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13
14 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
15

16 In re ALLIED NEVADA GOLD CORP.,)
SECURITIES LITIGATION)

Case No. 3:14-cv-00175-LRH-WGC

17) CLASS ACTION

18 This Document Relates To:)

19 ALL ACTIONS.)

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFF’S MOTION FOR FINAL
CERTIFICATION OF THE CLASS AND
FINAL APPROVAL OF THE NOTICE TO
THE CLASS

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1 **I. PRELIMINARY STATEMENT**

2 Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure and
3 Rule 408 of the Federal Rules of Evidence, lead plaintiff Andrey Slomnitsky (“Lead
4 Plaintiff”) in the above-entitled action (the “Action”), submits this memorandum in support
5 of final certification of the Class, as defined herein, and pursuant to FED. R. CIV. P. 23(c)(2)
6 and 23(e)(1) final approval of the forms and methods for providing notice of the proposed
7 settlement (the “Settlement”) as set forth in the Stipulation and Agreement of Settlement,
8 dated January 24, 2020 (the “Stipulation”),¹ between Lead Plaintiff and Defendants Scott
9 Caldwell, Robert Buchan, Randy Buffington and Stephen Jones (collectively,
10 “Defendants”).

11 Pursuant to the Preliminary Order for Notice and Hearing in Connection with
12 Settlement Proceedings signed on June 10, 2020 (the “Preliminary Approval Order”), this
13 Court certified a class consisting of all those who purchased or otherwise acquired the
14 common stock of Allied Nevada Gold Corporation (“Allied”) in the United States or on a
15 securities exchange in the United States between January 18, 2013 through August 5, 2013,
16 inclusive, and who were damaged thereby (*i.e.*, the “Class” and “Class Period”). Excluded
17 from the Class are the Defendants, any entity in which Defendants or any excluded person
18 has or had a controlling ownership interest, the officers and directors of Allied, members
19 of any such excluded person’s immediate families, and the legal affiliates, representatives,
20 heirs, controlling persons, successors, and predecessors in interest or assigns of any such
21 excluded party.

22 Additionally, pursuant to the Preliminary Approval Order, the Notice of Proposed
23 Settlement of Class Action (the “Notice”) and Proof of Claim form was mailed to 18,957
24 potential nominees and Class members beginning on July 1, 2020. *See* Declaration of
25 Michael McGuinness of Epiq Class Action & Solutions, Inc. (“Epiq”), the professional

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27

¹ All terms not defined herein have the same definitions as in the Stipulation.

1 class action administration company appointed by the Court in its Preliminary Approval
2 Order Regarding (A) Mailing of Notice and Claim Form; (B) Publication of Summary
3 Notice; (C) Call Center Services; (D) Posting of Notice and Claim Form on Settlement
4 Website; and (E) Report on Objections or Requests for Exclusion Received to date, dated
5 August 20, 2020 (“Epiq Declaration” or “Epiq Decl.”), attached as Exhibit A to the
6 Declaration of David A.P. Brower in Support of Plaintiff’s Motion for Final Certification
7 of the Class, Final Approval of the Class Notice, Final Approval of the Proposed
8 Settlement, Approval of the Proposed Plan of Allocation, and Plaintiff’s Counsel’s Motion
9 for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses and Lead
10 Plaintiff’s Request For Reimbursement For His Time and Expenses of Lead Plaintiff, dated
11 August 24, 2020 (the “Brower Declaration”). In addition, the Summary Notice of Proposed
12 Settlement of Class Action and Settlement Hearing (“Summary Notice”) was published
13 over the *PR Newswire* on July 8, 2020, July 15, 2020, and July 22, 2020. *See* Epiq Decl.
14 at ¶11. The last day to file objections to any aspect of the Settlement is September 28,
15 2020. As of August 24, 2020, neither Plaintiff’s Counsel² nor the Claims Administrator
16 has received any objection to final certification of the Class or the forms and methods
17 utilized to provide notice to the Class. *See* Brower Decl., at ¶71; Epiq Decl., at ¶16.

18 **II. PROCEDURAL AND FACTUAL BACKGROUND**

19 An extensive review of the facts and circumstances surrounding the institution of
20 this Action, its procedural history, Lead Plaintiff’s factual investigation, the settlement
21 negotiations, the efforts of Plaintiff’s Counsel, and the amount recovered for the Class are
22 set forth in the Brower Declaration. This Memorandum will focus upon the applicable
23 legal standards for certification of the Class, for settlement purposes, under FED. R. CIV. P.
24
25

26 ² Lead Counsel is Brower Piven, A Professional Corporation (“Brower Piven”). Plaintiff’s
27 Counsel are Brower Piven, Robbins Geller Rudman & Dowd LLP, and Muckleroy & Lunt,
28 LLC.

1 23(a) and 23(b)(3) and the requirements of FED. R. CIV. P. 23(c)(2) and 23(e)(1) and due
2 process for providing adequate notice to a Class of a proposed Settlement.

3 **III. CERTIFICATION OF THE CLASS UNDER FED. R. CIV. P. 23 IS APPROPRIATE**

4 Because the Settlement was reached prior to a decision by the Court regarding class
5 certification, Defendants have agreed to certification of the Class for settlement purposes.
6 FED. R. CIV. P. 23 provides that an action may be maintained as a class action if each of
7 the four prerequisites of FED. R. CIV. P. 23(a) is met and, in addition, the action qualifies
8 under one of the subdivisions of FED. R. CIV. P. 23(b). FED. R. CIV. P. 23(a) provides that:

9 One or more members of a class may sue or be sued as representative parties
10 on behalf of all members only if: (1) the class is so numerous that joinder
11 of all members is impracticable; (2) there are questions of law or fact
12 common to the class; (3) the claims or defenses of the representative parties
are typical of the claims or defenses of the class; and (4) the representative
parties will fairly and adequately protect the interests of the class.

13 FED. R. CIV. P. 23(b) provides, in relevant part:

14 A class action may be maintained if Rule 23(a) is satisfied and if: . . . (3)
15 the court finds that the questions of law or fact common class members
16 predominate over any questions affecting only individual members, and that
a class action is superior to other available methods for fairly and efficiently
adjudicating the controversy.

17
18 Although certification of the Class is requested solely to effectuate the Settlement, as set
19 forth below, all of the requirements of FED. R. CIV. P. 23 are easily met.

20 **A. The Class Is Sufficiently Numerous**

21 FED. R. CIV. P. 23(a) first requires that the proposed class be so numerous that
22 joinder of all members is difficult or impracticable. FED. R. CIV. P. 23(a)(1). “[I]n general,
23 courts have held that joinder is practicable where there are less than 25 parties, and
24 impracticable where there are more than 35.” *In re THQ, Inc. Sec. Litig.*, No. 00-1783-
25 AHM (Ex), 2002 U.S. Dist. LEXIS 7753, at *9-*10 (C.D. Cal. Mar. 22, 2002); *see also*
26 *Lundell v. Dell, Inc.*, No. C05-3970-JW/RS, 2006 U.S. Dist. LEXIS 90990, at *4 (N.D.
27 Cal. Dec. 4, 2006) (noting that “numerosity [is] generally met if the class consists of more
28

1 than 40 members”). Here, joinder is certainly impracticable. While the precise number of
2 Allied shareholders is unknown, based on the mailing of the Notice to almost 19,000
3 potential Class members and nominees, Lead Plaintiff believes there are thousands of
4 members in the Class, which easily satisfies numerosity. *See* 1 Alba Conte & Herbert B.
5 Newberg, *Newberg on Class Actions* §3.5 at 246 (4th ed. 2002) (“Certainly, when the class
6 is very large, for example, numbering in the hundreds, joinder will be impracticable.”).

7 **B. Common Questions of Law or Fact Exist**

8 FED. R. CIV. P. 23(a)(2) requires that there be “questions of law or fact common to
9 the [members of the] class.” Like all the requirements of FED. R. CIV. P. 23(a), the
10 commonality requirement is construed liberally: “[T]hose courts that have focused on
11 Rule 23(a)(2) have given it a permissive application so that common questions have been
12 found to exist in a wide range of contexts. The rule does not require all questions of law
13 and fact to be common.” *Rodriguez v. Carlson*, 166 F.R.D. 465, 472 (E.D. Wash. 1996);
14 *Schneider v. Traweek*, No. 88-0905-RG (Kx), 1990 U.S. Dist. LEXIS 15596, at *14-*16
15 (C.D. Cal. July 31, 1990).³

16 It is well established that the commonality requirement is satisfied if the claims of
17 the prospective class share even one central question of fact or law. *See Rodriguez v.*
18 *Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) (“The commonality requirement will be
19 satisfied if the named plaintiffs share at least one question of fact or law with the grievances
20 of the prospective class.”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-20 (9th Cir.
21 1998); Conte & Newberg, *supra*, §3.10 at 271-290. “The existence of shared legal issues
22 with divergent factual predicates is sufficient, as is a common core of salient facts coupled
23 with disparate legal remedies within the class.” *Hanlon*, 150 F.3d at 1019; *see also Yslava*
24 *v. Hughes Aircraft Co.*, 845 F. Supp. 705, 712 (D. Ariz. 1993) (“A common question is
25 one which arises from a ‘common nucleus of operative facts’ regardless of whether the
26

27 ³ Unless otherwise noted, citations are omitted and emphasis is added throughout.

1 underlying facts fluctuate over the class period and vary as to individual claimants.”⁴
2 Accordingly, common questions of law and fact exist in this Action such that certification
3 as a class action is appropriate.

4 **C. Lead Plaintiff’s Claims Are Typical of Those of the Class**

5 ““The test of typicality “is whether other members have the same or similar injury,
6 whether the action is based on conduct which is not unique to the named plaintiffs, and
7 whether other class members have been injured by the same course of conduct.”” *Ellis v.*
8 *Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011); *see also Booth v. Strategic*
9 *Realty Tr. Inc.*, No 13-cv-04921-JST, 2015 U.S. Dist. LEXIS 84143, at *10-*11 (N.D. Cal.
10 June 28, 2015); *Negrete v. Allianz Life Ins. Co. of N. Am.*, No. 05-6838, 2012 U.S. Dist.
11 LEXIS 182796, at *38 (C.D. Cal. Dec. 27, 2012); *THQ*, 2002 U.S. Dist. LEXIS 7753, at
12 *12. As Lead Plaintiff’s claims arise from the same course of conduct and are predicated
13 on the same legal theories as the claims of all other Class members, these claims easily
14 satisfy the typicality requirement of FED. R. CIV. P. 23(a).

15 **D. Lead Plaintiff Is an Adequate Representative of the Class**

16 The adequacy requirement “serves to uncover conflicts of interest between named
17 parties and the class they seek to represent.” *Amchem Prods., Inc. v. Windsor*, 521 U.S.
18 591, 625 (1997). “The Ninth Circuit has found representation adequate where (1) counsel
19 for the class is qualified and competent, (2) the representatives’ interests are not
20 antagonistic to those of the absent class members, and (3) it is unlikely that the action is

21
22 _____
23 ⁴ The common questions of law and fact here are overwhelming and include: whether
24 Defendants’ alleged acts violated the federal securities laws; whether Defendants
25 participated in and pursued the common course of conduct complained of herein; whether
26 documents, SEC filings, press releases and other statements disseminated to the investing
27 public and Allied stockholders during the Class Period misrepresented material facts about
28 the business of Allied; whether the market prices of Allied’s stock during the Class Period
were artificially inflated due to material misrepresentations and the failure to correct the
material misrepresentations complained of herein; and to what extent Class members have
sustained damages and the proper measure of damages.

1 collusive.” *THQ*, 2002 U.S. Dist. LEXIS 7753, at *20; *see also Ellis*, 657 F.3d at 985; *In*
2 *re Toyota Motor Corp. Unintended Acceleration Mktg.*, No. 8:10ML2151-JVS, 2012 U.S.
3 Dist. LEXIS 183941, at *211 (C.D. Cal. Dec. 28, 2012).

4 Here, there are no conflicts between the Lead Plaintiff and absent Class members.
5 That Lead Plaintiff has pursued this litigation for almost six years, overcome repeated
6 dismissals, and recovered \$14,000,000 for the Class he has represented dispels any thought
7 that he has any antagonisms with other Class members or colluded with Defendants. Lead
8 Plaintiff’s adequacy is also demonstrated by the fact that he has retained experienced
9 counsel to bring this Action against Defendants. Plaintiff’s Counsel are nationally
10 recognized class action law firm, which have been appointed throughout the country
11 (including repeatedly in this Circuit) as lead counsel in this and numerous other securities
12 class actions. Accordingly, both Lead Plaintiff and Plaintiff’s Counsel are more than
13 adequate to represent the Class.

14 **E. The Requirements of FED. R. CIV. P. 23(b)(3) Are Also Satisfied**

15 FED. R. CIV. P. 23(b)(3) authorizes certification where, in addition to the
16 prerequisites of FED. R. CIV. P. 23(a), common questions of law or fact predominate over
17 any individual questions and a class action is superior to other available means of
18 adjudication. *Amchem*, 521 U.S. at 591-94. The Action easily meets FED. R. CIV. P.
19 23(b)(3)’s requirements.

20 **1. Common Legal and Factual Questions Predominate in**
21 **the Action**

22 The Supreme Court has held that the predominance test is “readily met in . . . cases
23 alleging . . . securities fraud” *Amchem*, 521 U.S. at 625. In analyzing whether common
24 questions predominate, the Court must evaluate whether proving the elements of plaintiff’s
25 claims can be done through common questions of fact or law, or whether the proof will be
26 overwhelmed with individual issues. *See Hanlon*, 150 F.3d at 1022. The predominance
27 inquiry tests “whether proposed classes are sufficiently cohesive to warrant adjudication
28

1 by representation.” *Amchem*, 521 U.S. at 623; *see also THQ*, 2002 U.S. Dist. LEXIS 7753,
2 at *30 (“Plaintiffs’ claim – which is based on a series of misrepresentations and market
3 manipulations – clearly satisfies the requirement that common questions predominate over
4 those affecting individual members.”) (citing *In re United Energy Corp. Solar Power*
5 *Modules Tax Shelter Invs. Sec. Litig.*, 122 F.R.D. 251, 256 (C.D. Cal. 1988) (finding that
6 common questions such as the knowledge of the defendants and the truth or falsity of their
7 representations predominated)); *In re Unioil Sec. Litig.*, 107 F.R.D. 615, 622 (C.D. Cal.
8 1985) (holding that common questions predominated where the plaintiffs’ claim was based
9 on a common nucleus of misrepresentations, material omissions and market
10 manipulations). In this case, the common questions of law and fact identified above, *see*
11 n. 4, *supra*, predominate because the proof for the claims of misrepresentation, materiality,
12 reliance and Defendants’ scienter are all based on a common nucleus of fact and common
13 course of conduct.

14 2. **A Class Action Is the Superior Means to Adjudicate** 15 **Lead Plaintiff’s Claims**

16 The second prong of FED. R. CIV. P. 23(b)(3) is essentially satisfied by the
17 Settlement itself. As explained in *Amchem*, “[c]onfronted with a request for
18 settlement-only class certification, a district court need not inquire whether the case, if
19 tried, would present intractable management problems, *see* FED. R. CIV. P. 23(b)(3)(D), for
20 the proposal is that there be no trial.” 521 U.S. at 620. Thus, any manageability problems
21 that may have existed here - and Lead Plaintiff knows of none - are eliminated by the
22 Settlement. Accordingly, it is appropriate to certify this litigation as a class action.

23 **IV. NOTICE TO THE CLASS SATISFIES THE REQUIREMENTS OF** 24 **THE FEDERAL RULES OF CIVIL PROCEDURE, THE PSLRA** 25 **AND DUE PROCESS**

26 FED. R. CIV. P. 23(e)(1)(B) requires the Court to direct notice in a reasonable
27 manner to all class members who would be bound by a proposed settlement, voluntary
28 dismissal, or compromise. The notice procedure sought to reach the greatest number of

1 Class members possible. Pursuant to the Preliminary Approval Order, the Notice, along
2 with the Court-approved form of Proof of Claim and Release, was mailed to over 18,990
3 Class members and potential nominees. Epiq Decl. at ¶10. In addition, after the initial
4 mailing of the Notice, Lead Plaintiff published the Summary Notice on three staggered
5 dates over the *PR Newswire*, a national business-oriented newswire service on July 8, 2020,
6 July 15, 2020, and July 22,2020. *See id.*, at ¶11. Further, beginning on June 30, 2020, the
7 Notice and Proof of Claim were also posted on the Claim Administrator’s website. *See id.*,
8 at ¶14. Moreover, a telephone helpline was set up to accommodate potential Class
9 members. *See id.*, at ¶¶12-13.

10 This method of giving notice, previously approved by the Court, is appropriate
11 because it directs notice in a “reasonable manner to all class members who would be bound
12 by the propos[ed judgment],” FED. R. CIV. P. 23(e)(1)(B), and clearly ““the best notice
13 practicable under the circumstances, including individual notice to all members who can
14 be identified through reasonable effort,”” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173
15 (1974), and meets the requirements of FED. R. CIV. P. 23(c) and (e) and due process. *See,*
16 *e.g., Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (notice need
17 only be “reasonably calculated, under all the circumstances, to apprise interested parties of
18 the pendency of the action and afford them an opportunity to present their objections”).
19 Courts have repeatedly sustained notices in cases where the notice included only very
20 general information. *See, e.g., In re Equity Funding Corp. of Am. Sec. Litig.*, 603 F.2d
21 1353, 1361-62 (9th Cir. 1979); *Mendoza v. United States*, 623 F.2d 1338, 1351-52 (9th Cir.
22 1980).

23 The Notice here was also clearly sufficient with respect to its content. *See, e.g.,*
24 *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 945-47
25 (10th Cir. 2005) (finding notice program akin to the instant one satisfied due process).
26 FED. R. CIV. P. 23(c)(2)(b) requires the notice to state the following: (a) the nature of the
27 action; (b) the definition of the class certified; (c) the class claims, issues, or defenses; (d)

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1 that a class member may enter an appearance through an attorney if the member so desires;
2 (e) that the court will exclude from the class any member who requests exclusion; (f) the
3 time and manner for requesting exclusion; and (g) the binding effect of a class judgment
4 on members under FED. R. CIV. P. 23(c)(3). Settlement notices under FED. R. CIV. P. 23
5 do not need to delve into excessive details about the specifics of the settlement and the
6 legal claims of the parties. *See, e.g., Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178
7 (9th Cir. 1977) (“The aggregate amount available to all claimants was specified and the
8 formula for determining one’s recovery was given. Nothing more specific is needed.”).⁵
9 Rather, notice is adequate if the average settlement class member understands the terms of
10 the proposed settlement and the options they have. *See, e.g., Wal-Mart Stores, Inc. v. Visa*
11 *U.S.A. Inc.*, 396 F.3d 96, 114 (2d Cir. 2005).⁶

12 As to fee request disclosures, courts have held that, as with the other terms of the
13 settlement, notice need only be “very general” and contain an “an estimation of attorneys’
14 fees and other expenses.” *O’Brien*, 739 F. Supp. at 901. Indeed, as here, “notice of a
15 settlement often does not contain detailed information about the amount of fees but simply
16 notifies class members of the fee’s outside limit.” *Powers v. Eichen*, 229 F.3d 1249, 1255
17 (9th Cir. 2000). This procedure reflect the “expectation . . . that the fees will be set by the
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19 ⁵ *See also O’Brien v. National Prop. Analysts Partners*, 739 F. Supp. 896, 901 (S.D.N.Y.
20 1990) (class notice need only provide “sufficient guidance as to the major terms and areas
21 of agreement to allow class members to make further inquiry, either by examining the full
22 settlement agreement or by appearing at the settlement hearing”); *see also Cannon v. Texas*
23 *Gulf Sulphur Co.*, 55 F.R.D. 308, 313 n.2 (S.D.N.Y. 1972) (notice was sufficient where it
explained what a class member would receive depending on the factors enumerated
therein).

24 ⁶ *See also Handschu v. Special Servs. Div.*, 787 F.2d 828, 833 (2d Cir. 1986) (class notice
25 is expected only to provide sufficient information to “alert class members” to the pendency
26 of the settlement and to “their options in connection” with that pending settlement);
27 *Weinberger v. Kendrick*, 698 F.2d 61, 70-71 (2d Cir. 1982) (noting that a class notice
should alert class members to “the relevant terms of the proposed settlement,” “their
options in connection with that case,” and offer them enough information “to probe more
28 deeply” if desired).

1 court upon consideration of the evidence, including the objections of nonintervening [sic]
2 class members.” *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1443-44 (10th Cir. 1995).

3 Moreover, FED R. CIV. P. 23(h) requires that:

4 In a certified class action, the court may award reasonable attorney’s fees
5 and nontaxable costs that are authorized by law or by the parties’ agreement.
6 The following procedures apply:

7 (1) A claim for an award must be made by motion under Rule 54(d)(2),
8 subject to the provisions of this subdivision (h), at a time the court sets.
9 Notice of the motion must be served on all parties and, for motions by class
10 counsel, directed to class members in a reasonable manner.

11 (2) A class member, or a party from whom payment is sought, may
12 object to the motion.

13 (3) The court may hold a hearing and must find the facts and state its
14 legal conclusions under Rule 52(a).

15 (4) The court may refer issues related to the amount of the award to a
16 special master or a magistrate judge, as provided in Rule 54(d)(2)(D).

17 FED R. CIV. P. 54(d)(2) provides that:

18 (A) Claim to Be by Motion. A claim for attorney’s fees and related
19 nontaxable expenses must be made by motion unless the substantive law
20 requires those fees to be proved at trial as an element of damages.

21 (B) Timing and Contents of the Motion. Unless a statute or a court order
22 provides otherwise, the motion must:

23 (i) be filed no later than 14 days after the entry of judgment;

24 (ii) specify the judgment and the statute, rule, or other grounds
25 entitling the movant to the award;

26 (iii) state the amount sought or provide a fair estimate of it; and

27 (iv) disclose, if the court so orders, the terms of any agreement
28 about fees for the services for which the claim is made.

In accord with these requirements, a fee motion must be filed a reasonable time in
advance of the time for class members to object to it or request exclusion from the class.

1 Lead Plaintiff's papers in support of the Settlement and Plaintiff's Counsel's application
2 for an award of attorneys' fees (and the Brower Declaration in support thereof) are being
3 filed on August 24, 2020 – over a month before the deadline for objections and almost two
4 months before the scheduled fairness hearing on the Settlement and Plaintiff's Counsel's
5 fee motion. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 995 (9th Cir.
6 2010) (construing the timing requirement of FED. R. CIV. P. 23(h)).

7 The Notice here (*see* Epiq Decl., Ex. A), clearly meets and exceeds all of the
8 requirements as to content for a class notice. The long-form Notice, *inter alia*: (1) the
9 nature of the Action; (2) the defines the Class as certified; (3) specifies the Class securities
10 claims; (4) describes the binding effect of a class judgment on members under FED. R. CIV.
11 P. 23(c)(3); (5) details the terms of the Settlement and the releases that would be
12 exchanged; (6) summarizes the history of the litigation; (7) describes the parties and the
13 Class; (8) discusses the settlement negotiations; (9) discusses Lead Plaintiff's damages
14 estimates of recoverable damages at trial for the Class; (10) details the Plan of Allocation;
15 (11) details the percentage and per share recoveries to Class Members based on the dates
16 of their purchases and sales, if any, of Allied common stock during the Class Period; (12)
17 details the maximum amount that Plaintiff's Counsel would seek in attorneys' fees; (13)
18 describes Class members' right to request exclusion from the Class or appear through
19 personal counsel of their choosing and/or to object to the Settlement, Plan of Allocation,
20 request for attorneys' fees and reimbursement of expenses and/or Lead Plaintiff's request
21 for reimbursement of his time and expenses representing the Class; (14) specifies the
22 deadlines for asserting these rights and procedures for doing so; (15) provides addresses, a
23 toll-free telephone number and a website where Class members may obtain additional
24 information; and (16) informs Class Members when Lead Plaintiff's and Plaintiff's
25 Counsel's papers in support of the proposed Settlement, Plan of Allocation and request for
26 attorneys' fees and expenses will be filed with the Court and available for their inspection.

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1 Further, in securities class actions, Congress set forth specific required contents for
2 notices to class members in PSLRA cases regarding fee applications by successful
3 plaintiffs' counsel. *See* 15 U.S.C §78u-4(a)(7). The Notice also complies with the
4 settlement notice disclosure requirements of the PSLRA regarding the "statement of
5 plaintiff recovery," which states that Class members' average per share recovery will be
6 approximately \$0.30 per share; it identifies the attorneys and provides their addresses; it
7 states that there is no agreement on the amount of damages; it provides information on how
8 to contact Lead Plaintiff's representatives to obtain additional information, and it contains
9 a brief description of the reasons why the parties are proposing the Settlement. *See* §78u-
10 4(a)(7)(A)-(B) and (D)-(E). The Notice also points out that the "average per share
11 recovery" is only an estimate and that "Class Members may receive more or less than the
12 estimated average amount" and provides more accurate per share figures in the Plan of
13 Allocation detailed in the Notice based on the various scenarios in which Class members'
14 transactions in Allied common stock may have occurred during the Class Period. Indeed,
15 Lead Counsel, with the assistance of their damages expert, provided step-by-step formulas
16 for Class members to calculate their own, individual Recognized Loss by reference to the
17 Plan of Allocation, and the Notice sets forth the full Plan of Allocation to enable Class
18 members to preliminarily calculate the value of their claims (subject to the caveat in the
19 Notice that claims will be reduced *pro rata* by the amount that all claims in the aggregate
20 exceed the amount of the Net Settlement Fund). *See Marshall*, 550 F.2d at 1178
21 (overruling objection to class notice that did not provide description of class members'
22 recoveries where the notice contained the plan of distribution of the settlement proceeds).

23 The Notice also complies with the attorneys' fee disclosure requirements of the
24 PSLRA by: (a) identifying which counsel intend to make an application for attorneys' fees
25 and costs from the fund established by the settlement for the class; (b) stating the maximum
26 amount of fees and costs that will be sought both as a percentage of the whole and on an
27 average per share basis; and (c) providing a brief explanation supporting the attorneys' fees

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1 and costs sought. *See* 15 U.S.C. §78u-4(a)(7)(C). That information is both clearly
2 summarized in the summary section at the beginning of the Notice and set forth in more
3 detail in item 15 on page 8 of the Notice.

4 Regarding the requested award of attorneys’ fees and expenses, the Notice recites
5 factors, as required by the plain language of the PSLRA supporting the “amount of fees
6 and costs sought,” including that: substantial time has been devoted to the Action, that
7 Plaintiff’s Counsel has not been reimbursed, that the fees will be used to compensate
8 counsel for their efforts and their risks of representing the Class on a contingent basis, and
9 that the amount is within the range of fees awarded. Furthermore, consistent with this
10 Court’s approval of the form and content of the long-form Notice, the Notice contained all
11 other information that the Court required in its Preliminary Approval Order in compliance
12 with 15 U.S.C. §78u-4(a)(7)(F). In sum, the notice to the Class meets, and indeed exceeds,
13 all requirements of FED. R. CIV. P. 23 (c), (e), and (h), 15 U.S.C. §78u-4(a)(7) of the
14 PSLRA, the applicable case law and due process.

15 Accordingly, the Notice is sufficient because it “generally describes the terms of
16 the settlement in sufficient detail to alert those with adverse viewpoints to investigate and
17 to come forward and be heard.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 962 (9th
18 Cir. 2009); *see also In re Wireless Facilities, Inc. Sec. Litig.*, 253 F.R.D. 630, 636 (S.D.
19 Cal. 2008). In sum, the notice program here fairly apprises Class Members of their rights
20 with respect to the Settlement, is the best notice practicable under the circumstances, and
21 complies with the Court’s Preliminary Approval Order, Federal Rule of Civil Procedure
22 23, the PSLRA, and due process. *See, e.g., In re Immune Response Sec. Litig.*, 497 F. Supp.
23 2d 1166, 1170 (S.D. Cal. 2007).

24 Accordingly, the notice to the Class met all requirements of FED R. CIV. P. 23(c)
25 and (e), the PSLRA, 15 U.S.C. §78u-4(a)(7), and due process.

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1 **V. CONCLUSION**

2 For the reasons set forth above and in the Brower Declaration, Lead Plaintiff and
3 Plaintiff's Counsel submit that the Class should receive final certification and the Court
4 should approve the Notice provided to the Class as meeting the requirements of the Federal;
5 Rules of Civil Procedure, the PSLRA and due process.

6 DATED: August 24, 2020

Respectfully submitted,
MUCKLEROY LUNT, LLC

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8
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CERTIFICATE OF SERVICE

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

/s/ Martin A. Muckleroy
Martin A. Muckleroy