I, Robert Nagle, on behalf of The City of Miami Fire Fighters' and Police Officers' Retirement Trust ("Miami FIPO"), hereby certify, as to the claims asserted under the federal securities laws, that:

1. I am the Administrator of Miami FIPO. I have reviewed a complaint filed in this matter. Miami FIPO has authorized the filing of this motion for appointment as lead plaintiff.

2. Miami FIPO did not purchase the securities that are the subject of this action at the direction of counsel or in order to participate in any action arising under the federal securities laws.

3. Miami FIPO is willing to serve as a lead plaintiff and representative party on behalf of the Class, including providing testimony at deposition and trial, if necessary. Miami FIPO fully understands the duties and responsibilities of the lead plaintiff under the Private Securities Litigation Reform Act, including the selection and retention of counsel and overseeing the prosecution of the action for the Class.

4. Miami FIPO's transactions in the Penn West Petroleum Ltd. securities that are the subject of this action are set forth in the chart attached hereto.

5. Miami FIPO has sought to serve and was appointed as a lead plaintiff and representative party on behalf of a class in the following action under the federal securities laws filed during the three-year period preceding the date of this Certification:

   In re Quality Systems, Inc. Securities Litigation, No. 13-cv-01818 (C.D. Cal.)

6. Miami FIPO will not accept any payment for serving as a representative party on behalf of the Class beyond Miami FIPO's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class, as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this __ day of September 2014.

Robert Nagle
Administrator
The City of Miami Fire Fighters' and Police Officers' Retirement Trust

The City of Miami Fire Fighters' and Police Officers' Retirement Trust
Transactions in Penn West Petroleum Ltd.

Transaction	Date	Shares	Price
Purchase	3/23/2011	4,541	27.5465
Purchase	6/15/2011	200	22.8621
Purchase	6/16/2011	400	22.7549
Purchase	6/17/2011	200	22.7223
Purchase	6/20/2011	300	22.6996
Purchase	6/23/2011	5,706	22.2990
Purchase	6/23/2011	515	22.3246
Purchase	6/24/2011	373	22.2590
Purchase	6/27/2011	197	22.1525
Purchase	7/12/2011	313	22.4572
Purchase	7/14/2011	2,407	22.5000
Purchase	7/25/2011	100	22.4183
Purchase	7/26/2011	300	22.4658
Purchase	7/27/2011	700	22.2428
Purchase	7/28/2011	300	22.1159
Purchase	7/29/2011	400	22.1345
Purchase	8/1/2011	400	22.1755
Purchase	8/2/2011	1,700	21.7704
Purchase	8/3/2011	1,700	21.1224
Purchase	8/4/2011	2,122	20.3684
Purchase	8/5/2011	1,504	19.6981
Purchase	8/8/2011	724	17.8724
Purchase	8/8/2011	3,471	18.1233
Purchase	8/9/2011	589	17.9444
Purchase	8/19/2011	332	17.7578
Purchase	8/22/2011	915	17.5000
Purchase	8/26/2011	64	17.3201
Purchase	9/6/2011	392	17.3412
Purchase	9/9/2011	751	17.3643
Purchase	9/12/2011	650	17.0696
Purchase	9/13/2011	135	17.1443
Purchase	9/14/2011	225	17.0894
Purchase	9/21/2011	715	17.0022
Purchase	9/22/2011	1,038	16.0167
Purchase	9/22/2011	390	15.8089
Purchase	9/23/2011	260	15.7616
Purchase	9/26/2011	325	15.6525
Purchase	9/26/2011	65	15.6100
Purchase	9/28/2011	280	15.6389
Purchase	9/28/2011	412	15.5910
Purchase	9/29/2011	787	15.1653
Purchase	9/30/2011	234	14.7497
Purchase	9/30/2011	136	14.8000
Purchase	10/3/2011	519	14.0540
Purchase	10/3/2011	726	14.0137
Purchase	10/4/2011	725	12.7515

The City of Miami Fire Fighters' and Police Officers' Retirement Trust
Transactions in Penn West Petroleum Ltd.

Transaction	Date	Shares	Price
Purchase	10/4/2011	288	12.7534
Purchase	10/7/2011	746	14.5236
Purchase	10/10/2011	297	15.1197
Purchase	10/11/2011	163	14.9634
Purchase	5/8/2012	700	14.8199
Purchase	5/9/2012	400	14.6709
Purchase	5/11/2012	100	14.7048
Purchase	5/14/2012	500	14.3412
Purchase	5/15/2012	500	14.1009
Purchase	5/16/2012	400	14.0786
Purchase	5/17/2012	400	13.8359
Purchase	5/18/2012	500	13.8367
Purchase	5/22/2012	600	13.9846
Purchase	6/1/2012	700	12.7781
Purchase	6/4/2012	300	12.6454
Purchase	6/21/2012	400	12.8720
Purchase	6/22/2012	200	12.7513
Purchase	6/25/2012	400	12.5314
Purchase	6/26/2012	342	12.5287
Purchase	6/27/2012	945	12.4590
Purchase	6/28/2012	256	12.6695
Purchase	7/10/2012	547	12.7104
Purchase	7/11/2012	377	12.7414
Purchase	7/12/2012	819	12.3570
Purchase	11/9/2012	800	10.4824
Purchase	11/9/2012	2,900	10.5933
Purchase	11/12/2012	100	10.4357
Purchase	11/12/2012	1,000	10.4366
Purchase	11/13/2012	100	10.4210
Purchase	11/13/2012	1,100	10.5450
Purchase	11/14/2012	580	10.5400
Purchase	11/14/2012	290	10.5386
Purchase	11/14/2012	580	10.5333
Purchase	11/14/2012	30	10.5000
Purchase	11/14/2012	563	10.5380
Purchase	11/15/2012	774	10.4050
Purchase	11/15/2012	842	10.4318
Purchase	11/15/2012	192	10.4000
Purchase	11/15/2012	484	10.4700
Purchase	11/16/2012	638	10.3667
Purchase	11/16/2012	77	10.3724
Purchase	11/16/2012	213	10.4000
Purchase	11/16/2012	426	10.3750
Purchase	2/26/2013	5,400	9.6980
Purchase	3/5/2013	600	9.6396

EXHIBIT 2

GLANCY BINKOW & GOLDBERG LLP

SWORN CERTIFICATION OF PLAINTIFF
PENN WEST PETROLEUM LTD. SECURITIES LITIGATION

I, Avi Rojany, certify that:

1. I have reviewed the Complaint and authorized its filing.

2. I did not purchase Penn West Petroleum Ltd., the security that is the subject of this action, at the direction of plaintiff's counsel or in order to participate in any private action arising under the federal securities laws.

3. I am willing to serve as a representative party on behalf of a class and will testify at deposition and trial, if necessary.

4. My transactions in Penn West Petroleum Ltd. during the Class Period are set forth in the attached exhibit.

5. I have not served as a representative party on behalf of a class under federal securities laws during the last three years.

6. I will not accept any payment for serving as a representative party, except to receive my pro-rata share of any recovery or as ordered or approved by the court, including the award to a representative plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I declare under penalty of perjury that the foregoing are true and correct statements.

Dated: 12/16/14 Signature: A Roj

Avi Rojany's Common Stock Transactions in Penn West Petroleum Ltd.			
Date	**Transaction Type**	**Quantity**	**Price**
2/17/2011	Buy	7275	$26.8796
6/6/2011	Buy	3200	$28.0000
7/5/2011	Buy	1800	$23.4570
7/14/2011	Buy	100	$27.0000
7/27/2011	Buy	1700	$27.0000
8/19/2011	Buy	2700	$27.0000
9/16/2011	Buy	500	$27.0000
9/28/2011	Buy	3700	$28.0000
10/10/2011	Buy	10000	$14.9800
11/2/2011	Buy	3100	$17.8600
1/30/2012	Buy	5000	$21.4600
2/8/2012	Buy	5000	$21.9900
3/28/2012	Buy	5900	$26.0000
4/24/2012	Buy	2500	$26.0000
4/26/2012	Buy	4500	$22.0000
6/15/2012	Buy	5500	$22.0000
6/15/2012	Buy	2900	$26.0000
8/2/2012	Buy	10000	$13.3421
8/6/2012	Buy	8700	$14.0049
8/22/2012	Buy	10000	$14.7486
11/5/2012	Buy	5000	$11.6100
11/5/2012	Buy	5000	$11.6200

Avi Rojany's Options Transactions in Penn West Petroleum Ltd.				
Contract	**Date**	**Transaction Type**	**Quantity**	**Price**
Put PWE 6/18/11 $28	2/2/2011	Sold Put	(50)	$2.4000
Put PWE 6/18/11 $28	2/10/2011	Sold Put	(50)	$2.8500
Put PWE 6/18/11 $28	3/14/2011	Sold Put	(50)	$2.4500
Put PWE 6/18/11 $28	6/7/2011	Bought Put	150	$3.5601
Put PWE 6/18/11 $28	6/9/2011	Sold Put	(32)	$4.1000
Call PWE 9/17/11 $27	4/28/2011	Sold Call	(50)	$0.8500
Put PWE 9/17/11 $27	4/13/2011	Sold Put	(25)	$2.4000
Put PWE 9/17/11 $27	4/14/2011	Sold Put	(25)	$2.5500
Put PWE 12/17/11 $28	6/7/2011	Sold Put	(150)	$4.7101
Put PWE 12/17/11 $28	11/28/2011	Bought Put	113	$10.9539
Put PWE 6/16/12 $22	1/30/2012	Sold Put	(100)	$2.0500
Put PWE 6/16/12 $26	11/28/2011	Sold Put	(113)	$9.4592
Put PWE 9/21/13 $10	5/9/2013	Sold Put	(100)	$1.4500
Put PWE 12/21/13 $10	5/20/2013	Sold Put	(100)	$1.6000