

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

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SHAWN M. HALL, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

NOBILIS HEALTH CORP.,  
CHRISTOPHER H. LLOYD, and  
KENNETH J. KLEIN,

Defendants.

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) **Case No. 4:15-cv-3098**

) **COMPLAINT FOR VIOLATION OF**

) **THE FEDERAL SECURITIES LAWS**

) **DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff Shawn M. Hall (“Plaintiff”), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint against defendants, alleges the following based upon personal knowledge as to himself and his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of the defendants’ public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Nobilis Health Corp. (“Nobilis” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons other than defendants who purchased or otherwise acquired Nobilis securities between April 2, 2015 and October 8, 2015, both dates inclusive (the “Class Period”), seeking to recover damages caused by defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, against the Company and certain of its top officials.

2. Nobilis, together with its subsidiaries, acquires and manages ambulatory surgical centers (ASCs) and healthcare facilities in the United States. Its ASCs are licensed ambulatory surgery centers that provide scheduled surgical procedures in clinical specialties, including orthopedic surgery, podiatric surgery, ENT, pain management, gastro-intestinal, gynecology, and general surgery. As of March 18, 2015, the company owned and managed 10 healthcare facilities in Texas and Arizona; a surgical hospital in Houston; six ambulatory surgery centers; two MRI centers; and an urgent care center. The Company was formerly known as Northstar Healthcare Inc. and changed its name to Nobilis Health Corp. in December 2014. Nobilis was founded in 2007 and is headquartered in Houston, Texas. The Company’s shares trade on the NYSE under the ticker symbol “HLTH.”

3. In December 2014, Nobilis acquired Athas Health, LLC (“Athas”), along with Athas’ subsidiary, North American Spine, a company that markets itself as “The Leader in Minimally Invasive Spine Care.” Through its acquisition of Athas and North American Spine, Nobilis acquired the rights to offer the proprietary AccuraScope procedure, a spinal procedure marketed at all relevant times as a “minimally invasive decompression[] designed to alleviate pressure on spinal nerves.”

4. Throughout the Class Period, defendants made materially false and misleading statements regarding the Company's business, operational and compliance policies. Specifically, defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company claimed success rates for its AccuraScope procedure which lacked recognition from any university, medical body, or insurance company; (ii) the Company had overstated its 2014 revenues by as much as \$36 million; (iii) consequently, the Company had misrepresented its 2014 revenue growth rate as 161%, when it was actually only 44%; and (iv) as a result of the foregoing, Nobilis's public statements were materially false and misleading at all relevant times.

5. On October 9, 2015, *Seeking Alpha* published an article entitled "Nobilis: About To Fall From Nobility, Part I, 65%+ Downside" (the "*Seeking Alpha* Report"). The *Seeking Alpha* Report summarized its findings with respect to Nobilis in relevant part, as follows:

**Summary**

- Accounting red flags: 4 CFO changes in a handful of years, along with recent auditor resignations; potentially overstated revenues; newly acquired acquisitions with Accounts Receivable issues.
- Questionable marketing, with paid studies touting inappropriate success rates for its medical procedures.

6. As a result of this news, shares of Nobilis fell \$1.42, or over 27%, to close at \$3.82 on October 9, 2015.

7. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

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

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

10. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b), as defendant is headquartered in this District and a significant portion of the defendants' actions, and the subsequent damages, took place within this District.

11. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

12. Plaintiff, as set forth in the attached Certification, acquired Nobilis securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

13. Defendant Nobilis is incorporated in British Columbia, Canada, and the Company's principal executive offices are located at 4120 Southwest Freeway, Suite 150, Houston, Texas 77027. Nobilis's common stock trades on the NYSE under the ticker symbol "HLTH."

14. Defendant Christopher H. Lloyd ("Lloyd") has served at all relevant times as the Company's Chief Executive Officer.

15. Defendant Kenneth J. Klein (“Klein”) has served at all relevant times as the Company’s Chief Financial Officer and Chief Accounting Officer.

16. The defendants referenced above in ¶¶ 14-15 are sometimes referred to herein as the “Individual Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

17. Nobilis, together with its subsidiaries, acquires and manages ambulatory surgical centers and healthcare facilities in the United States. Its ASCs are licensed ambulatory surgery centers that provide scheduled surgical procedures in clinical specialties, including orthopedic surgery, podiatric surgery, ENT, pain management, gastro-intestinal, gynecology, and general surgery. As of March 18, 2015, the company owned and managed 10 healthcare facilities in Texas and Arizona; a surgical hospital in Houston; six ambulatory surgery centers; two MRI centers; and an urgent care center. The Company was formerly known as Northstar Healthcare Inc. and changed its name to Nobilis Health Corp. in December 2014. Nobilis was founded in 2007 and is headquartered in Houston, Texas. The Company’s shares trade on the NYSE under the ticker symbol “HLTH.”

18. In December 2014, Nobilis acquired Athas, along with Athas’ subsidiary, North American Spine, a company that markets itself as “The Leader in Minimally Invasive Spine Care.” Through its acquisition of Athas and North American Spine, Nobilis acquired the rights to offer the proprietary AccuraScope procedure, a spinal procedure marketed at all relevant times as a “minimally invasive decompression[] designed to alleviate pressure on spinal nerves.”

**Materially False and Misleading Statements Issued During the Class Period**

19. The Class Period begins on April 2, 2015, when Nobilis filed an annual report on Form 10-K with the SEC announcing the Company's financial and operating results for the quarter and year ended December 31, 2014 (the "2014 10-K"). For the quarter, the Company reported net income of \$6.21 million, or \$0.11 per diluted share, on revenue of \$39.60 million, compared to net income of \$3.02 million, or \$0.08 per diluted share, on revenue of \$13.51 million for the same period in the prior year. For 2014, the Company reported net income of \$6.72 million, or \$0.14 per diluted share, on revenue of \$84.03 million, compared to net income of \$1.42 million, or \$0.04 per diluted share, on revenue of \$31.13 million for 2013.

20. In the 2014 10-K, Nobilis listed the AccuraScope trademark, Registration Number 4,041,538, as an intellectual property asset, owned by the Company's Athas subsidiary.

21. The 2014 10-K also reflected Nobilis's increased investment in spine treatment.

The Company stated, in part:

In December 2014, as part of the Athas acquisition, the Company acquired Athas' investment ownership in two ASC's and one hospital: 87.5% in Elite Orthopedic and Spine Surgery Center LLC; 15.7% in Elite Sinus Spine and Ortho LLC; and 10.7% in Elite Hospital Management LLC.

...

*Medical supplies*

Drugs and medical supplies expense for the twelve months ended December 31, 2014, totaled \$11.1 million, an increase of \$6.7 million or 152.3% from the prior corresponding period. This increase is primarily due to an increase in case volume at all Nobilis Facilities. ***Additionally, the shift in case mix to include a greater percentage of orthopedic and spine cases contributes to an overall higher spend on drugs and medical supplies per case.***

22. The 2014 10-K contained signed certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) by the Individual Defendants, stating that the financial information contained in the 2014 10-K was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

23. On May 14, 2015, Nobilis filed a quarterly report on Form 10-Q with the SEC announcing the Company’s financial and operating results for the quarter ended March 31, 2015 (the “Q1 2015 10-Q”). For the quarter, the Company reported a net loss of \$1.21 million, or \$0.02 per diluted share, on revenue of \$37.12 million, compared to a net loss of \$0.44 million, or \$0.01 per diluted share, on revenue of \$12.12 million for the same period in the prior year.

24. In the Q1 2015 10-Q, Nobilis reported, in part:

*Operating General and Administrative*

Our operating general and administrative expense for three months ended March 31, 2015, totaled \$15.4 million, an increase of \$9.5 million, or 161.0%, from the prior corresponding period. . . . Marketing expenses allocated to the Medical Services segment increased to \$4.3 million for the three months ended March 31, 2015, from \$1.1 million for the corresponding period in 2014. ***The increase in marketing expenses is related to our strategic growth initiatives of growing our bariatric, spine, podiatry and gynecological brands.***

25. The Q1 2015 10-Q contained signed certifications pursuant to SOX by the Individual Defendants, stating that the financial information contained in the Q1 2015 10-Q was accurate and disclosed any material changes to the Company’s internal control over financial reporting.

26. On July 13, 2015, North American Spine issued a press release entitled “North American Spine’s AccuraScope Procedure Featured on FOX43, WPMT” (the “July 13, 2015 Press Release”). Touting the purported benefits of the AccuraScope Procedure, the July 13, 2015 Press Release stated, in part:

The AccuraScope procedure is performed in Dallas by North American Spine doctors. This procedure is a minimally invasive spine surgery and takes less than an hour to complete. Doctors from North American Spine use a tiny laser, smaller than the tip of a mechanical pencil, that only works on the tissue it touches. . . .

Most patients who receive the AccuraScope procedure feel pain-free immediately and are able to leave the clinic the day of the procedure and return to work within a week.

"We see a lot of patients come from out-of-state to Dallas for the AccuraScope procedure," Jon Sasser of North American Spine said. "It is a great minimally invasive alternative that could have you pain-free and back to work in a short amount of time."

To date, more than 8,000 AccuraScope procedures have been performed by board-certified physicians with specialty training. Medical research has shown that the AccuraScope procedure has an 82% success rate and saves patients an average of \$23,190 in out-of-pocket costs over 5 years by reducing expenses including medical visits and medications.

27. On August 14, 2015, Nobilis filed a quarterly report on Form 10-Q with the SEC announcing the Company's financial and operating results for the quarter ended June 30, 2015 (the "Q2 2015 10-Q"). For the quarter, the Company reported a net loss of \$1.59 million, or \$0.02 per diluted share, on revenue of \$48.87 million, compared to net income of \$0.22 million, or \$0.01 per diluted share, on revenue of \$15.11 million for the same period in the prior year.

28. For the quarter, the Company also reported that it had performed 456 spine procedures, or 4.0% of all Nobilis procedures for the quarter, compared to performance of 28 spine procedures, or 0.5% of all Nobilis procedures for the quarter, for the same period in the prior year. Additionally, the Company reported, in part:

*Operating General and Administrative*

Our operating general and administrative expense for three months ended June 30, 2015, totaled \$20.6 million, an increase of \$14.6 million, or 243.3%, from the prior corresponding period. . . . Marketing expenses allocated to the Medical Services segment increased by \$5.3 million to \$6.1 million for the three months ended June 30, 2015, from \$0.8 million for the corresponding period in 2014. *The*



*increase in marketing expenses is related to our strategic growth initiatives of growing our bariatric, spine, podiatry and gynecological brands.*

29. The Q2 2015 10-Q contained signed certifications pursuant to SOX by the Individual Defendants, stating that the financial information contained in the Q2 2015 10-Q was accurate and disclosed any material changes to the Company's internal control over financial reporting.

30. On September 28, 2015, Nobilis filed Amendment No. 1 to the Company's Q2 2015 10-Q on Form 10-Q/A with the SEC (the "Q2 2015 10-Q/A"). On the Q2 2015 10-Q/A, the Company stated, in relevant part:

Nobilis Health Corp. (the "Company") is filing this Amendment No. 1 (this "Amendment") to its quarterly report on Form 10-Q for the quarterly period ended June 30, 2015 (the "Original Form 10-Q"), which was filed with the Securities and Exchange Commission (the "SEC") on August 14, 2015, in response to comments from the SEC regarding a confidential treatment request made by the Company with respect to Exhibit 10.1 to the Original Form 10-Q. The Company is refiling the agreement contained in Exhibit 10.1 and re-instating certain information previously redacted from such Exhibit.

Except as described above, no other changes have been made to the Original Form 10-Q.

31. The statements referenced in ¶¶ 19-30 were materially false and misleading because defendants made false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operational and compliance policies. Specifically, defendants made false and/or misleading statements and/or failed to disclose that: (i) the Company published unsubstantiated success rates for its AccuraScope procedure which lacked recognition from any university, medical body, or insurance company; (ii) the Company had overstated its 2014 revenues by as much as \$36 million; (iii) consequently, the Company had misrepresented its 2014 revenue growth rate as 161%, when it was actually only 44%; and (iv) as

a result of the foregoing, Nobilis's public statements were materially false and misleading at all relevant times.

### **The Truth Emerges**

32. On October 9, 2015, *Seeking Alpha* published an article entitled "Nobilis: About To Fall From Nobility, Part I, 65%+ Downside". The *Seeking Alpha* Report summarized its findings with respect to Nobilis, in relevant part, as follows:

#### **Summary**

- Accounting red flags: 4 CFO changes in a handful of years, along with recent auditor resignations; potentially overstated revenues; newly acquired acquisitions with Accounts Receivable issues.
- Questionable marketing, with paid studies touting inappropriate success rates for its medical procedures.

33. The *Seeking Alpha* Report described in detail issues with the AccuraScope procedure and the history of North American Spine, and reported, in part:

- *The AccuraScope procedure "has questionable insurability, unsubstantiated success rates, lack of recognition from any institutions (insurance, university or medical bodies) and a poor history with patient lives being ruined."*
- The AccuraScope procedure was developed by Lawrence B. Rothstein, a non-surgeon anesthesiologist who lost his medical license twice; accumulated over 40 malpractice lawsuits against him while using the AccuraScope procedure; settled two of these lawsuits at \$5 million and \$1.4 million, respectively; and "inevitably disappeared, but not before filing for bankruptcy to avoid having to deal with his remaining malpractice suits."
- "Complications stemming from the AccuraScope [procedure] include but are not limited to permanent nerve damage, pain, weakness, numbness, paralysis, and incontinence."
- "Last year, North American Spine sought to have a judge stop a Florida woman from complaining about the AccuraScope procedure on a website. In its petition, the company said . . . AccuraScope is 'the only minimally invasive

procedure vetted by a major university (Louisiana State University) establishing both the procedure's efficacy as well as its overall cost savings'... This was a reference to Erich Richter, who formerly taught at LSU. He disputes the company's assertion. 'It is not vetted or approved by LSU,' he said. 'There was no study by LSU.' Nor has there been a study by West Virginia University, where Richter now teaches".

- “Nobilis continues with [a questionable] style of publishing success rates. As of its April 7, 2015 press release, the company said: ‘Medical research has shown that the AccuraScope procedure has an 82% success rate and saves patients an average of \$23,190 in out-of-pocket costs over 5 years by reducing expenses including medical visits and medications.’ [An article examining the efficacy of AccuraScope] references five studies that North American Spine previously used as sources: one was written by Rothstein and a related doctor, another was once again written by a doctor related to North American Spine (Dr. Kenneth Alo), the third is of current trends in the industry, the fourth is a Korean report which Dr. Alo was once again linked to, and the final study had nothing to do with North American Spine-like procedures. *This all begs the question of how Nobilis is still standing by the 82% success rate noted in the April 7, 2015 press release.*”

34. Moreover, the *Seeking Alpha* Report also reported that “the company’s accounting situation appears unstable and vulnerable”:

#### **Are Nobilis' Financials Any More Reliable Than The Company's Surgical Procedure?**

Any roll up with multiple mergers is going to lead to some complicated accounting. And Nobilis takes this even further with many subsidiaries and partial ownership of entities. Appendix A shows Nobilis's complicated organization, with 31 different entities and multiple ownership percentages. All this for a company that brought in only \$49 million in revenue last quarter, for a shockingly low revenue per entity of less than \$2 million. And of all the accounting firms to audit that complexity, which one did Nobilis pick? None other than tiny Calvetti Ferguson, with a total of 38 professionals. Barely more than the number of entities it audited at Nobilis. And the company's CFO situation inspires no more confidence. *Since 2010, Nobilis has changed CFOs four times* (Source: Bloomberg, Company Filings).

In August, Calvetti resigned as auditor. This follows closely after the last CFO change in July. A new CFO and a new auditor are now charged with figuring out all the complicated arrangement and deals built up over the years. While this does not guarantee that any problems will be found, it definitely increases the uncertainty.

*Even my outsider's review of Nobilis' financial statements uncovered some potential issues.* Per the organization chart or the following statements, "The Company assigned 100% of its equity interest in MSID to NHC ASC - Dallas, of which the Company owns 35% as a result of syndication... In November 2013, the Company sold 15.1% of its ownership interest in the Kirby Partnership to existing physician limited partners, effectively decreasing the Company's ownership interest to 25%" - so this means the company owns 35% of MSID and 25% of Kirby. However, it appears to be fully consolidating both entities. *The effect of this would be to inflate revenues so that the growth story appears better than it really is* (Source: Nobilis' latest 10-K).

*If the company were to proportionally consolidate revenues, its 2014 revenues would be meaningfully lower by \$36 million for a total of \$44 million,* as reflected in the following adjusted chart (Source: Nobilis' latest 10-K).

2014 Revenue Adjusted for Kirby & MSID Ownership				
Sub	Per 10-k Rev.	Portion Owned	Portion Attributed	Adj. Revenues
	(A)		(B)	(A x B)
NHSC-H	\$22	100%	100%	\$22
Kirby	\$13	25%	25%	\$3
MSID	\$31	35%	35%	\$11
NHSC-S	\$2	100%	100%	\$2
FNH	\$11	51%	100%	\$5
FNCS	\$1	51%	100%	\$1
<b>Total</b>	<b>\$80</b>			<b>\$44</b>

It appears that Nobilis does not have control over these two subsidiaries. Also, *if \$44 million is the right number for revenue for 2014, then revenue growth is 44%, not the astronomical 161% the company reported.* It is noted that Nobilis retains the benefit of fully consolidating FNH and FNCS in the chart above.

35. As a result of this news, shares of Nobilis fell \$1.42, or over 27%, to close at \$3.82 on October 9, 2015.

36. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

37. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or

otherwise acquired Nobilis securities during the Class Period (the “Class”); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are defendants herein, the officers and directors of the Company, 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.

38. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Nobilis securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Nobilis or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

39. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants’ wrongful conduct in violation of federal law that is complained of herein.

40. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

- whether the federal securities laws were violated by defendants’ acts as alleged herein;

- whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Nobilis;
- whether the Individual Defendants caused Nobilis to issue false and misleading financial statements during the Class Period;
- whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- whether the prices of Nobilis securities during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

42. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

43. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Nobilis securities are traded in an efficient market;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NYSE and was covered by multiple analysts;

- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased, acquired and/or sold Nobilis securities between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

44. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

45. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

### **COUNT I**

#### **(Against All Defendants For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder)**

46. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

47. This Count is asserted against defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

48. During the Class Period, defendants engaged in a plan, scheme, conspiracy and course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue 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; and employed devices, schemes and artifices to

defraud in connection with the purchase and sale of securities. Such scheme was intended to, and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of Nobilis securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire Nobilis securities and options at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

49. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the defendants participated directly or indirectly in the preparation and/or issuance of the quarterly and annual reports, SEC filings, press releases and other statements and documents described above, including statements made to securities analysts and the media that were designed to influence the market for Nobilis securities. Such reports, filings, releases and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about Nobilis's finances and business prospects.

50. By virtue of their positions at Nobilis, defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to defendants. Said acts and omissions of defendants were committed willfully or with reckless disregard for the truth. In addition, each defendant knew or recklessly disregarded that material facts were being misrepresented or omitted as described above.



51. Defendants were personally motivated to make false statements and omit material information necessary to make the statements not misleading in order to personally benefit from the sale of Nobilis securities from their personal portfolios.

52. Information showing that defendants acted knowingly or with reckless disregard for the truth is peculiarly within defendants' knowledge and control. As the senior managers and/or directors of Nobilis, the Individual Defendants had knowledge of the details of Nobilis's internal affairs.

53. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual Defendants were able to and did, directly or indirectly, control the content of the statements of Nobilis. As officers and/or directors of a publicly-held company, the Individual Defendants had a duty to disseminate timely, accurate, and truthful information with respect to Nobilis's businesses, operations, future financial condition and future prospects. As a result of the dissemination of the aforementioned false and misleading reports, releases and public statements, the market price of Nobilis securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning Nobilis's business and financial condition which were concealed by defendants, Plaintiff and the other members of the Class purchased or otherwise acquired Nobilis securities at artificially inflated prices and relied upon the price of the securities, the integrity of the market for the securities and/or upon statements disseminated by defendants, and were damaged thereby.

54. During the Class Period, Nobilis securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the defendants made, issued or caused to be

disseminated, or relying upon the integrity of the market, purchased or otherwise acquired shares of Nobilis securities at prices artificially inflated by defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of Nobilis securities was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of Nobilis securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

55. By reason of the conduct alleged herein, defendants knowingly or recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

56. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions and sales of the Company's securities during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

## **COUNT II**

### **(Violations of Section 20(a) of the Exchange Act Against The Individual Defendants)**

57. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

58. During the Class Period, the Individual Defendants participated in the operation and management of Nobilis, and conducted and participated, directly and indirectly, in the conduct of Nobilis's business affairs. Because of their senior positions, they knew the adverse

non-public information about Nobilis's misstatement of income and expenses and false financial statements.

59. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Nobilis's financial condition and results of operations, and to correct promptly any public statements issued by Nobilis which had become materially false or misleading.

60. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Nobilis disseminated in the marketplace during the Class Period concerning Nobilis's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Nobilis to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of Nobilis within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Nobilis securities.

61. Each of the Individual Defendants, therefore, acted as a controlling person of Nobilis. By reason of their senior management positions and/or being directors of Nobilis, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, Nobilis to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of Nobilis and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

62. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Nobilis.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against defendants as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
- B. Requiring defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;
- C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

Dated: October 21, 2015

Respectfully submitted,

**ABRAHAM, WATKINS, NICHOLS,  
SORRELS, AGOSTO & FRIEND**

*/s/ Sammy Ford IV*

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