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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

In re ALLIED NEVADA GOLD CORP., SECURITIES LITIGATION This Document Relates To: ALL ACTIONS.	Case No. 3:14-cv-00175-LRH-WGC CLASS ACTION **DECLARATION OF DAVID A.P. BROWER IN SUPPORT OF LEAD PLAINTIFF'S MOTION FOR FINAL CERTIFICATION OF THE CLASS, FINAL APPROVAL OF CLASS NOTICE, FINAL APPROVAL OF THE PROPOSED SETTLEMENT, FINAL APPROVAL OF THE PROPOSED PLAN OF ALLOCATION, AND PLAINTIFF'S COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND LEAD PLAINTIFF'S REQUEST FOR REIMBURSEMENT FOR HIS TIME AND EXPENSES REPRESENTING THE CLASS**

I, David A.P. Brower, hereby declare under penalty of perjury as follows:

1. I am a Managing Director of the law firm of Brower Piven, A Professional Corporation ("Brower Piven"). My firm was appointed lead counsel in the above-captioned action (the "Action") for the Court-appointed lead plaintiff, Andrey Slomnitsky ("Lead Plaintiff") and the Class ("Lead Counsel").[1]

2. My firm has worked actively on this litigation under my direction since its inception. As such, I have personal knowledge of the matters described below and am competent to testify thereto. Further, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), at my request and under my supervision, served as additional counsel. Muckleroy Lunt, LLC ("Muckleroy Lunt") was approved as Liaison Counsel by the Court. (Brower Piven, Robbins Geller and Muckleroy Lunt are collectively referred to herein as "Plaintiff's Counsel")

3. I submit this Declaration pursuant to Rule 23 of the Federal Rules of Civil Procedure in support of Lead Plaintiff's motions for (a) final certification of the Class; (b) final approval of the forms and methods for providing notice to the Class; (c) final approval of the proposed Settlement; and (d) final approval of the proposed Plan of Allocation. This Declaration is also submitted in support of Plaintiff's Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses to Plaintiff's Counsel, and an award to Lead Plaintiff for his time and expenses related to his representation of the Class.

4. This Declaration is intended to provide the Court with a summary of the proceedings in this Action and the basis upon which Lead Plaintiff and Plaintiff's Counsel highly recommend approval of the Settlement, the Plan of Allocation and the requested award of attorneys' fees and reimbursement of expenses. This Declaration does not, however, seek to

[1] Unless otherwise indicated, the definitions used in the Stipulation of Settlement, dated January 24, 2020 ("Stipulation") filed on February 10, 2020 (ECF No.199), with Lead Plaintiff's Motion for: (1) Preliminary Approval of Proposed Settlement; (2) Certification of the Class for Purposed of Settlement; (3) Approval of Notice to the Class; and (4) Scheduling of a Settlement Hearing; and Memorandum of Points and Authorities In Support Thereof, ECF No. 198, are the same as those used herein.

comprehensively detail the approximately six years of hard-fought litigation, but rather provides the Court with highlights of the events leading to the resulting Settlement.

PRELIMINARY STATEMENT

5. As this Court is aware, this case has a long history. It has been litigated from April 3, 2014 through execution of the final form of the Stipulation and the associated exhibits on January 24, 2019. The Allied bankruptcy proceedings added another level of difficulty to this Action. The Settlement represents an excellent recovery for Allied Nevada Gold Corporation ("Allied" or the "Company") common stock purchasers during the Class Period who were at a substantial risk of receiving a smaller recovery or, indeed, no recovery at all, through continued litigation. At every stage of the Action, counsel for the Defendants aggressively asserted defenses and expressed the belief that the Class could not prevail on merits, and that Lead Plaintiff could not prove or recover damages in the magnitude that he sought, if at all. The Settlement was not achieved until Lead Plaintiff, among other things: (a) conducted an extensive factual investigation; (b) filed a detailed consolidated amended complaint and a second consolidated complaint; (c) filed claims on behalf of the Class in Allied's Chapter 11 bankruptcy proceedings and negotiating agreements in the bankruptcy court in connection with respect to Allied's directors' and officers' insurance coverage ("D&O"), preserving documents and responding to discovery requests in the future; (d) briefed and argued the oppositions to Defendants' two motions to dismiss before this Court; (e) successfully argued and obtained reversal of the District Court dismissal of the Action from the Ninth Circuit Court of Appeals; (f) propounded wide-reaching discovery on Defendants and third-parties; (g) reviewed and analyzed hundreds of thousands of pages of documents; (h) consulted with well-respected experts on engineering, mining, economics, finance and damages; and (i) prepared for and attended multiple face-to-face settlement meetings, as well as engaging in numerous informal negotiations between the parties without a mediator.

6. Substantial investigation, discovery, consultations, and legal research informed Lead Plaintiff, as well as Plaintiff's Counsel's vast experience in litigating securities class

actions, that, while Lead Plaintiff and Plaintiff's Counsel believed this case was meritorious, there were dangers that had to be carefully evaluated in determining what course was in the best interests of the Class – *i.e.*, whether to settle and on what terms, or continue to litigate.

7. As set forth in further detail below, despite the fact that Plaintiff's Counsel believe Lead Plaintiff's claims were supported by legal authority and the evidence discovered to date, this Action presented many uncertainties with respect to Lead Plaintiff's ability to ultimately prevail or, more importantly, recover more than is offered by the Settlement. These risks include, but are not limited to, amassing sufficient evidence through discovery to defeat the Defendants' inevitable motions for summary judgment; obtaining certification of the Class; demonstrating, by a preponderance of the evidence to the trier of fact, that the Defendants made misrepresentations and/or omissions of fact; credibly demonstrating the amount of damages caused by the alleged misleading statements; obtaining a judgment at trial and sustaining it through the inevitable appellate process; and recovering on any judgment beyond the limits of the depleting D&O insurance policies.

8. In addition to the factual and legal obstacles to success on the merits was the certainty that further litigation would require the expenditure of enormous amounts of time and expense to complete merits and expert discovery, litigate pre-trial motions, try the case and succeed on the ultimate appellate proceedings that would have followed the trial no matter what the verdict might have been. All of this was more complicated due to Allied's previous bankruptcy filing and Allied no longer being a defendant in the Action. Weighed against these risks was the achievement of an immediate $14,000,000 million cash Settlement.

9. In accordance with the Court's June 10, 2020 Order Granting Preliminary Approval of Proposed Settlement, Granting Conditional Class Certification, and Providing for Notice to the Class ("Preliminary Approval Order"; ECF No. 201), the long form Notice of Pendency and proposed Settlement of Class Action (the "Notice") and Proof of Claim and Release form ("Proof of Claim") were mailed to over 118,957 potential Class Members and nominees, and the Summary Notice was published three separate times over *PR Newswire* on

July 8, 2020, July 15, 2020, and July 22, 2020. *See* Declaration of Michael McGuinness, the Project manager at Epiq Class Action & Claims Solutions, Inc.("Epiq"), the Court approved professional claims administrator for this Action Regarding (A) Mailing of Notice of Proposed Settlement of Class Action and Proof of Claim and Release Form; (B) Publication of Summary Notice; (C) Call Center Services; (D) Posting of Notice and Claim Form On Settlement Website; and (E) Report on Objections or Requests for Exclusion Received To Date, dated August 20, 2020 ("Epiq Declaration" or "Epiq Decl.") at ¶¶10, 11, annexed hereto as Exhibit A hereto.

10. The Stipulation (with its exhibits), the Notice, Proof of Claim and Release form and a selection of other important documents were posted on a website maintained by Epiq (www.AlliedNevadaSecuritiesSettlement.com). Epiq Decl. at ¶14. The Notice describes, in detail, *inter alia*, the Settlement; the likely recoveries for Class Members; the reasons for the Settlement, the Plan of Allocation; the maximum amount of attorneys' fees and litigation expenses that Lead Counsel would seek for Plaintiff's Counsel; that Lead Plaintiff may seek an award of reasonable costs and expenses directly relating to his representation of the Class; Class Members' rights; and the procedures and deadlines for exercising those rights. Thus, the notice program fully complied with the Court's Preliminary Approval Order, was the best notice practicable under the circumstances and met the requirements of FED. R. CIV. P. 23(c), (e), and (h), the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and due process. *See* Memorandum of Law In Support of Lead Plaintiff's Motion For Final Certification of the Class For Settlement Purposes and Final Approval of the Notice To The Class, dated August 24, 2020 (the "Notice Memorandum), submitted herewith, pp. 7-13. In response to the extensive notice program, as of the date of this Declaration, no objections or requests for exclusion from the Class have been received.[2]

[2] The deadline to opt-out or file objections is September 28, 2020. Accordingly, as provided by the Preliminary Approval Order, Lead Plaintiff will file supplemental papers ten (10) business days prior to the Settlement Hearing scheduled for November 16, 2020 to address any objections and/or requests for exclusion, if any, as necessary.

11. Further, I submit that the Plan of Allocation is fair and reasonable and should be approved by the Court. The Plan of Allocation was developed with assistance from Lead Plaintiff's financial and damages expert, Dr. Zachary Nye. *See* Declaration of Zachary Nye, Ph.D. in Support of the Proposed Settlement and Plan of Allocation, dated August 20, 2020 ("Nye Declaration" or "Nye Decl."), Exhibits B, hereto. The proposed Plan of Allocation distributes, *pro rata*, the Net Settlement Fund to Class Members based on their respective most likely per share recoverable damages at trial based on the dates of their purchase and sale transactions in Allied common stock, and, therefore, is both fair and equitable. *See* Nye Decl. at ¶¶28-29.

12. Although the deadline for objections to the Plan of Allocation does not expire until September 28, 2020, to date, no objections to the Plan of Allocation have been received.

13. In addition, I submit that the requested fee of 33 1/3% of the Settlement, or $4,666,000, and the request for reimbursement of litigation expenses in the amount of $324,557.52 should be approved as fair and reasonable. The requested fee is consistent with awards made in other, similar securities class action cases under the percentage-of-the-recovery methodology and substantially less than awards under the lodestar/multiplier methodology used by the courts in making such awards given Plaintiff's Counsel are not seeking a multiplier of their lodestar. The requested fee is also appropriate to compensate Plaintiff's Counsel for, *inter alia*, the extremely high percentage of Class Members' best possible damages Class Members could recover in the Action reflected by the Settlement, the contingent nature of Plaintiff's Counsel's representation, the complexities and difficulties presented by the Action, the quality of that representation, and the risks undertaken by Plaintiff's Counsel at inception. *See* Lead Plaintiff's and Plaintiff's Counsel's Memorandum in Support of (1) Plaintiff's Counsel's Application for an Award of Attorneys' Fees; (2) Plaintiff's Counsel's Request For Reimbursement of Their Litigation Expenses; and (3) Lead Plaintiff's Request For Reimbursement For His Time and Expenses Representing the Class, dated August 24, 2020 (the "Fee Memorandum"), submitted herewith, *passim*.

14. Although the deadline for objections to the request for attorneys' fees does not expire until September 28, 2020, to date, no objections to the fee request have been received.

15. Likewise, I submit the expenses incurred to achieve the Settlement were necessary to the successful resolution of this Action for the Class and are extremely reasonable in the context of complex class action securities litigation. Notably, the expenses requested are lower than the maximum amount the Notice indicated Plaintiff's Counsel might seek in reimbursement of expenses. Nevertheless, as of the date of this Declaration, there have been no objections to the request for reimbursement of expenses.

16. Finally, the request of the Lead Plaintiff, Andrey Slomnitsky, for his time and expenses in connection with its prosecution of the claims in this case of $10,000 is fair and reasonable. Lead Plaintiff actively assisted in the case, supervising Lead Counsel and complying with his discovery obligations. Declaration of Andrey Slomnitsky, dated August 12, 2020, at ¶¶2-3, annexed hereto as Exhibit C. As demonstrated below, the amount requested is modest compared to awards in other PSLRA cases, and Lead Counsel believes it is fair, reasonable, and justified.

BACKGROUND

The initial complaint was filed in the Court by plaintiff Movses Marjanian on April 3, 2014. ECF No. 1. A subsequent complaint was filed in the Court on April 29, 2014 by plaintiff Janet Martinez. *See Martinez v. Allied Nevada Gold Corp., et al*., Case No. 2:14-cv-0650, ECF No. 1.

17. As required by the PSLRA, on April 3, 2014, notice was issued over a national business-oriented wire service (*Business Wire*) advising members of the proposed class that a securities class action was filed and that investors had 60 days (until June 2, 2014) in which to move for appointment as lead plaintiff. *See* 15 U.S.C. §78u-4 (a)(3)(A)(i).

18. On June 2, 2014, pursuant to the PSLRA, seven movants each timely filed motions for consolidation and appointment as lead plaintiff and lead counsel, including: (1) Mr. Slomnitsky; (2) Richard Heil and State-Boston Retirement System (collectively, "Heil-

Boston"); (3) United Teamster Pension Fund-A and Sherman and Susan Olson (the so-called "Allied Investors"); (4) LBP Holdings Ltd.; (5) Thomas Frost and Beth Frost; (6) Jeff Croucier, acting with Power of Attorney for Patricia Krentzman; and (7) Jose Parraga and Jeannette Parraga (the "Parragas"). *See* ECF Nos. 13, 15-19; 21-23, 24. The Parragos withdrew their motion on June 6, 2014, conceding that they do not have the largest financial interest in the litigation. Dkt. No. 31.

19. On June 19, 2014, only Mr. Slomnitsky, Heil-Boston, and Allied Investors filed oppositions to the competing motions. ECF Nos. 35- 37.

20. On June 30, 2014, Mr. Slomnitsky, Heil-Boston, and Allied Investors filed replies to the competing motions. ECF Nos. 46-48.

21. On July10, 2014, Mr. Slomnitsky sought leave to file a sur-reply in response to new arguments made in Heil-Boston's reply, ECF No. 54. Heil-Boston opposed on July 14, 2014. ECF No. 56. On July 21, 2014, Mr. Slomnitsky filed his reply. ECF No. 58.

22. On November 7, 2014, the Court consolidated the two actions and appointed Mr. Slomnitsky as the lead plaintiff, Brower Piven as Lead Counsel, and Muckleroy Lunt as Liaison Counsel. ECF No. 59 ("Lead Plaintiff Order").

23. On November 21, 2014, Heil-Boston filed a motion for reconsideration of the Lead Plaintiff Order. ECF No. 70 ("Reconsideration Motion"). On December 8, 2014, Lead Plaintiff responded, ECF NO. 71, and on December 18, 2014, Heil-Boston filed their reply. ECF No. 72.

24. On January 9, 2015, the Court denied the Reconsideration Motion. ECF No. 74.

25. Following the Court's appointment of Lead Plaintiff and Lead Counsel, Plaintiff's Counsel commenced an extensive investigation of the claims in the Action.

26. The factual investigation included an analysis of the publicly available information about Allied. Among other things, Lead Plaintiff obtained and reviewed Allied's SEC filings, press releases, news reports, and analyst reports relevant to the claims and defenses.

Plaintiff's Counsel analyzed this and other extensive information for inclusion in the amended complaint.

27. Plaintiff's Counsel, through investigators, also interviewed numerous former employees of Allied.

28. Further, Plaintiff's Counsel consulted with financial experts, Valuescope and Stanford Consulting, concerning the calculation of the potential amounts of recoverable damages during the Class Period, as well as issues concerning loss causation and the Defendants' potential defenses to Lead Plaintiff's Class-wide damages estimates. *See* Nye Decl., Exhibit 1 (detailing Professor Nye's qualifications). Plaintiff's Counsel also retained and consulted with mining and engineering experts. Those expert consultants included Professor Tuncel M. Yegulalp, Professor of Mining Engineering, Emeritus, Henry Krumb School of Mines, Earth & Environmental Engineering at Columbia University (Professor Yegulalp's qualifications can be found at: http://www.columbia.edu/~yegulalp/) who consulted on gold mining techniques and Corby Anderson, of Allihies Engineering Incorporated, Harrison-Western Professor, Metallurgical and Materials Engineering Associate Director, Kroll Institute for Extractive Metallurgy at the Colorado School of Mines, who consulted on heap leach mining and extractive metallurgy (Professor Anderson's qualifications can be found at: https://metallurgy.mines.edu/project/anderson-corby/).

29. On February 13, 2015, this Court held a status conference regarding the scheduling of the filing of the amended complaint, as well as the briefing on any motion to dismiss the amended complaint. ECF No. 91.

30. On February 27, 2015, the Court set the deadlines for the filing of the amended complaint and the briefing on any motion to dismiss. ECF No. 92.

31. On March 30, 2015, Allied, then a defendant in the Action, filed a Notice of Bankruptcy Filing, notifying the Court that on March 10, 2015 it filed for voluntary petition for Chapter 11 relief under the United States Bankruptcy Code, in the United States Bankruptcy Court for the District of Delaware, Case No. 15-10503. Pursuant to 11 U.S.C § 362(a), the

Action was then automatically stayed against Allied. ECF No. 95. Thus, Allied was dropped as a defendant in the Action.

32. As a result of the Allied bankruptcy filing, the briefing schedule was extended. ECF No. 97.

33. On May 1, 2015, Lead Plaintiff filed his Consolidated Amended Complaint for Violations of the Federal Securities Laws (the "Complaint"). ECF No. 98. It alleged that Defendants violated §§10(b) and 20(a) of the Securities Exchange Act of 1934 by issuing materially false and misleading statements and omitting material information concerning Allied's business and operations.

34. Plaintiff's Counsel retained Lowenstein Sandler LLP, a highly experience bankruptcy firm with a particular expertise in representing parties with class claims in bankruptcy court, to represent Lead Plaintiff and the Class in Allied bankruptcy proceedings. (The qualifications of the primary attorney at Lowenstein Sandler retained by Lead Counsel to represent the Class in the Allied bankruptcy qualifications can be found at: https://www.lowenstein.com/people/attorneys/michael-etkin). On June 23, 2015, Lead Plaintiff, through Lowenstein and Lead Counsel, submitted Lead Plaintiff's personal claim and a claim for the Class in Allied's bankruptcy proceeding.

35. On September 25, 2015, Lead Plaintiff filed a rejection of the then current amended Chapter 11 Plan of Reorganization for Allied ("Chapter 11 Plan") and opted out of the releases in the Allied bankruptcy proceedings. Further, Lead Counsel and Lowenstein began drafting the objection to the confirmation of Allied's Chapter 11 Plan. In the midst of the drafting, Lowenstein was also negotiating with Akin Gump Strauss Hauer & Feld, who acted as one of Allied's counsel in its bankruptcy proceedings, to resolve the objection. The objection related to Allied's duties to preserve documents and respond to discovery requests in the future, which was necessary for discovery in this Action. An agreement was reached, and the objection was not filed.

36. On September 29, 2015, Defendants moved to dismiss the Complaint. ECF No.

103. Defendants argued that Lead Plaintiff failed to plead a false statement or omission, the alleged statements were not actionable, a strong inference of scienter could not be established, loss causation was not adequately pled, and Lead Plaintiff failed to state a claim under Section 20(a). Lead Plaintiff filed his opposition to the motion on December 15, 2015, ECF No. 109, and Defendants filed their reply brief on February 1, 2016. ECF No. 110. The Court heard oral argument on the motion to dismiss on March 30, 2016, ECF No. 117, and on August 8, 2016, the Court issued its Order Granting Defendants' Motion to Dismiss Without Prejudice. ECF No. 120.

37. Lead Plaintiff filed his Second Consolidated Amended Complaint for Violations of the Federal Securities Laws (the "Amended Complaint") on November 3, 2016. ECF No. 125. Defendants moved to dismiss the Amended Complaint on January 25, 2017, ECF No. 126, based on the same arguments as the Complaint. Lead Plaintiff filed his opposition brief on March 22, 2017, ECF No. 132, and Defendants filed their reply on May 17, 2017. ECF No. 135. On September 20, 2017, the Court issued an Order dismissing the Amended Complaint with prejudice. ECF No. 136.

38. On December 14, 2016, the parties to this Action and the parties to parallel Canadian securities litigation on behalf of Allied investors who acquired Canadian Allied securities (*LBP Holdings Ltd. v. Hycroft Mining Corp., et al.*, Court File No. CV-14-50851300-CP, pending in the Ontario Superior Court of Justice) participated in a face-to-face settlement conference with all Defendants in both cases in Toronto, Canada. In advance, the parties exchanged detailed mediation statements setting forth their respective positions on liability and damages. That mediation did not, however, result in a resolution.

39. Lead Plaintiff filed a Notice of Appeal on October 16, 2017. ECF No. 137. The Parties fully briefed Lead Plaintiff's appeal, *see* Case No. 17-17110 (9th Cir.) ("Appeal ECF"), at Appeal ECF Nos. 11, 16, 21, which was completed on August 14, 2018, *see id.*, and oral argument was held before the Ninth Circuit on November 15, 2018. Appeal ECF No. 34.

40. On November 29, 2018, the Ninth Circuit Court of Appeals issued an opinion

reversing dismissal of the Amended Complaint and remanding the Action to this Court. Appeal ECF No. 36.

41. On December 13, 2018, Defendants filed a Petition for Rehearing and Petition for Rehearing *En Banc*. Appeal ECF No. 37. The Ninth Circuit directed Lead Plaintiff to respond, Appeal ECF No. 40, which he did on February 12, 2019. Appeal ECF No. 43. On March 5, 2019, the Ninth Circuit denied Defendants' petition for rehearing and rehearing *en banc*. Appeal ECF No. 44. The Mandate was issued on March 13, 2019. Appeal ECF No. 45.

42. On May 2, 2019, Defendants filed their Answer to the Amended Complaint. ECF No. 155.

43. The Parties then began negotiations on the Discovery Plan and Proposed Schedule for Discovery ("Discovery Plan"). The Discovery Plan was heavily debated with extensive back and forth between the Parties. Ultimately, the Parties failed to agree on several substantive issues as evidenced by the version of the Discovery Plan filed on May 22, 2019. ECF No. 165. These issues included, *inter alia*, the substantial completion deadline for discovery, the length of the relevant time period for document production, the scope of discovery, the number of depositions that each side may take, and the number of interrogatories each side may serve.

44. On May 8, 2019, the Parties exchanged their Initial Rule 26(a) Disclosures. Defendants served their first request for production of documents on April 29, 2019, and Lead Plaintiff served his on May 7, 2019, as well as a subpoena to Hycroft Mining Corporation ("Hycroft") (the renamed Allied successor company after it emerging from bankruptcy). On May 29, 2019, Lead Plaintiff served his responses and objections to Defendants' first request for production of documents, and on June 6, 2019, Defendants served their responses and objections to Lead Plaintiff's first request for production of documents and Hycroft served its responses and objections to Lead Plaintiff's subpoena. Defendants served their first interrogatory to Lead Plaintiff on June 7, 2019.

45. On July 3, 2019, the Court held a hearing to resolve some of the outstanding issues on the Discovery Plan. ECF Nos. 165, 171. A new Discovery Plan was submitted by the

Parties on July 18, 2019, ECF No. 174, which was approved by the Court on July 19, 2020. ECF No. 177. The Discovery Plan included a confidentiality agreement and a form of production agreement, which were also extensively negotiated by the Parties, ECF Nos. 175-76, and approved by the Court. ECF No. 179-80.

46. On July 8, 2019, Lead Plaintiff served his response to Defendants' first interrogatory on July 8, 2019, and an amended response on July 10, 2019. Lead Plaintiff served his second request for production of documents on August 9, 2019.

47. On August 13, 2019, Lead Plaintiff provided a list of proposed search terms and custodians to Defendants. Defendants provided their counter proposal on September 4, 2019. After attempting to narrow the search terms, Lead Plaintiff provided the new, revised search terms to Defendants on September 19, 2019, as well as explanations for why the custodians proposed by Lead Plaintiff were relevant and appropriate. The search terms were not agreed on and Defendants had only accepted twelve of Lead Plaintiff's thirty-three custodians, four of which were Defendants, prior to the mediation on October 10, 2019.

48. On August 28, 2019, Lead Plaintiff served his first request for admissions to Defendants related to the class certification process. Defendants served their response and objections to the second request for production of documents on September 9, 2019.

49. Lead Plaintiff provided all responsive documents to Defendants' document requests, excluding privileged documents to Defendants, which were detailed in the privilege log also provided.

50. Additionally, Lead Plaintiff served subpoenas on multiple third-parties for documents, including Plante & Moran, PLLC ("Plante & Moran"), Allied Nevada's outside auditors; Moelis & Company LLC, an investment banking entity that prepared reports and other submissions on behalf of Allied in connection with its bankruptcy; Carl Pescio, a former director of Allied; HomeCrafters Ltd., which served as the builder of the housing development for Allied workers at the Hycroft mine; and multiple companies that provided engineering or similar services to Allied, including EM Strategies, Inc., Fluor Corporation, Jacobs Engineering Group,

Inc., Kappes, Cassiday & Associates, Inc., M3 Engineering & Technology Corp., SRK Consulting (U.S.), Inc., and Scott E. Wilson Consulting Inc. After meet-and-confers with many of these third-parties, Lead Plaintiff received and reviewed documents from almost all of those subpoenaed.

51. Further, in 2016, Lead Plaintiff served a FOIA request on the Bureau of Mining Regulation & Reclamation, Nevada Division of Environmental Protection and receive extensive documentation regarding Allied's plans and mining operations.

52. In total, Plaintiff's Counsel received and reviewed approximately 365,000 pages of non-public documents produced by Allied, Defendants and third-parties in addition to the thousands of pages of public documents gathered from various public sources, including, but not limited to the SEC's database, Allied's bankruptcy proceedings and Lead Plaintiff's FOIA request.

53. Fr their part, Defendants also subpoenaed Allied's former employees, referenced in the Amended Complaint as FEs, for documents and depositions, which Lead Plaintiff objected to due to the inappropriate timing and scope of the subpoenas. After several written communications with Defendants regarding the subpoenas, and an inability to reach an agreement, Lead Plaintiff filed, on September 17, 2019, an emergency letter motion for relief to stay the depositions until Defendants have produced relevant documents to Lead Plaintiff regarding the FEs and to limit the discovery sought by the subpoenas to protect Plaintiff's Counsel's attorney work product in connection with his counsel's investigation of the claims in the Amended Complaint. ECF Nos. 181.

54. As ordered by the Court on September 18, 2019, ECF No. 184, Defendants responded to the emergency motion on September 26, 2019, ECF No. 189, and Lead Plaintiff replied on September 30, 2019. ECF No. 190.

55. On October 2, 2019, Magistrate Judge William G. Cobb heard argument on the emergency motion, ECF No. 191, and granted the emergency motion and vacated the depositions. The Court also ordered that Lead Plaintiff's deposition could be taken prior to the

filing of the motion for class certification.

56. On October 10, 2019, the Parties participated in a lengthy mediation with Jed Melnick, Esquire, of JAMS, in New York City. Prior to this mediation, the Parties exchanged detailed mediation statements setting forth their respective positions on liability and damages. The mediation itself lasted a full day and was attended by not only Defendants' counsel, but representatives and counsel for Allied's various D&O insurance carriers. This mediation resulted in an agreement-in-principle to settle the Action for $14,000,000.00 in cash.

57. Following the mediation, Plaintiff's Counsel and Defendants' Counsel negotiated the specific terms of the Settlement as set forth in the Stipulation and related exhibits. The negotiations were lengthy, sometime contentious, and continued for several months with numerous drafts exchanged necessitating numerous follow up telephone calls.

58. The terms of the Stipulation and the form of the exhibits were finally agreed to and signed on January 24, 2020.

59. On February 10, 2020, Lead Plaintiff filed the Motion For: (1) Preliminary Approval of Proposed Settlement; (2) Certification of the Class for Purposes of Settlement; (3) Approval of Notice to The Class; and (4) Scheduling of a Settlement Hearing; and Memorandum of Points and Authorities in Support ("Preliminary Approval Motion"), ECF No. 198), which included, as Exhibit 1, the Stipulation (ECF No. 199), which attached Exhibit A: The [Proposed] Preliminary Approval Order ("Order"); Exhibit A-1: The [Proposed] Notice of Pendency and Proposed Settlement of Class Action; Exhibit A-2: The [Proposed] Proof of Claim and Release form; Exhibit A-3: The [Proposed] Summary Notice of Proposed Settlement of Class Action; and Exhibit B: The [Proposed] Final Judgment and Order of Dismissal With Prejudice.

60. On June 10, 2020, the Court granted preliminary approval of the Settlement and entered the Preliminary Approval Order. ECF No. 201. Further, the Preliminary Approval Order (a) preliminary certified the Class; (b) approved the forms, methods and timing for providing the Notice, the Summary Notice and the Proof of Claim form to Class members; (c) appointed the claims administrator; (d) set the deadlines for Class members to request exclusion

from the Class or object to the Settlement, Plan of Allocation, Plaintiff's Counsel's request for an award of attorneys' fees and reimbursement of expenses, and/or Lead Plaintiff's request for reimbursement of his time and expenses and/or to personally appear or appear through counsel; (e) scheduled the final fairness hearing for November 16, 2020 ("Settlement Hearing"); and (f) set the deadlines for the submission of papers in support of, and opposition to, the matters that will be heard at the Settlement Hearing.

NOTICE TO THE CLASS

61. Lead Counsel was judicious in its selection of Epiq, the Court-appointed Claims Administrator in this Action. Lead Counsel only selected Epiq as the proposed claims administrator after assuring itself that Epiq's bid reflected the most aggressive and efficient proposal among several potential claims administrators considered by Lead Counsel.

62. Lead Counsel orchestrated a competitive bidding process among the potential claims administrators and only selected Epiq after carefully reviewing and negotiating, line by line, each component of the claims administration process delineated in the bids received by Lead Counsel.

63. As demonstrated by the Epiq Declaration, the notice program directed by the Court has been fully completed. An aggregate 18,957 copies of the detailed long form Notice and Proof of Claim were mailed to potential Class Members and nominees as of August 20, 2020.

64. As in most securities class actions, many Class Members are beneficial purchasers whose common stock is held in "street name" – *i.e.*, the common stock is purchased by brokerage firms, banks, institutions and other third-party nominees in the name of the nominee, on behalf of the beneficial purchasers. Epiq also maintains a proprietary database with the names and addresses of the 1,246 largest and most common U.S. nominees, and mailed to all of those firms as well as to those persons and entities appearing on Allied's stock transfer records. Epiq Decl. at ¶6. The Notice, under the heading "Special Notice to Securities Brokers and Other

Nominees," directed all those who purchased Allied common stock in the United States or on a securities exchange in the United States during the Class Period for the beneficial interest of a person or organization other than themselves, within seven (7) days of receipt of the Notice, to either (a) provide to the claims administrator the name and last known address of each person or entity for whom or which they purchased Allied common stock during such time period or (b) request additional copies of the Notice and the Proof of Claim form, which would be provided to them free of charge, and within seven (7) days mail the Notice and Proof of Claim directly to the beneficial owners. Epiq Decl., Exhibit A, at p. 14.

65. Epiq established a toll-free telephone number for potential Class members to call and obtain information. This system became operational on or about June 30, 2020 (before the mailing date for the Notice and Proof of Claims), Epiq Decl. at ¶¶12-13. Epiq also maintains a website where important documents related to this case are posted, www.AlliedNevadaSecuritiesSettlement.com on which Class members can access the Stipulation, Preliminary Approval Order, the Notice, the Proof of Claim, and other case -related documents. Epiq Decl. at ¶14. The current papers in support of Lead Plaintiff's motion for approval of the Settlement, Plan of Allocation, final certification of the Class, and the forms and methods for providing notice to the Class, and Plaintiff's Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses, and Lead Plaintiff's request for reimbursement of his time and expenses will also be posted on that website after the papers are filed with the Court.

66. Pursuant to the Preliminary Approval Order, Epiq published the Summary Notice sent out over July 8, 2020, July 15, 2020, and July 22, 2020. *See* Epiq Decl. at ¶11.

67. The Notice provides, *inter alia*: (1) the detailed terms of the Settlement and the releases that would be exchanged; (2) summarized the history of the litigation; (3) described the parties and the Class; (4) discussed the settlement negotiations; (5) discussed Lead Plaintiff's consultant's estimates of recoverable damages at trial; (6) detailed the Plan of Allocation; (7) detailed the percentage and per share recoveries to Class Members based on the dates of their

purchases and sales, if any, of Allied common stock during the Class Period; (8) detailed the maximum amount that Plaintiff's Counsel would seek in attorneys' fees and in reimbursement of expenses for prosecuting the Action, and stated that Lead Plaintiff may seek an award for his direct representation of the Class; (9) described Class Members' right to request exclusion from the Class or appear through personal counsel of their choosing and/or to object to the Settlement, Plan of Allocation and/or request for fees and reimbursement of expenses; (10) specified the deadlines for asserting these rights and procedures for doing so; (11) provided addresses, a toll-free telephone number and a website where Class Members could obtain additional information; and (12) informed Class Members when Lead Plaintiff and Plaintiff's Counsel's papers in support of the proposed Settlement, Plan of Allocation and request for fees and expenses will be filed with the Court and available for their inspection.

68. The Notice also provided the "statement of plaintiffs' recovery," as required by the PSLRA, which states that Class Members' average per share recovery will be $0.30 per share, it identified the attorneys and provided their addresses, it provided information on how to contact Lead Counsel's representatives to obtain additional information, and it contained a brief description of the reasons why the parties are proposing the Settlement. The Notice, however, also points out that the "average per share recovery" is not necessarily reflective of Class Members' actual likely recoveries from the Settlement and provides more accurate per share figures in the Plan of Allocation detailed in the Notice. Indeed, as detailed below, Plaintiff's Counsel, with the assistance of their damages consultant, provided step-by-step formulas for Class Members to calculate their own, individual Recognized Loss by reference to the Plan of Allocation.

69. All objections to the Settlement, the Plan of Allocation and the request for fees and expenses and all requests for exclusion from the Class are required to be filed no later than September 28, 2020. Thus, as provided by the Preliminary Approval Order, Lead Plaintiff's papers in support of the Settlement, the Plan of Allocation and their application for an award of

attorneys' fees and reimbursement of expenses will be filed with the Court and available on the website more than a month before the objection and opt-out date.

70. As of the date of this Declaration, there are no objections concerning the Settlement, the Plan of Allocation, or request for attorneys' fee and expenses, and no requests for exclusion have been received from putative Class Members.

CLAIMS PROCESSING

71. The Plan of Allocation set forth in the long form Notice also details the procedures that will be followed to process claims made by Class Members. In order to receive a share of the distribution of the proceeds from the Settlement, a member of the Class must be an "Authorized Claimant." An Authorized Claimant is a Class Member who: (a) purchased Allied common stock in the United States or on a securities exchange in the United States during the Class Period, (b) meets the further qualifications set out below, and (c) submits a valid and properly documented Proof of Claim form that accompanies the Notice in a timely manner as set out in the Notice.

72. Class Members will be able to substantiate their claims with any of the following forms of evidence: brokerage firm confirmation slips; monthly account statements; or such other third-party documents that Lead Counsel and the Defendants' Counsel, in their discretion, mutually agree are sufficiently reliable and verifiable.

73. As discussed above, with each copy of the Notice disseminated to potential members of the Class, a copy of the Proof of Claim in the form approved by the Court was included. As provided by the Preliminary Approval Order, the deadline for submitting Proofs of Claim is November 7, 2020.

74. Additionally, it is the experience of Lead Counsel and the Claims Administrator that members of similar classes do not submit proofs of claim until (and, often, shortly after) the claims filing deadline. Further, such deadline may be extended by the Court.

THE RESULTS ACHIEVED

75. The proposed Settlement will provide a substantial monetary benefit to the Class of $14 million.

76. As discussed above, based on Lead Plaintiff's damages expert's estimate of the best possible recovery for the Class on all claims at trial, the Settlement reflects an overall 15% recovery of Class Members' total aggregate compensable damages of $93.4 million. Nye Decl., at ¶21. That figure assumes a 100% participation rate by Class Members and does not take into account any risks of non-payment through continued litigation based on either the typical risks inherent in any complex securities fraud litigation, or the unique aspects of this Action.

77. Notably, aggregate damages awards are not typically awarded at trial in securities class actions. Rather, following the trial of a federal securities class action, prior to entry of judgment against defendants, a claims process must be conducted to identify class members and for those class members to prove the amount of their claim. While all of Lead Plaintiff's damages and recovery estimates assume a 100% participation rate, in any class action, not all of those who can make claims do. Nevertheless, here, Class Members will share in the total of the Net Settlement Fund regardless of the number or face value of claims actually received. Therefore, while the Settlement in the aggregate represents an already high recovery of approximately 15% of Class Members' maximum compensable damages, in actuality, before attorneys' fees and expenses, based on the actual amount of claims that are made, the Settlement is likely to represent a significantly higher percentage of Class Members' damages.

78. However, in securities class actions, following the verdict on liability, the practice is for a claims administrator to require each class member to file a claim and subject himself to potential attack on issues such as reliance, before the total amount of Defendants' actual liability is determined. Therefore, the $93.4 million figure arrived at by Lead Plaintiff's financial expert is only a starting point since it not only assumes complete success on all issues of liability and damages, but also assumes that all members of the Class who can make a claim for payment will claim. That, however, is almost never the case.

79. Based on consultations over the years with financial experts, claims administrators, and Lead Counsel's own experience, typically 90% of institutional class members and 30% of non-institutional class members actually make claims. Here, Lead Plaintiff's expert estimated approximately 47 million shares were purchased during the Class Period and held through a curative disclosure and that of those shares approximately 33 million shares were purchased by institutions. Therefore, 30% of the eligible Class shares were purchased by non-institutional investors and 70% of the shares were purchased by institutional investors. Nye Decl., at ¶22. Based on Lead Plaintiff's damages expert's estimate of Class-wide damages of approximately $93.4 million, $8.4 million in claims are estimated to be made by non-institutional Class Members (*i.e.,* 30% x $93.4mm = $28mm x 30%) and $58.8 million in claims are estimated to be made by institutional investors (*i.e.,* 70% x $93.4mm = $65.4mm x 90%). In total, applying the foregoing estimates, approximately $67.3 million in claims are estimated to be made by eligible Class Members. Applying these holdings and estimated claim rates, the $14,000,000 Settlement represents, on a projected claims-made basis, a recovery of approximately 21% of the highest possible damages obtainable in the Action (before payment of attorneys' fees and expenses), without consideration of any of the risks attendant to success on the merits.

80. The median settlement as a percentage of estimated damages in the Ninth Circuit of 5.1% from 2009 through 2018. *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2018 Review and Analysis* at 19, Appendix 3 (Cornerstone Research 2019), annexed as Exhibit D hereto. And according to National Economic Research Associates, Inc. ("NERA"), in 2019 the median ratio of settlements to NERA-defined Investor Losses was 2.1%, which further supports that the Settlement here is a very good recovery for the Class. *See* Janeen McIntosh & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2019 Full-Year Review* at 20 (NERA Jan. 21, 2020), annexed as Exhibit E, hereto.

81. Thus, whether viewed on a gross basis or on a likely claims-made basis, the result achieved for the Class in this litigation is extraordinary, both in absolute terms and when viewed

in light of avoiding the risks and delays of further litigation, the absence of a corporate defendant, and the wasting D&O insurance coverage.

THE SETTLEMENT WARRANTS APPROVAL

82. The proposed Settlement is the result of years of difficult litigation and protracted settlement negotiations by highly experienced counsel who concluded that the Settlement is in the best interests of the Class.

83. The following factors have been cited by the Ninth Circuit as the pertinent criteria for evaluating the fairness of a proposed Settlement: (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement[3]; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant[4]; and (8) the reaction of the class members to the proposed settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003); *Van Der Gracht De Rommerswael v. Auerbach*, No. 18-00236, 2019 U.S. Dist. LEXIS 224924, at *6-*7 (C.D. Cal. Jan. 7, 2019). Based on an analysis of each of these factors, the Settlement before the Court is, without doubt, fair, reasonable and adequate and should be approved.

The Risk, Expense, Complexity and Likely Duration of the Litigation

84. An analysis of the risk, expense, complexity, and likely duration of the litigation supports the Settlement. Virtually all securities actions are inherently complex, and this Action was no different. The subtleties of the federal securities laws, including, but not limited to, the need to demonstrate scienter and loss causation, and the concepts of "recklessness" and "control person liability, are substantial risks to plaintiffs in federal securities cases not found in less complex areas of the law.

[3] The amount offered in Settlement is discussed in the prior section.

[4] There was no government assistance in prosecuting this Action.

85. This case was further complicated by the underlying complexity of Allied's gold mining business. Technical mining issues abounded, many involving arcane manufacturing processes that would need to be explained to the trier of fact. Likewise, complex issues regarding the cost of mining gold; forward gold sales; and the fluctuating market for gold and their relative impacts on Allied during the Class Period would have confronted Lead Plaintiff. While Plaintiff's Counsel were confident, with the aid of their highly qualified experts, they could navigate these complicated macroeconomic and microeconomic matters, distilling them for the jury would be a challenge.

86. Plaintiff's Counsel considered the substantial time and expense that would be involved in continuing to prosecute the Action through trial and the inevitable post-trial motions and appellate proceedings. Formal discovery was at an early stage. Nevertheless, to reach that point had taken almost five years. Simply completing the pre-trial proceedings would have involved considerable additional discovery; taking dozens of depositions; defense of the depositions; preparation of complex expert reports and discovery of the expert witnesses; the negotiation and completion of a complex and voluminous pre-trial order; and extensive briefing on motions for summary judgment, motions to strike experts and other motions *in limine* likely to be made by Lead Plaintiff and by the Defendants. Given the complex nature of the case and the numerous persons with knowledge of discreet aspects of the case, trial of the Action would be extremely complex and likely take weeks, if not months, to complete. Additionally, this Action was severely complicated by Allied's bankruptcy and Allied no longer being a defendant in the Action.

87. As to expense, there is no question the costs of this litigation would have grown geometrically. For instance, most of Plaintiff's Counsel's expenses are related to experts. *See infra*, at ¶144. While Lead Plaintiff's experts' assistance was important for drafting Plaintiff's complaints and preparing discovery requests, that assistance was still at the informal consulting stage. Once Lead Plaintiff moved on to the substantive depositions of mining personnel in which Lead Plaintiff's experts would be expected to provide guidance for questioning; then expert

discovery, with its competing opening reports, responses and rebuttals; then expert depositions, and finally trial testimony. Clearly, the cost of experts would have risen easily into the seven figures alone. Likewise, modern pre-trial and trial technology, essential to complex litigation, is extremely costly. In addition, as Lead Plaintiff needed to look to the available D&O insurance for any meaningful recovery for the Class in this Action, the cost of Defendants' defense is a factor to consider. Not only did Defendants face the same out-of-pocket costs that Plaintiff's Counsel faced, but unlike Plaintiff's Counsel, who were on a contingency fee arrangement, Defendants' multiple high-powered defense firms were paid by the hour on a regular basis from the D&O insurance. Years of further litigation would have undoubtedly depleted the D&O insurance coverage, risking less available to pay a settlement or judgement in the future than Plaintiff Counsel have now secured for the Class.

The Reaction of the Class to the Settlement

88. As noted above, in total, almost 19,000 Notices describing the nature and procedural history of the Action, and the terms of the Settlement, have, to date, been disseminated by first-class U.S. mail to potential Class Members and nominees. In addition, the Summary Notice was transmitted over the *PR Newswires* on three separate, staggered days. Although the deadline for objecting to the Settlement or seeking exclusion from the Class has not yet passed, to date, no Class Member has objected to approval of the Settlement and no potential Class Member has sought exclusion. Nor, for that matter, has any potential Class Member contacted Plaintiff's Counsel to complain about the Settlement.

The Stage of the Proceedings and Discovery Completed

89. At the commencement of the Action, Plaintiff's Counsel conducted an extensive investigation relating to Lead Plaintiff's claims in the Action, including: (i) review and analysis of filings made by, and/or concerning, Defendants with the SEC; (ii) review and analysis of wire and press releases, public statements, news articles, and other publications disseminated by, and/or concerning, Defendants; (iii) review and analysis of Allied voluminous disclosure material filed in its bankruptcy proceedings; (iv) documents produced pursuant to Lead

Plaintiff's FOIA request to the relevant Nevada state agency; and (v) interviewing numerous former employees.

90. Additionally, Plaintiff's Counsel obtained and reviewed approximately 365,000 pages of relevant non-public documents from Defendants, and numerous third parties subpoenaed.

91. Lead Plaintiff also conducted extensive discovery relevant to the Class Members' claims and the reasonableness of the Settlement. Further, to assist with the prosecution and analysis of this case, Lead Counsel also consulted with well-respected consultants and experts concerning mines, engineering, and the calculation of the potential amounts of recoverable damages during the Class Period, as well as issues concerning loss causation and the Defendants' potential defenses to Lead Plaintiff's Class-wide damages estimates. As mentioned above, Plaintiff's Counsel also consulted with mining and economics consultants and/or experts about various factual issues in the Action.

92. As a result of all of the foregoing, Plaintiff's Counsel was well-prepared to negotiate from a position of strength and knowledge to reach the settlement in principle, and to enter into the final Stipulation.

The Strength of Lead Plaintiff's Case

93. While Lead Plaintiff is confident in the strength of his case, the Defendants were just as confident that Lead Plaintiff would not succeed on the merits. It can be said, however, without gainsay that Lead Plaintiff faced considerable risks to success in this Action, as evidenced that the Action was previously dismissed twice before being remanded back by the Ninth Circuit. In achieving the Settlement, Plaintiff's Counsel carefully considered numerous factors, including, but not limited to, the complexity, expense and delay inherent in continued prosecution of the Action through the pretrial, trial and appeal phases, including trying to obtain additional discovery and depositions; Lead Plaintiff's difficult burden of proof on damages; the risks of maintaining the entire Class throughout the litigation; the uncertainties of the outcome of a trial before a jury; the likelihood and vagaries of appellate proceedings; the maximum amount

Lead Plaintiff could reasonably expect to recover at trial; the delay that would likely be incurred in obtaining a recovery for the Class; and the substantial and immediate monetary benefit provided by the Settlement to the Class. Lead Plaintiff evaluated these factors only after extensive factual investigation and legal analysis that enabled Lead Plaintiff to assess the strengths and weaknesses of its claims.

94. As a result of Plaintiff's Counsel's factual and legal research and analysis, as well as the Settlement negotiations, Plaintiff's Counsel was able to identify many of the arguments and issues that would likely have been raised in the course of continued litigation against the Defendants. Although Plaintiff's Counsel would forcefully argue the merits of Lead Plaintiff's claims at trial, the Defendants could have offered potentially effective arguments of their own in their defense to Lead Plaintiff's claims.

95. If the Action had continued, Lead Plaintiff faced substantial challenges in later stages of litigation in proving falsity, scienter and loss causation, all of which Defendants challenged. Defendants asserted that the operational problems during the Class Period were always disclosed, any statements made were protected, the former employees actually support Defendants' arguments as to scienter, and the explanation for the stock drop was the price of gold, not the revelation of any truth.

96. Further, there is no doubt that both sides would have had to present complex and nuanced information to a jury that would include a "battle of the experts" on complex issues surrounding securities disclosure requirements and damages calculations, which the parties did not agree on. Likewise, the issue of damages would have degenerated into a "battle of experts," and whose experts the jury would believe is a risk not practically measurable in advance of trial. Thus, Lead Plaintiff was at risk that the jury might not resolve the "battle of experts" over causation and damages in favor of the Class.

The Risk of Maintaining the Class Action Through the Trial

97. A very significant procedural risk Lead Plaintiff faced was that the Court had not yet certified the class. Absent this Settlement, Defendants would likely have vigorously opposed class certification, including because of the timing and quantity of Lead Plaintiff's trades.

98. For instance, the burden to invoke the fraud-on-the-market doctrine at the class certification stage, which is essential to obtain class certification in securities fraud actions, has risen significantly in the last decade. Issues that did not exist when the Supreme Court decided *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988), such as demonstrating a single objective methodology for providing class-wide damages, *see Comcast v. Behrend*, 569 U.S. 27 (2013), demonstrating price impact, *see Halliburton v Erica John, Fund, Inc.,* 573 U.S. 258 (2014), and permitting inquiries into the underlying merits in deciding class certification. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). The risk to securing and maintain class certification of nationwide classes continues to evolve and tend s to make the effort more and more difficult for plaintiffs.

99. While the Lead Plaintiff believed that his motion to certify the Class would have been granted (and certification would have survived any attempts at a FED. R. CIV. P. 23(f) appeal), Plaintiff's Counsel recognized the real risk that the Court might not certify a class at all and, even if it did, might certify a smaller class than the one proposed, increasing the risk of no recovery for some, potentially large segment of the Class.

The Ability of the Defendants to Withstand a Greater Judgment

100. The Settlement amount may also be considered in the context of the collectability of a greater judgment.

101. The D&O insurance coverage is a wasting asset as it pays legal fees of the Defendants, as well as providing coverage for the claims asserted in the Action. By continuing with the schedule set by the Court, each day that the Action was not settled would take away money available for the Class for settlement.

102. Even if the Class could recover a larger judgment after trial, the additional delay through trial, post-trial motions, and the appellate process could deny the Class any recovery

(even assuming victory at every step and collectability) for years.

The Experience and Views of Counsel

103. As demonstrated by Lead Counsel, Brower Piven's firm resume, *see* Exhibit F-1, annexed hereto, as well as the firm resume of Lead Plaintiff's additional counsel, Robbins Geller, *see* Exhibit G-1, annexed hereto, which acted as additional counsel at the direction and supervision of Lead Counsel, the attorneys at both firms are experienced and skilled practitioners in the securities litigation field and have a successful track record in securities cases throughout the country – including within this Circuit.

104. Thus, this Action has been litigated and settled by experienced and competent counsel on both sides of the case. That such qualified and well-informed counsel endorse the Settlement as being fair, reasonable and adequate to the Class heavily favors this Court's approval of the Settlement.

THE PLAN OF ALLOCATION

105. As set forth in the Notice, Lead Counsel prepared the Plan of Allocation (in consultation with Dr. Nye) for the distribution of the proceeds of the Settlement. The objective of the proposed Plan of Allocation is to distribute equitably the net proceeds of the Settlement to those Class Members who suffered losses as a result of the alleged misrepresentations and omissions. Thus, the proposed division of the proceeds of the Settlement among claiming Class Members is based upon the formula that results in Lead Plaintiff's best possible damages assuming success on the merits for all claims of the Class Members. Since the proposed allocation reflects the best possible damages theory that Lead Counsel believes could have been proffered at trial, Lead Counsel submits that the Plan of Allocation is eminently fair, reasonable, and equitable.

106. The Plan of Allocation, which is fully set forth in the Notice provides for the calculation of "Recognized Losses" for those Class Members who file timely and properly completed Proof of Claim forms ("Authorized Claimants"). In sum, the calculation of Recognized Loss, which is step-by-step set forth in the Notice, is based on the dates and prices

Allied common stock was purchased; and whether those shares were sold, and if sold, when and for what price. Class Members will be eligible to participate in the distribution only to the extent they had a net loss on their overall transactions in Allied common stock shares during the Class Period. If a Class Member had a net gain from his/her overall transactions in Allied common stock during the Class Period, the value of the Recognized Loss will be zero.

107. An Authorized Claimant's total Recognized Loss is the sum total of his, her or its per share Recognized Loss for each share of Allied common stock purchased during the Class Period. For purposes of determining whether a Claimant has a Recognized Loss, purchases, acquisitions, and sales of like ordinary shares will first be matched on a First In/First Out basis. To the extent that a calculation of a per share Recognized Loss results in zero or a negative number, that number shall be set to zero.

108. For all purposes, the transaction date and not the settlement date shall be used as the date for determining eligibility to file a claim. The covering purchase of a "short" sale is not an eligible purchase.

109. Finally, under the Plan of Allocation, if the sum total of Recognized Losses of all Authorized Claimants who are entitled to receive payment out of the Net Settlement Fund is greater than the Net Settlement Fund, each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total of the Recognized Loss of all Authorized Claimants (*i.e.*, on a *pro rata* basis). Class Members who do not file acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not file an acceptable Proof of Claim and do not opt-out of the Class will nevertheless be bound by the judgment and the Settlement. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court approves the final calculations and distributions to be made to Class Members.

110. The Plan of Allocation reflects the same formula that would have been applied by Lead Counsel to determine per share and aggregate damages at trial and is the same formula that Lead Plaintiff would have proposed to the Court for a post-trial Class claims process if Lead

Plaintiff had succeeded on the merits. *See* Nye Decl., at ¶30. As such, the proposed Plain of Allocation reflects the same methodology for calculating Class Members' claims as would have been used if there was no settlement and a recovery to the Class.

111. As noted above, although the deadline has not yet passed, Lead Counsel has not received any objections to the Plan of Allocation to date. If any objections are received by the deadline, Lead Counsel will address any additional issues resulting from the objections in Lead Plaintiff's supplemental papers.

112. Accordingly, Lead Counsel believe that this method of allocation has a reasonable and rationale basis and is fair, reasonable and equitable and therefore, warrants the Court's approval.

LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES

113. Lead Counsel respectfully request an award of 33 1/3 % of the Settlement Fund, plus interest earned on that amount at the same rate as earned by the Settlement Fund from the time of the award to the time of payment, for all of Plaintiff's Counsel.

114. Lead Counsel believe that this request is consistent with established precedent in this District and throughout the Ninth Circuit, as well as in federal courts throughout the country, as fees equal to and greater than the requested percentage have been awarded in securities class actions to plaintiff's counsel working on a contingent fee basis and obtaining a common fund for the benefit of the class.

115. Moreover, a cross-check under the lodestar/multiplier approach amply supports the attorneys' fee request. Plaintiff's Counsel devoted 6,470.95 hours prosecuting this Action equal to a lodestar of $4,888,825.75 from its inception through August 24, 2020. See Plaintiff's Counsel's individual firm declarations Exhibits F - H, annexed hereto. Thus, the requested fee award represents a ***negative*** multiplier of Plaintiff's Counsel's lodestar, or ***a loss*** of $222,128.4 in time billings if Plaintiff's Counsel's fees are granted as requested.

116. Although most courts in the Ninth Circuit apply the "percentage of the fund"

method over the "lodestar" method when determining awards of attorneys' fees in common fund recoveries, Lead Counsel are presenting the information necessary for the Court to use either method for its analysis. Regardless of which fee calculation method is applied, district courts in the Ninth Circuit also consider certain factors when determining an award of attorneys' fees. The factors are: "(1) the results achieved[5]; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases." *Alcantar v. Hobart Serv.*, No. 11-1600, 2018 U.S. Dist. LEXIS 221900, at *19 (C.D. Cal. Aug. 13, 2018) (citation omitted).

117. Lead Counsel respectfully submit that an analysis of these criteria demonstrates that the requested fee is abundantly fair and reasonable.

118. In addition, although the factors do not specifically include the reaction of the class to the fee request, some courts consider the class' reaction when deciding whether to award the requested fee. The Notice disseminated to the Class advised recipients of the fee that Lead Counsel would seek and the maximum amount of expenses that would be requested. To date, not a single objection to Lead Counsel's request for an award of attorneys' fees has been received.

The Risk of The Litigation and the Contingent Nature of the Fee

119. The magnitude, complexities and the risk of the litigation is described in detail above.

120. Moreover, Plaintiff's Counsel prosecuted this case on a fully contingent basis, committed their own resources, and litigated it without any compensation or guarantee of success. As set forth in detail above, at the outset, the attorneys representing Lead Plaintiff understood they were embarking on a difficult, complex, expensive and lengthy case. Plaintiff's Counsel understood that the Defendants would (and, in fact, did) retain a highly experienced large corporate defense firm to mount a vigorous defense, and that there was no guarantee of

[5] This factor is discussed above.

ever being compensated for the anticipated enormous investment of time and money the case would require.

121. Undertaking a federal securities action on a contingency is, itself, a high-risk endeavor, with a majority of such cases being dismissed at the pleading stage. Indeed, according to a NERA Economics Consulting, in 2016 "[f]or the first time since passage of the PSLRA, more cases were dismissed than settled – in fact, almost a third more cases were dismissed than settled. *See* Stephan Boettrich & Svetlana Starykh, *Recent Trends in Securities Class Action Litigation: 2016 Full-Year Review*, NERA Economic Consulting, Jan. 23, 2017, at p. 24, annexed hereto as Exhibit I.

122. There are numerous cases in which plaintiff's counsel, in contingent fee cases such as this, after expenditures of thousands of hours, have received no compensation whatsoever. Counsel know from personal experience that despite the most vigorous and competent of efforts, a law firm's success in contingent litigation such as this is never assured – and that many able plaintiffs' law firms have suffered major defeats after years of litigation (and after expending tens of millions of dollars of time and money) without receiving any compensation at all for their efforts. However, the Defendants and their counsel know that Plaintiff's Counsel were prepared and willing to go to trial, which permits meaningful settlement in actions such as this.

123. Notwithstanding the tremendous risks faced in pursuing this Action, Plaintiff's Counsel undertook this Action on a fully contingent basis. Had Lead Plaintiff not prevailed or achieved a favorable settlement in the Action, Plaintiff's Counsel would have sustained a substantial financial loss.

124. It would also be wrong to ignore the responsibility undertaken by Plaintiff's Counsel in agreeing to represent the Class in the Action in terms of foregoing other potential employment during the litigation to assure sufficient resources were dedicated to the prosecution of this Action. Another factor is the attorney's loss of the use of the money invested during the course of the litigation. Attorneys representing hourly fee-paying clients are paid immediately,

with the money available for investment and the creation of additional revenues. Such additional revenues are not available to the contingent fee attorney. Lawsuits such as this Action are exceedingly expensive to litigate. Outsiders often focus on the gross fees awarded but ignore that those fees are used to fund overhead expenses incurred during the course of many years of litigation, are taxed by federal, state, and local authorities, and, when reduced to a bottom line, are far less imposing to each individual firm involved than the gross fee award might suggest.

The Quality of the Representation

125. The expertise and experience of Plaintiff's Counsel was discussed above.

The quality of the work performed by Plaintiff's Counsel in attaining the Settlement should also be evaluated in light of the quality of the opposition. Lead Plaintiff was opposed in this case by the highly skilled, well financed law firms with virtually unlimited resources at their disposal to defeat Lead Plaintiff's claims. Defendants were represented by the prominent New York City-based national law firm of Sullivan & Cromwell, which is highly experienced in the defense of securities class actions, and by the well-respected Nevada firms of Erwin & Thompson, LLP and subsequently Dickenson Wright, LLP. Additionally, Allied was represented in the Delaware bankruptcy court by Blank Rome LLP and Akin Gump Strauss Hauser & Feld, LLP, also large national firms that routinely defend securities class actions as well as engaging in complex corporate bankruptcy litigation.

126. In order to protect the interest of the Class both in this Court and in the bankruptcy court, and ultimately obtain the substantial Settlement reached in this Action, Plaintiff's Counsel needed to confront knowledgeable and formidable defense firms and develop a case that was sufficiently strong to persuade the Defendants to settle.

127. Moreover, Plaintiff's Counsel achieved this outstanding Settlement through their own skill, effort, and initiative. As mentioned, Plaintiff's Counsel received no outside or governmental assistance that Plaintiff's Counsel could "coattail.". Plaintiff's Counsel achieved this result without expending unnecessary time and expenses or burdening the Court with unnecessary motion practice.

The Requested Fee Award in Relation to the Settlement

128. When determining whether a fee request is reasonable in relation to a settlement amount, the court compares the fee application to fees awarded in similar securities class-action settlements of comparable value.

129. The requested fee in relation to the settlement favors approval of Lead Counsel's fee request. While the percentage of fees awarded in securities actions have varied substantially, courts in the Second Circuit and around the country have consistently awarded percentage fees to Plaintiff's Counsel that were equal to and, indeed, greater than the fee requested by Plaintiff's Counsel herein. Given the significant amount of time that Lead Counsel were required to expend to successfully prosecute this Action, the present request, the fee is reasonable and should be approved.

The Labor and Time Expended

130. The work undertaken by Plaintiff's Counsel in prosecuting this case and arriving at this Settlement in the face of substantial risks has been time-consuming and challenging. Plaintiff's Counsel performed a wide range of tasks necessitated by the complexity of both the underlying facts presented by this case and the sophisticated legal issues that naturally arise under the federal securities laws. These efforts are detailed above.

131. Plaintiff's Counsel expended 6,470.95 hours in the prosecution of this Action over the past approximately 6 years. The individual firm declarations of Plaintiff's Counsel annexed hereto as Exhibits F to H set forth the identity and level of each attorney and paraprofessional at Plaintiff's Counsel's law firms who worked on this Action, each of their current billing rates and the number of hours each devoted to this Action. Attached as exhibit to each of those declarations are each firm's resume which describes the backgrounds, education and experience of each of the persons listed below. The total hourly charges of Lead Counsel in this Action, on a current basis (*i.e.*, their "lodestars"), is $4,888,825.75 on 6,470.95 hours of

time.[6]

132. Plaintiff's Counsel maintained daily control and monitoring of the work performed by lawyers and the paraprofessional on this case. While I, the senior attorney at my firm, personally devoted substantial time to this case, other experienced attorneys at my firm and at Robbins Geller undertook particular tasks appropriate to their levels of expertise, skill and experience, and more junior attorneys and paralegals worked on matters appropriate to their experience levels. Throughout the Action, I allocated work assignments among the attorneys to avoid unnecessary duplication of effort with the goal of providing efficient, low-cost representation to the Class.

133. Plaintiff's Counsel's billing rates are consistent with (and, indeed, lower than) rates charged in the communities in which they practice. Plaintiff's Counsel's rates are also commensurate with (and, again, lower than) rates charged by attorneys of comparable skill, reputation and experience who specialize in the defense of securities fraud litigation. *See, e.g., In re Cnova N.V. Sec. Litig.*, No. 1:16-Civ.-444-LTS (S.D.N.Y.), *Cnova* Dkt. No. 137-7 (Declaration of Professor Geoffrey P. Miller, New York University School of Law, dated December 15, 2017, submitted in *Cnova* as Exhibit C to the Appendix of Exhibits in support of plaintiff's counsel's motion for attorneys' fees) (the "Miller Decl.").

134. As demonstrated by the survey conducted by Professor Miller, rates for partners at New York law firms that typically represent defendants in securities class actions, such as Proskauer Rose, Ropes & Gray, Kirkland & Ellis and Skadden, Arps, Meagher & Flom for senior litigators topped out at between $1,425 and $1,475 per hour in 2016. Miller Decl., at ¶68. Indeed, Allied's bankruptcy counsel, Akin Gump Strauss Hauer & Feld who Plaintiff's Counsel faced in this Action billed their senior bankruptcy partners at $1,425 per hour in 2016. *See id*.

[6] This time does not include time spent preparing Plaintiff's Counsel application for an award of attorneys' fee and expenses, time necessary for Plaintiff's Counsel to address and submit Lead Plaintiff's supplemental papers regarding requests for exclusion and/or objections, if any after, that will be filed after the deadline on September 28, 2020, or time spent preparing for, and attending the Final Hearing on November 16, 2020.

135. Moreover, the rates described in the Miller Declaration have obviously increased over the intervening four years. The steep trajectory of rate increases at the large defense firms is evidenced by the increases in rates by Sullivan & Cromwell for litigation and bankruptcy attorneys over the past four years is representative. *See* 2019 Attorney Hourly Rates Report, prepared by the legal consulting firm of Valeo Partners LLC, www.valeropartners.com, excerpts annexed hereto as Exhibit J), For instance, rates for Sullivan & Cromwell litigation partners increased from between $1,024 and $1,067 per hour in 2014 to $1,471 and $1,549 per hour in 2019, or an approximate 50% increase over the years this Action has been pending. Its rates for other levels of attorneys in litigation and bankruptcy have risen similarly. *See id*.

136. In sum, the billing rates of Lead Plaintiff's highly experience and well-respected New York national securities class action firms are not only consistent with, but far lower than their typical opponents, including Sullivan & Cromwell, the firm that primarily conducted the defense in this Action.

137. The resulting lodestar for Plaintiff's Counsel is $4,888,825.75. The total requested fee, therefore, yields a ***negative*** multiplier and is fair and reasonable based upon the significant risk of the litigation, the results achieved, the time devoted to the Action, the reputation of counsel, awards in similar cases, and the quality of representation in achieving the excellent Settlement before the Court.

Public Policy Considerations

138. Although not a factor, the United States Supreme Court and countless lower courts have repeatedly and consistently recognized that the public has a strong interest in having experienced and able counsel be incentivized to undertake the risky task, on a contingent basis, of privately enforcing the federal securities laws and related regulations designed to protect investors from the pernicious effects of false and misleading statements made in connection with the issuance or subsequent purchase or sale of publicly-traded securities. The importance of this public policy is particularly evident in this case. Government authorities (including the SEC) can only bring a certain amount of securities law enforcement actions against companies at a time.

139. Without any assistance from any government authority, Lead Plaintiff's Counsel has recovered a Settlement Fund on behalf of the Class. Such recoveries – and the complex, difficult and high-risk litigation necessary to achieve them – are only possible if plaintiffs' counsel is ultimately compensated with fees commensurate with the magnitude of the risk they undertook and the results they achieve.

140. Based upon all of the foregoing, Plaintiff's Counsel submit that their fee request for all of Plaintiff's Counsel is fair and reasonable and should be granted.

PLAINTIFF'S COUNSEL'S APPLICATION FOR REIMBURSEMENT OF EXPENSES

141. Plaintiff's Counsel also request $324,557.52 as reimbursement of their all of the other Plaintiff's Counsel's out-of-pocket litigation expenses reasonably and necessarily incurred by them in the prosecution of this Action.

142. From the beginning of the case, Plaintiff's Counsel were aware that they might not recover any of their expenses, and, at the very least, would not recover anything until the Action was successfully resolved. Plaintiff's Counsel also understood that, even assuming that the case was ultimately successful, an award of expenses would not compensate them for the loss of the use of those funds advanced to prosecute this Action. Thus, Plaintiff's Counsel were motivated to, and did, take significant steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of the Action.

143. The following chart details the expenses incurred by Plaintiff's Counsel by category:

JAMS (Mediator)	$10,159.10
Filing/Witness/Service/Other Fees	$2,353.00
Process Service (subpoenas)	$1,201.74
Reproduction/Printing/Binding/Special Supplies	$3,460.55
Messenger/Postage/Express Mail	$712.49
Computer Legal/Financial Research	$10,866.66
Transcripts	$659.35
Travel	$12,751.19
eDiscovery Database Hosting	$21,819.90
Telephone/Facsimile/Wire/Conf. Service	$70.00
PSLRA Notices	$1,708.00

Stanford Consulting Group (Damages Expert)	$120,730.00
Valuescope (Financial Expert)	$5,059.20
Allihies Engineering, Inc. (Mining Expert)	$3,463.85
Tuncel M. Yegulalp (Mining Expert)	$2,375.00
Lowenstein Sandler (Outside Bankruptcy Counsel)	$127,167.49
Total Expenses	**$324,557.52**

144. The expenses of each of Plaintiff's Counsel aggregated above are broken down by category for each of Lead Plaintiff's law firms in the individual firm declarations attached as Exhibits F to H hereto.

145. The expenses incurred are the types typically and necessarily incurred in modern complex business litigation and the types that courts routinely reimburse in securities and antitrust class actions. These expenses include the cost of experts and consultants; computer research; photocopying; telephone; postal charges; hand delivery charges; charges for transcripts; the mediators' fees; travel expenses, discovery and the mediation; and other similar case-related costs.

146. The expenses incurred in this Action are reflected on the books and records of the various firms. These books and records are prepared from expense vouchers, check records and other primary source materials, and are an accurate record of the expenses incurred. The bills, receipts and other records reflecting the firms' expenses are available for inspection at the Court's request.

147. I believe the total expenses of Plaintiff's Counsel are reasonable and were necessarily incurred in the prosecution of the Action and obtaining the result achieved for the Class.

148. As the chart above demonstrates, the largest expense is by far Lead Plaintiff's outside experts. As Lead Counsel, my firm was primarily responsible for retaining each of these experts and negotiated their retainers. I have personally reviewed the time and expenses billings of Lead Plaintiff's experts and I am satisfied that the time and expenses billed by each of these outside professionals, including Lead Plaintiff's outside bankruptcy counsel, are reasonable, consistent with the work each was retained to do and commensurate with the work actually

performed on behalf of Lead Plaintiff and the Class.

149. Moreover, the total requested reimbursement of expenses of $324,557.52 is far less than the limit of Lead Counsel's projected request of $450,000 set forth in the Notices. Nevertheless, as of the date of this Declaration, no objections have been received to that higher potential reimbursement request disclosed to Class Members.

AWARD FOR LEAD PLAINTIFF

150. Further, the time spent by the Lead Plaintiff in managing the case is properly reimbursable from the Settlement Fund.

151. The Notice informed the Class that Lead Counsel would request an award for Lead Plaintiff directly related to his representation of the Class.

152. Lead Plaintiff's declaration attests to the approximate amount of time that he spent on behalf of the Class overseeing the status of the case and supervising Lead Counsel, including regularly discussing the case with Lead Counsel and consulting with Lead Counsel with respect to the proposed settlement, as well as performing tasks such as reviewing pleadings and documents, and gathering documentation in response to discovery requests, See Exhibit C hereto annexed hereto.

153. Accordingly, Lead Plaintiff requests a reimbursement in the amount of $10,000.

EPIQ'S FEES AND EXPENSES

154. The above described expenses include the initial expenses for the Court-appointed claims administrator for providing the Court-ordered Notice to the Class, administering claims or ultimately distributing the Settlement Fund. To date, Epiq has incurred fee and costs for, *inter alia*, set-up and preparation costs for the notice and administration; printing the Notice and Proof of Claim; postage; renting lists of names and addresses of potential members of the Settlement Class for disseminating the Notice; publishing the Summary Notice; computer programming and processing claims; maintenance of the web site; and responding to inquiries from potential claimants. As permitted by the Preliminary Approval Order, to date, Epiq has billed $58,989.16

in fees and expenses relating to its services in connection with providing notice to the Settlement Class and administrating the Settlement. As Lead Counsel, I have reviewed Epiq's billings and believe that they are commercially competitive, that the time and expenses are consistent with the retainer entered into with the firm after competitive bidding (and subsequent further negotiations downward) for the position of claims administrator, and that the fees and expenses were reasonably and necessarily incurred. Accordingly, Lead Plaintiff requests that the Court approval to pay their interim bill related primarily to the notice program ordered by the Court.

155. Epiq will have additional fees and expenses as the settlement administration process progresses, and Lead Counsel will seek Court approval before making any such payments to Epiq.

156. Notably, even if Epiq billings for the Court-ordered notice program were considered part of Plaintiff's Counsel's litigation expenses (which they technically are not), the amount of Plaintiff's Counsel's litigation expenses and the Claims Administrator's notice expenses combined being sought would still be well below the cap for the amount of litigation expenses that Plaintiff's Counsel disclosed they would seek at this time in the Notice to the Class.

CONCLUSION

Based on all the factors discussed above, as well as my extensive experience in the litigation of securities class actions, I believe that the proposed Settlement is fair, reasonable, and adequate, and should be approved; that the Plan of Allocation of the net proceeds of the Settlement, which mirrors the formulas Lead Plaintiff would have used at trial to prove Class Members' damages, is fair and equitable and should be approved; that Lead Counsel's requested award of attorneys' fees and reimbursement of litigation expenses are fair and reasonable and should be granted; and the Lead Plaintiff should be granted reimbursement of its reasonable time expended in representation of the Class.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 24 day of August 2020 at New York, New York.

David A.P. Brower
David A.P. Brower

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document with exhibits was filed on August 24, 2020, and will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF).

Martin A. Muckleroy
Martin A. Muckleroy