

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE NORTHERN DYNASTY  
MINERALS LTD. SECURITIES  
LITIGATION

Case No. 1:20-cv-05917-ENV-TAM

**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR ENTRY OF  
ORDER PRELIMINARILY APPROVING SETTLEMENT AND  
ESTABLISHING NOTICE PROCEDURES**

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Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Lead Plaintiff Lawrence Kelemen (“Lead Plaintiff”) and Named Plaintiff Charles Hymowitz (“Named Plaintiff” and, together with Lead Plaintiff, the “Plaintiffs”), respectfully submit this memorandum of law in support of their unopposed motion for preliminary approval of the class action settlement.

## **I. INTRODUCTION**

Plaintiffs and Northern Dynasty Minerals Ltd. (“Northern Dynasty” or the “Company”), and the Individual Defendants (“Defendants”), have agreed to settle this Action for \$6,375,000 in cash by the terms stated in the Stipulation (“Settlement”).<sup>1</sup> Plaintiffs now seek an order: (1) preliminarily certifying the Settlement Class for the purposes of settlement; (2) preliminarily approving the terms of the Settlement as set forth in the Stipulation; (3) approving the form and method for providing notice of the Settlement; (4) scheduling a hearing for final approval of the Settlement (“Settlement Hearing”), at which the Court will consider the request for final approval of the proposed Settlement, the Plan of Allocation of Settlement proceeds (“Plan of Allocation”), the request for attorneys’ fees, expenses, and case contribution awards, and entry of the Final Judgment; and (5) scheduling various deadlines in connection with the Settlement.

The Settlement was achieved only after substantial arm’s-length negotiations with the aid of a highly regarded mediator, Robert Meyer of JAMS. The Settlement provides a substantial, immediate and guaranteed recovery for Settlement Class Members, in light of Northern Dynasty’s current financial condition, decline in its market capitalization since the commencement of the class period, and its quickly depleting insurance coverage. The Settlement is a favorable result in light of several obstacles Plaintiffs faced with ongoing litigation including proving liability and

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<sup>1</sup> All capitalized terms used herein have the meanings set forth and defined in the Stipulation of Settlement (“Stipulation”), dated June 7, 2023, and filed contemporaneously herewith. Emphasis is added and internal citations and quotations are omitted unless otherwise specified.



prevailing on loss causation. Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the Settlement Class Members' best interests. The proposed content and manner of providing notice satisfy requirements imposed by Fed. R. Civ. P. 23, the Private Securities Litigation Reform Act of 1995 ("PSLRA"), and due process. For these reasons, the Court should preliminarily approve the Settlement.

## **II. SUMMARY OF THE LITIGATION AND THE SETTLEMENT**

On December 4, 2020, Neil Darish filed an original complaint in this Court commencing the Action. Dkt. No. 1.<sup>2</sup> On December 17, 2020, Named Plaintiff Charles Hymowitz filed his own complaint in this Court, under the title *Hymowitz v. Northern Dynasty Minerals Ltd., et al.*, Case No. 20-cv-6126-ENV (E.D.N.Y. Dec. 17, 2020) ("*Hymowitz Action*") at Dkt. No. 1. The complaints named Northern Dynasty, Ronald W. Thiessen ("Thiessen"), Thomas C. Collier, Jr. ("Collier"), Mark C. Peters, and Marchand Snyman as defendants.

On February 2, 2021, Lead Plaintiff filed a motion for consolidation, appointment as lead plaintiff, and approval of lead counsel. Dkt. No. 14. By Order dated March 17, 2021, the Court consolidated this Action and the *Hymowitz Action*, appointed Lawrence Kelemen as Lead Plaintiff, and Pomerantz LLP ("Pomerantz") as Lead Counsel for the putative class. Dkt. No. 32.

On June 15, 2021, Plaintiffs filed a Consolidated Amended Complaint against Defendants Northern Dynasty, Thiessen and Collier, dropping Mr. Peters and Mr. Snyman. Dkt. No. 37. The Consolidated Amended Complaint asserted claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The

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<sup>2</sup> Unless otherwise specified, references to "Dkt. No. \_\_\_\_" refer to the docket in the above-captioned action, defined as the "Action" in the Stipulation: *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.).

Consolidated Amended Complaint alleged, among other things, that during the Settlement Class Period, Defendants made false and misleading statements concerning the size, scope, and duration of the Pebble Project, Northern Dynasty's plan to develop what Defendants deemed "one of the world's most important mineral resources." The Consolidated Amended Complaint alleged that Northern Dynasty's stock price was artificially inflated as a result of these alleged false and misleading statements, and that Northern Dynasty's stock price declined when the truth regarding the alleged misrepresentations was revealed.

On September 15, 2021, Defendants served a motion to dismiss the Consolidated Amended Complaint. Dkt. No. 39. Among other things, Defendants argued that there were no materially misleading or false statement or omissions made during the alleged class period. Defendants also argued that the Consolidated Amended Complaint failed to adequately plead any actionable misstatement or omission, failed to adequately allege scienter, and failed to adequately plead loss causation. On November 15, 2021, Plaintiffs served a brief opposing Defendants' motion to dismiss. Dkt. No. 40. On December 15, 2021, Defendants filed their reply brief in further support of their motion to dismiss. Dkt. No. 41.

On January 25, 2023, the Court denied Defendants' motion to dismiss in its entirety. Dkt. No. 47.

On March 27, 2023, the Settling Parties participated in an all-day private mediation session with experienced mediator Robert Meyer of JAMS. In advance of the mediation, the Parties submitted and exchanged detailed mediation statements and exhibits, which addressed, among other things, issues related to liability, loss causation, and damages. The Parties were unsuccessful in reaching a resolution during the mediation. Subsequently, and in consultation with Mr. Meyer, on April 11, 2023, the Parties reached an agreement in principle to settle the Action for a payment

of \$6,375,000 for the benefit of the Settlement Class, subject to the execution of a settlement stipulation and related papers.

### **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES**

In preliminarily approving the proposed Settlement, this Court must first consider whether to conditionally certify the Settlement Class for settlement purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litigation* (Fourth) § 21.632. The Second Circuit has long acknowledged the propriety of certifying a class solely for settlement purposes. *See Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982). “The type of certification approval that courts provide with a preliminary settlement approval is accorded under a more relaxed standard” than in the typical certification process. 4 *Newberg on Class Actions* § 13:18 (5th ed. 2012). The Court need not conduct a rigorous analysis at this stage to determine whether to certify a settlement class, but should reserve this analysis for the final approval hearing. *Karvaly v. eBay, Inc.*, 245 F.R.D. 71, 86 (E.D.N.Y. 2007). In certifying the Settlement Class the Court is not required to determine whether the action, if tried, would present intractable management problems, “for the proposal is that there be no trial.” *Amchem*, 521 U.S. at 620; *see also* Fed. R. Civ. P. 23(b)(3)(D).

Certification of a settlement class is appropriate where the proposed class and proposed class representative meet the four requirements of Rule 23(a): (1) “numerosity” – the class is so numerous that joinder of all members is impracticable, (2) “commonality” – there are questions of law or fact common to the class, (3) “typicality” – the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) “adequacy” – the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). In addition, certification of a class action for damages requires a showing, under Rule 23(b)(3), that questions

of law or fact common to the members of the class predominate over individual issues of law or fact (“predominance”) and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy (“superiority”). Fed. R. Civ. P. 23(b)(3).

Here, the Parties have stipulated to the certification of the Settlement Class for settlement purposes only. Stipulation ¶10.1. For settlement purposes, Plaintiffs request that the Court certify the Settlement Class defined in the Stipulation, comprising all Persons who purchased or otherwise acquired Northern Dynasty securities during the Settlement Class Period, defined as December 21, 2017 through November 24, 2020, both dates inclusive, (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and who were allegedly damaged thereby. *Id.* ¶¶1.43, 1.45.<sup>3</sup> Here, the proposed Settlement Class meets the requirements of and satisfies Rule 23(a) and 23(b)(3).

#### **A. Numerosity**

Rule 23(a)(1) requires a class be so large that joinder of all members is “impracticable.” Fed. R. Civ. P. 23(a)(1). For purposes of Rule 23(a)(1), “[i]mpracticable does not mean impossible,” *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993), and Plaintiffs must only show

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<sup>3</sup> Excluded from the Settlement Class are (i) Individual Defendants; (ii) the officers and directors of Northern Dynasty; (iii) members of the Individual Defendants’ immediate families and their legal representatives, heirs, successors or assigns; and (iv) any entity in which Individual Defendants have or had a controlling interest. Also excluded from the Settlement Class is any individual or entity, who or which has: (i) asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) is entitled to a settlement or other distribution payment – regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation. Additionally excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion from the Settlement Class that is accepted by the Court. *Id.* ¶1.43.

“that the difficulty or inconvenience of joining all members of the class make the use of the class action appropriate.” *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 245 (2d Cir. 2007). In the Second Circuit, “numerosity is presumed at a level of 40 members.” *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *see also In re Vivendi Universal, S.A.*, 242 F.R.D. 76, 83 (S.D.N.Y. 2007), *aff’d sub nom. In re Vivendi, S.A. Sec. Litig.*, 838 F.3d 223 (2d Cir. 2016) (“Precise quantification of the class members is not necessary because a court may make common sense assumptions regarding numerosity”). Although the exact size of the Settlement Class is not yet known, the numerosity requirement is generally satisfied in a securities class action where “a large number of shares were outstanding and traded during the relevant period.” *In re Sadia, S.A. Sec. Litig.*, 269 F.R.D. 298, 304 (S.D.N.Y. 2010); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 2007 WL 2230177, \*12 (S.D.N.Y. July 27, 2007) (numerosity requirement is generally met in cases involving nationally traded securities).

Here, there are likely hundreds, if not thousands of potential Settlement Class Members as Northern Dynasty’s common stock was actively traded on the New York Stock Exchange with millions of shares traded during the relevant period. Thus, the numerosity requirement is met.

## **B. Commonality**

Commonality requires that “questions of law or fact [are] common to the class.” *EVCI*, 2007 WL 2230177, at \*13. Securities class actions are particularly well-suited to class treatment as the commonality requirement “is applied permissively.” *Id*; *see also Vivendi*, 242 F.R.D. at 84. Commonality does not mean that all class members must make identical claims and arguments, but only that “named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 451 (S.D.N.Y. 2004). The common issue must be of such a nature that it is “capable of class wide resolution—

which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137 (2d Cir. 2015) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011)). Commonality is satisfied if the plaintiffs charge defendants with a common course of misconduct – particularly where, as here, the alleged misrepresentations appeared in the company’s public filings and statements. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 312 F.R.D. 332, 341 (S.D.N.Y. 2015).

Here, commonality is met due to common questions of law and fact pertaining to whether false statements of material fact were made in Northern Dynasty’s filings with the Securities and Exchange Commission (“SEC”) and in public statements, whether they were made with scienter, and whether damages were sustained by members of the Class and, if so, the appropriate measure of damages.

### **C. Typicality**

Putative class representatives’ claims must also be typical of those of the class members. Fed. R. Civ. P. 23(a)(3). Typicality requires that “the claims of the named plaintiffs arise from the same practice or course of conduct that gives rise to the claims of the proposed class members.” *Marisol A. by Forbes v. Giuliani*, 929 F. Supp. 662, 691 (S.D.N.Y. 1996), *aff’d sub nom. Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997). Typical does not mean identical. *EVCI*, 2007 WL 2230177, at \*13; *Vivendi*, 242 F.R.D. at 85 (“In prosecuting their case, plaintiffs will necessarily seek to develop facts relating to the ... dissemination of allegedly false or misleading statements underlying their claims. Such allegations are generally considered sufficient to satisfy the typicality requirement”). Particular factual differences, differences in the amount of damages claimed, or even the availability of certain defenses against a class representative may not necessarily render their claims atypical. *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce,*

*Fenner & Smith, Inc.*, 903 F.2d 176, 180 (2d Cir. 1990).

Plaintiffs' claims are typical of those of the Settlement Class. Plaintiffs purchased Northern Dynasty securities during the Settlement Class Period and allege they were damaged upon revelation of Defendants' alleged misrepresentations and omissions, just like all of the Settlement Class Members. Plaintiffs satisfy the typicality requirement.

**D. Adequacy**

Rule 23(a)(4) requires that the representative parties fairly and adequately protect the interests of the class. This requirement has traditionally entailed a two-pronged inquiry: first, that the interests of the representative parties will not conflict with the interests of Settlement Class Members, and second, that the representative parties' counsel is qualified, experienced, and able to conduct the proposed litigation vigorously. *EVCI*, 2007 WL 2230177, at \*13. Plaintiffs are adequate if their interests do not conflict with those of the class. *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, 2009 WL 5178546, at \*10 (S.D.N.Y. Dec. 23, 2009). Pursuant to Rule 23(g), the adequacy of proposed class counsel is now considered separately from the determination of the adequacy of the proposed class representatives. Both prongs of the adequacy requirement are satisfied here.

**(i) Adequacy of the Proposed Class Representatives**

Plaintiffs do not have any interests antagonistic to those of the proposed Settlement Class. Plaintiffs have submitted certifications consistent with the PSLRA, indicating that they reviewed the complaint, that they are willing to represent the Class, and that they will accept no payment for serving as representative plaintiffs beyond their pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court. Dkt. No. 17-4; *Hymowitz* Action at Dkt. No. 1. Plaintiffs are seeking, on their own behalf and on behalf of all Settlement Class Members, to recover from Defendants

damages caused by Defendants' alleged unlawful conduct. No evidence exists of any conflict of interests with the Settlement Class. Thus, Plaintiffs are adequate class representatives.

**(ii) Rule 23(g) Adequacy of the Proposed Class Counsel**

Rule 23(g) requires a court to assess the adequacy of the proposed class counsel. To that end, the court must consider: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources counsel will commit to representing the class. *Fogarazzao v. Lehman Bros.*, 232 F.R.D. 176, 182 (S.D.N.Y. 2005).

The Court-appointed firm serving as Lead Counsel, Pomerantz LLP, is experienced in prosecuting class actions, having successfully prosecuted securities class actions in this Court and throughout the country. Courts have consistently found Pomerantz LLP to be well suited as class counsel in securities class actions. *See, e.g., In re: Petrobras Sec. Litig.*, 312 F.R.D. 354, 362 (S.D.N.Y. 2016), *aff'd in part, vacated in part sub nom. In re Petrobras Sec.*, 862 F.3d 250 (2d Cir. 2017) (finding Pomerantz is "qualified, experienced and able to conduct the litigation," in a case achieving a \$3 billion settlement); *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 181 (S.D.N.Y. 2014) ("Pomerantz LLP has extensive experience and a stellar reputation in the field of class action and securities litigation."). Lead Counsel's firm resume was previously submitted to the Court. Dkt. No. 17-6. Pomerantz LLP leveraged its skills and resources to secure the Settlement.

The Settlement was reached only after Lead Counsel investigated and drafted the Consolidated Amended Complaint and successfully opposed Defendants' motion to dismiss. Counsel spent considerable time on this action for the benefit of Northern Dynasty investors including: conducting a thorough investigation including retaining a private investigator; opposing



Defendants' motion to dismiss; and preparing for and participating in the mediation and settlement discussions, including drafting a comprehensive mediation statement. Lead Counsel's significant securities class action experience makes them knowledgeable and capable of evaluating cases to determine when a settlement is beneficial to investors, or when the prudent course would be to continue litigation. Thus, Lead Counsel should be appointed as class counsel for the Settlement Class.

**E. Common Questions Predominate and a Class Action Is Superior to Other Methods of Adjudication**

To certify a class under Rule 23(b)(3), the Court must find that "the questions of law or fact common to class members 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." Fed. R. Civ. P. 23(b)(3). Plaintiffs satisfy the predominance and superiority criteria.

"The focus of the predominance inquiry is on defendants' liability, not on damages." *Espinoza v. 953 Assocs. LLC*, 280 F.R.D. 113, 125 (S.D.N.Y. 2011). When common questions are a significant aspect of a case and they can be resolved in a single action, class certification is appropriate. *See* 7A Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d*, § 1788, at 528 (1986). "Rule 23(b)(3) requires merely that common issues predominate, not that all issues be common to the class." *Ackerman v. Coca-Cola Co.*, 2013 WL 7044866, at \*18 (E.D.N.Y. July 18, 2013). Here, no question exists that issues surrounding Defendants' alleged conduct, such as whether their statements and omissions were materially false or misleading, whether they were made with scienter, and whether their conduct caused damages to Plaintiffs and the Settlement Class, are common to each member of the Settlement Class. If each class member were to bring an individual action, each would be required to demonstrate the same misrepresentations and/or

omissions to prove liability. Thus, this case illustrates the principle that the predominance requirement is “readily met” in many securities fraud class actions. *Amchem*, 521 U.S. at 625.<sup>4</sup>

Rule 23(b)(3) also requires a finding that the class action mechanism is a superior method of adjudicating Plaintiffs’ and the Settlement Class members’ claims. The factors relevant to a finding of superiority include:

(A) the class members’ interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Many of the Settlement Class Members are individuals for whom prosecution of a costly damages action on their own behalf does not provide a realistic or efficient alternative. All related domestic cases have been consolidated into this Action, in an appropriate forum convenient for all parties. Additionally, Plaintiffs believe no difficulties will be encountered in the management of this class action and Settlement.

This Court should balance the merits of certifying a class against other possible methods of adjudication. Without securities class actions, investors who have been defrauded by securities law violations, but whose losses do not run into several millions of dollars, would likely have no practical recourse. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) (“most of the plaintiffs would have no realistic day in court if a class action were not available”). The “class action is uniquely suited to resolving securities claims[,]” because of “the prohibitive cost of instituting individual actions” in such cases gives class members “limited interest in individually

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<sup>4</sup> Additionally, the Second Circuit has found that “a settlement class ordinarily need not demonstrate that the fraud-on-the-market presumption applies to its claims in order to satisfy the predominance requirement.” *In re Am. Int’l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 241 (2d Cir. 2012) (citing *Amchem*, 521 U.S. at 620).

controlling the prosecution or defense of separate actions.” *Marsh & McLennan*, 2009 WL 5178546, at \*12. *See also Amchem*, 521 U.S. at 617 (“While the text of Rule 23(b)(3) does not exclude from certification cases in which individual damages run high, the Advisory Committee had dominantly in mind vindication of ‘the rights of groups of people who individually would be without effective strength to bring their opponents into court at all.’”). Moreover, a class action avoids the possibility of repetitious litigation and efficiently resolves the claims of the entire Settlement Class at once, conserving judicial resources. Accordingly, a class action is the superior method of adjudication.

Plaintiffs have satisfied all the requirements of Rules 23(a) and (b)(3). The Court should preliminarily certify the Settlement Class for settlement purposes.

#### **IV. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE**

##### **A. Standards for Preliminary Approval**

The law favors settlement, particularly in class actions and other complex cases because they tie up substantial judicial resources, use up the parties’ time and money, and, in such cases, litigation resolution is usually significantly delayed. *Palacio v. E\*TRADE Fin. Corp.*, 2012 U.S. WL 2384419, at \*7 (S.D.N.Y. June 22, 2012) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)); *see also Spann v. AOL Time Warner Inc.*, 2005 WL 1330937, at \*6 (S.D.N.Y. June 7, 2005) (“[P]ublic policy favors settlement, especially in the case of class actions”); 4 *Newberg on Class Actions* (4th ed. 2002) § 11.41 (“The compromise of complex litigation is encouraged by the courts and favored by public policy.”). Due to the presumption in favor of settlement, and “[a]bsent fraud or collusion,” courts “should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.” *EVCI*, 2007 WL 2230177,

at \*12. When reviewing a proposed class settlement, courts should “not decide the merits of the case or resolve unsettled legal questions.” *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981).

Where, as here, the Parties propose to resolve class action litigation through a class-wide settlement, they must request and obtain the Court’s approval. Fed. R. Civ. P. 23(e). Pursuant to Rule 23(e)(1), the issue at preliminary approval turns on whether the Court “will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Rule 23(e)(2) provides:

(2) ***Approval of the Proposal.*** If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:

- (A) the class representatives and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm’s length;
- (C) the relief provided for the class is adequate, taking into account:
  - (i) the costs, risks, and delay of trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and
- (D) the proposal treats class members equitably relative to each other.

Plaintiffs request at this stage only that the Court take the first step in the settlement approval process by granting preliminary approval of the proposed Settlement. A preview of the factors considered by courts in granting final approval of class action settlements demonstrates

that this Settlement is well within the range of possible approval. The Court will be able to approve the Settlement as fair, reasonable and adequate under Rule 23(e)(2).

**B. Plaintiffs and Their Counsel Have Adequately Represented the Class**

Plaintiffs have diligently prosecuted this Action on behalf of the Settlement Class, including by thoroughly investigating the facts to draft the Consolidated Amended Complaint, defeating Defendants' motion to dismiss, and negotiating a favorable settlement. The Settlement provides a substantial and immediate recovery to Settlement Class Members, particularly in light of the Company's current financial condition and depleted insurance coverage. *See supra* at §III. D.

**C. The Proposed Settlement Is the Result of Arm's-Length Negotiations by Informed, Experienced Counsel**

The Rule 23(e)(2)(B) factor is a procedural one – whether “the proposal was negotiated at arm's length.” Courts initially presume that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *Wal-Mart Stores, Inc.*, 396 F.3d at 116; *Leung v. Home Boy Rest. Inc.*, 2009 WL 398861, at \*1 (S.D.N.Y. Feb. 18, 2009) (preliminary approval is appropriate where “the proposed settlement appears to be the product of extensive, arms-length negotiations conducted by experienced counsel with input from the parties”). Further, a mediator's involvement in settlement negotiations supports a presumption of fairness. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator's involvement in ... settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure”); *In re Indep. Energy Holdings PLC*, 2003 WL 22244676, at \*4 (S.D.N.Y. Sept. 29, 2003) (“the fact that the Settlement was reached after exhaustive arm's-length negotiations, with the assistance of a private mediator experienced in complex litigation, is further proof that it is fair and reasonable.”).

Plaintiffs were armed with sufficient information to evaluate the Settlement's benefits

and drawbacks. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“[I]n the context of class action settlements, formal discovery is not a necessary ticket to the bargaining table where the parties have sufficient information to make an informed decision about settlement.”). Informal information sharing is especially appropriate where discovery has been stayed pursuant to the PSLRA. *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007).

On March 27, 2023, the Settling Parties attended a full-day mediation session with Robert Meyer of JAMS. In advance of that session, the Settling Parties exchanged mediation statements addressing key aspects of liability and damages. During the mediation session, the Settling Parties argued the merits of Plaintiffs’ claims and the defenses thereto. A settlement in principle was later reached on April 11, 2023. The negotiations were at all times hard-fought and conducted at arm’s length and have produced a result that the Settling Parties believe to be in their respective best interests. The arm’s-length nature of the negotiations and Mr. Meyer’s involvement support the conclusion that the Settlement is fair and was achieved free of collusion. *See Sudunagunta v. NantKwest, Inc.*, 2019 WL 2183451, at \*3 (C.D. Cal. May 13, 2019) (that a settlement was reached as a result of mediation before Mr. Meyer weighs in favor of approval).

**D. The Relief Provided to the Class Is Adequate**

**(i) The Substantial Benefits for the Class, Weighed Against the Costs, Risks and Delay of Trial and Appeal Support Preliminary Approval**

The principal factors in evaluating the fairness of a proposed settlement in the Second Circuit, set out in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), are:

(1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and]

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

In weighing these factors, courts recognize that settlements require significant compromise between negotiating parties. Courts do not attempt to rewrite settlement agreements or try to resolve issues that are left undecided as a result of the parties' compromise. *See, e.g., In re Warner Commc'ns Sec. Litig.*, 798 F.2d 35, 37 (2d Cir. 1986) ("It is not a district judge's job to dictate the terms of a class settlement.").<sup>5</sup>

**a) The Complexity, Expense, and Likely Duration of the Litigation**

"Courts recognize that securities class actions are generally complex and expensive to prosecute." *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at \*4 (S.D.N.Y. July 21, 2020); *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 424 (S.D.N.Y. 2001) ("most securities fraud cases . . . are complex and challenging as regards both liability and damage.").

The Settlement provides a guaranteed, immediate recovery to Northern Dynasty investors. If the Settlement were not reached, the Parties would have to incur substantial costs and engage in prolonged litigation through class certification, summary judgment, trial and if applicable, subsequent appeals. Discovery costs, including document production and hosting fees as well as expert fees, including for class certification, expert reports, and expert testimony, would be significant and could total several hundred thousand dollars for Plaintiffs. Reaching this Settlement now not only guarantees recovery for the Settlement Class, but also reduces overall litigation expenses.

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<sup>5</sup> It is not possible to evaluate the second factor, the reaction of the class to the settlement, at this time, as notice of the Settlement has not yet been disseminated.

There is no guarantee that Plaintiffs would have been able to obtain the necessary evidence to prove their case through discovery; and even if they could do so, it would be costly, take years, and delay any potential recovery to Settlement Class Members. Thus, the complexity, expense, and likely duration of these proceedings favor approval of the Settlement.

**b) The Stage of the Proceedings and the Amount of Discovery Completed**

As discussed above, Plaintiffs conducted a thorough investigation supporting a detailed Consolidated Amended Complaint. Although the Parties had not begun formal discovery, by thoroughly investigating the case and exchanging mediation statements with Defendants, Plaintiffs had the information they needed to evaluate the Settlement. *Am. Bank Note*, 127 F. Supp. 2d at 425-426 (“To approve a proposed settlement ... the Court need not find that the parties have engaged in extensive discovery. Instead, it is enough for the parties to have engaged in sufficient investigation of the facts to enable the Court to intelligently make ... an appraisal of the Settlement.”).

**c) The Risk of Establishing Liability and Damages**

There were substantial risks in this Action and further prosecution may have yielded limited or no recovery. Although Plaintiffs were successful in defeating the motion to dismiss, this was no guarantee as to continued success in the case. Proving, not merely alleging, that Defendants’ statements and omissions were false or misleading, and were made with scienter, would be a difficult task. Even more, Plaintiffs would encounter significant loss causation defenses as Defendants attempted to disaggregate the portion of the price declines that arose from the alleged corrective disclosures as opposed to the portion caused by other information and confounding factors disclosed on those dates. *See, e.g., Police & Fire Ret. Sys. of City of Detroit v. Safenet, Inc.*, 645 F. Supp. 2d 210, 228-29 (S.D.N.Y. 2009) (dismissing claims based on stock



drop following press release for failure to “explain why the disclosure on page 8 – as opposed to all other information in the extended 12 page release – caused the price decline”). Even if they survived summary judgment, Plaintiffs would then have to establish each element of their claims and damages to a jury’s satisfaction. If they won at trial, Plaintiffs would have to survive Defendants’ inevitable appeals. Through this entire period, every hour Defendants’ attorneys worked would diminish the funds available to fund a settlement or pay a judgment. The Settlement avoids these genuine risks.

**d) The Risks of Maintaining the Class Action Through Trial**

For class certification, Plaintiffs would need to complete class certification discovery and show – subject to a more rigorous analysis than the Court applies here – that they satisfy each of the prongs of Rule 23(a) and 23(b)(3). Even if Plaintiffs were able to certify a class, there is no guarantee that a class would remain certified through trial as the Court may re-evaluate the appropriateness of class certification at any time. Fed. R. Civ. P. 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”); *Glob. Crossing*, 225 F.R.D. at 460 (“[E]ven if plaintiffs could obtain class certification, there could be a risk of decertification at a later stage.”). Here, “the uncertainty surrounding class certification supports approval of the Settlement.” *Marsh & McLennan*, 2009 WL 5178546, at \*6. That the Settlement avoids the uncertainty of obtaining and maintaining class certification supports approval of the Settlement.

**e) The Ability of Settling Defendants to Withstand a Greater Judgment and the Reasonableness of the Settlement Fund**

Considering Northern Dynasty’s strained financial position and a depleting insurance coverage, with a significant decline in its market capitalization since the commencement of the class period, the Stipulation provides a significant Settlement of \$6,375,000 to be paid into the

Settlement Fund. Plaintiffs' damages expert estimates that if Plaintiffs fully prevailed at summary judgment and trial, and the Court and jury accepted Plaintiffs' damages theory, the total potential maximum damages would be approximately \$281 million. Thus, the Settlement Amount represents a recovery of approximately 2.3%. The Settlement Amount is more than the median recovery of 1.8% of estimated damages for securities class actions settled in 2022, according to a study conducted by as NERA Economic Consulting.<sup>6</sup>

Moreover, the expert's estimates do not account for Defendants' anticipated loss causation arguments, which could have reduced potential damages to a great degree. *Grinnell*, 495 F.2d at 455 n.2 (“[T]here is no reason ... why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.”); *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 621 (S.D.N.Y. 2012) (“It is well-settled that a cash settlement amounting to only a fraction of the potential recovery will not *per se* render the settlement inadequate or unfair.”); *Cagan v. Anchor Sav. Bank FSB*, 1990 WL 73423, at \*12–13 (E.D.N.Y. May 22, 1990) (approving \$2.3 million class settlement over objections that the “best possible recovery would be approximately \$121 million.”).

As such, the Settlement falls well within the range of possible approval.

**(ii) The Proposed Method for Distributing Relief Is Effective**

As demonstrated below, the proposed methods of notice and claims administration are effective. The claims administration process includes a standard claim form that requests the information necessary to calculate a claimant's claim amount pursuant to the Plan of Allocation. The Plan of Allocation governs how Class Members' claims will be calculated and, ultimately, how

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<sup>6</sup> Janeen McIntosh, Svetlana Starykh and Edward Flores, *Recent Trends in Securities Class Action Litigation: 2022 Full-Year Review* (NERA Jan. 24, 2023 at 18 (Fig. 19), available at [https://www.nera.com/content/dam/nera/publications/2023/PUB\\_2022\\_Full\\_Year\\_Trends.pdf](https://www.nera.com/content/dam/nera/publications/2023/PUB_2022_Full_Year_Trends.pdf)).

money will be distributed to Authorized Claimants. The Plan of Allocation was prepared with the assistance of Plaintiffs' damages consultant.

**(iii) Attorneys' Fees, Reimbursement of Expenses, and Awards to Plaintiffs**

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Lead Counsel will seek an award of attorneys' fees of no more than one third of the Settlement Amount, and reimbursement of litigation expenses in an amount not to exceed \$500,000.<sup>7</sup> This fee request is in line with other settlements approved in recent cases. "[I]t is very common to see 33% contingency fees in cases with funds of less than \$10 million . . . ." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014).<sup>8</sup> Further, as explained in the proposed notice, Plaintiffs intend to request an amount not to exceed \$20,000 for Lead Plaintiff Lawrence Kelemen and \$5,000 for Named Plaintiff Charles Hymowitz, or \$25,000 in total, pursuant to 15 U.S.C. §78u-4(a)(4) in connection with their representation of the Settlement Class.

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<sup>7</sup> As required by Local Civil Rule 23.1, the Notice also includes a description of certain fee-sharing agreements between Plaintiffs' Counsel in the Action. *See* Stipulation, Ex. A-1 (Notice) ¶13, n.3.

<sup>8</sup> *In re PPD AI Grp. Inc. Sec. Litig.*, 2022 WL 198491, at \*17 (E.D.N.Y. Jan. 21, 2022) (approving fee award that was one-third of a \$9 million settlement); *Enriquez v. Nabriva Therapeutics plc*, 1:19-cv-04183, ECF No. 78 (S.D.N.Y. May 14, 2021) (approving fee award that was one-third of a \$3 million settlement); *Pearlman v. Cablevision Sys. Corp.*, 2019 WL 3974358, at \*3 (E.D.N.Y. Aug. 20, 2019) ("[I]t is very common to see 33% contingency fees in cases with funds of less than \$10 million[.]"); *In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474, 497 (S.D.N.Y. 2017), *aff'd sub nom. Fresno Cty. Employees' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63 (2d Cir. 2019) (approving 33 1/3% and stating "courts routinely award a percentage amounting to approximately 1/3"); *Hayes v. Harmony Gold Min. Co.*, 2011 WL 6019219, at \*1 (S.D.N.Y. Dec. 2, 2011), *aff'd*, 509 F. App'x 21 (2d Cir. 2013) (noting that attorneys' fee of one-third of the \$9 million settlement amount was fair, reasonable and adequate); *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at \*12 (S.D.N.Y. Nov. 30, 2021) ("The percentage of the fund requests – one-third – is a percent that has been approved as reasonable in this Circuit."); *Moloney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at \*5 (S.D.N.Y. Mar. 31, 2009) (Counsel's "request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.").

**(iv) The Parties Have An Agreement Regarding Opt-Outs**

Rule 23(e)(2)(C)(iv) requires the disclosure of any side agreement. The Parties have executed a supplemental agreement providing that if Settlement Class Members opt out of the Settlement such that the number of Northern Dynasty securities represented by such opt-outs exceeds a certain amount, Defendants shall have the option to terminate the Settlement. Stipulation ¶11.5. As is standard practice in securities class actions, while the supplemental agreement is identified in the Stipulation (*id.*), the terms are confidential to avoid creating incentives for a small group of class members to opt out solely to leverage the threshold to exact an individual settlement. *See Heffler v. Wells Fargo & Co.*, 2018 WL 4207245, at \*7, 11 (N.D. Cal. Sept. 4, 2018) (“There are compelling reasons to keep this information confidential in order to prevent third parties from utilizing it for the improper purpose of obstructing the settlement and obtaining higher payouts”; “The existence of a termination option triggered by the number of class members who opt out of the Settlement does not by itself render the Settlement unfair.”); *Thomas v. MagnaChip Semiconductor Corp.*, 2017 WL 4750628, at \*5 (N.D. Cal. Oct. 20, 2017) (same); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at \*13 (S.D.N.Y. July 21, 2020) (“This type of agreement is a standard provision in securities class actions and has no negative impact on the fairness of the Settlement.”). In accordance with its terms, the Supplemental Agreement may be submitted to the Court *in camera* or under seal.

**E. There Is No Preferential Treatment; The Plan Of Allocation Treats Settlement Class Members Equitably**

A plan of allocation will be preliminarily approved if the proposed plan has a “reasonable, rational basis.” *In re Citigroup Inc. Bond Litig.*, 296 F.R.D. 147, 158 (S.D.N.Y. 2013). The Plan of Allocation is fair, reasonable and adequate because it does not treat Plaintiffs or any other Class Member preferentially. *In re Tremont Sec. Law, State Law & Ins. Litig.*, 2015 WL 5333494, at \*6

(S.D.N.Y. Sept. 14, 2015), *aff'd in part, vacated in part*, 699 F. App'x 8 (2d Cir. 2017). The Plan of Allocation, set out in the Long Notice, attached as Exhibit A-1 to the Stipulation, explains how the Settlement proceeds will be distributed among Authorized Claimants. The Plan of Allocation provides that each Settlement Class Member will receive their *pro rata* share of the Net Settlement Fund based on their Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants. Stipulation, Ex. A-1 (Notice) ¶7. Plaintiffs and all other Class Members will receive their payment pursuant to the same formula. The Plan of Allocation thus has a “reasonable, rational basis” and should be preliminarily approved. *Citigroup*, 296 F.R.D. at 158.

**V. THE PROPOSED FORMS AND METHOD OF PROVIDING NOTICE TO THE CLASS ARE APPROPRIATE AND SATISFY RULE 23, THE PSLRA, AND DUE PROCESS**

Class notice of a settlement must meet the requirements of Rules 23(c)(2) and 23(e), the PSLRA, and due process. Under Rule 23(c)(2), the Court “must direct to class members the best notice that is practicable under the circumstances.” *Vargas v. Capital One Fin. Advisors*, 559 F. App'x 22, 26 (2d Cir. 2014). In addition to how it is delivered, the notice “must fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings,” including the opportunity to opt out of or object to the settlement. *Id.* at 27; *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at \*17 (S.D.N.Y. Mar. 24, 2014) (“Rule 23(e) requires notice that is ‘reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.’”). The PSLRA and the Due Process Clause of the United States Constitution impose similar requirements. *See* 15 U.S.C. § 78u-4(a)(7); *Consol. Edison, Inc. v. Ne. Utilities*, 332 F. Supp. 2d 639, 652 (S.D.N.Y. 2004) (“Due process requires that the notice to class members fairly apprise the ... members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the]

proceedings.”).

The proposed Notice provides detailed information concerning: (a) the rights of Settlement Class Members, including the manner in which objections can be lodged; (b) the nature, history, and progress of the litigation; (c) the proposed Settlement; (d) how to file a Claim Form; (e) a description of the Plan of Allocation; (f) the fees and expenses to be sought by Plaintiffs’ Counsel; and (g) the necessary information to examine Court records. Stipulation, Ex. A-1. The Notice also sets forth instructions to securities brokers and other nominee holders for forwarding the Notice to those persons for whom the nominees held shares. *Id.*

The proposed Notice also informs Settlement Class Members how to request exclusion from the Settlement and clearly states that all those who do not exclude themselves will be bound by the Settlement and Final Judgment. *Id.* Furthermore, the PSLRA-mandated disclosures are satisfied as the Notice: (1) states the amount of the Settlement on both an aggregate and average per share basis; (2) provides a brief statement explaining the reasons why the Parties are proposing the Settlement; (3) states the amount of attorneys’ fees and maximum amount of litigation expenses (both on an aggregate and average per share basis) that counsel will seek; and (4) provides the contact information for Claims Administrator and Lead Counsel to answer questions from Settlement Class Members.<sup>9</sup> *Id.*; 15 U.S.C. § 78u-4(a)(7).

The proposed Preliminary Approval Order, Stipulation, Ex. A, mandates that Lead Counsel provide Class Members notice of the Settlement by either: (a) emailing the Summary Notice to Settlement Class Members for whom the Claims Administrator is able to obtain email addresses,<sup>10</sup>

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<sup>9</sup> Plaintiffs request that Epiq Class Action & Claims Solutions, Inc. (“Epiq”) be appointed the Claims Administrator. Lead Counsel requested proposals from several claims administration companies for the administration of the Settlement. After reviewing responses, counsel decided to retain Epiq due to its substantial experience and its proposal’s costs and caps on those costs.

<sup>10</sup> Pursuant to Fed. R. Civ. P. 23(c)(2)(B), amended in December 2018, notice may be disseminated by “electronic means.” According to the Committee Notes, email is an electronic method of notice.

or (b) mailing the Postcard Notice, if an email address cannot be obtained, by first class mail to Settlement Class Members who can be identified with reasonable effort. After entry of the proposed Preliminary Approval Order, the Stipulation and its exhibits, the Preliminary Approval Order, and the Long Notice and Claim Form will be posted on the Claims Administrator's website. *Id.* Additionally, Summary Notice will be published electronically once on *PR Newswire* and in print once in *Investor's Business Daily*. *Id.*

The proposed Notice and its dissemination are "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). "The use of a combination of a mailed post card directing class members to a more detailed online notice has been approved by courts." *In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 183 (S.D.N.Y. 2014); *Baker v. SeaWorld Entm't, Inc.*, 2020 WL 818893, at \*2-\*3 (S.D. Cal. Feb. 19, 2020) (approving postcard notice and similar proposed notice program including website); *see also Graham v. Capital One Bank (USA), N.A.*, 2014 WL 12579809, at \*2 (C.D. Cal. July 29, 2014); *In re ForceField Energy Inc. Sec. Litig.*, Case No. 1:15-cv-3020-NRB (S.D.N.Y.) (Dkt. No. 243); *Allen, et al., v. PixarBio Corp., et al.*, Case No. 2:17-cv-00496 (D.N.J.) (Dkt. No. 135); *In re Silver Wheaton Corp. Sec. Litig.*, Case No. 2:15-cv-05146 (C.D. Cal.) (Dkt. No. 487); and *In re Tangoe, Inc., Sec. Litig.*, Case No. 3:17-cv-00146 (D. Ct.) (Dkt. No. 64).

The form and manner of providing notice to Settlement Class Members are the best practicable under the circumstances and satisfy the requirements of due process, Rule 23, and the

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Providing electronic notice to class members by email, if obtained, will reduce administration costs and ultimately benefit the class. Similar electronic notice is permitted in securities class action settlements. *See Zubrinski, et al., v. BioAmber Inc., et al.*, Case No. 2:17-cv-01531 (E.D.N.Y.) (Dkt. No. 59); *In re Silver Wheaton Corp. Sec. Litig.*, Case No. 2:15-cv-05146 (C.D. Cal.) (Dkt. No. 487); *In re Akers Biosciences, Inc., Sec. Litig.*, Case No. 18-cv-10521 (D.N.J.) (Dkt. No. 40); *Allen, et al., v. PixarBio Corp., et al.*, Case No. 2:17-cv-00496 (D.N.J.) (Dkt. No. 135); *In re USA Technologies, Inc. Sec. Litig.*, Case No. 1:19-cv-04565 (E.D. Pa.) (Dkt. No. 88).

PSLRA. Accordingly, Plaintiffs request that the Court approve the form and method Plaintiffs have proposed to provide notice of the Settlement to the Settlement Class.

## **VI. PROPOSED SCHEDULE OF EVENTS**

Plaintiffs propose the following schedule as set forth in the proposed Preliminary Approval Order, paragraphs of which are referenced in the chart below. This schedule is similar to those used in similar class action settlements and provides due process for potential Settlement Class Members with respect to their rights concerning the Settlement.

<b>Event</b>	<b>Deadline for Compliance</b>
Emailing Summary Notice and/or mailing Postcard Notice; Creating website with Stipulation, Long Notice, and Claim Form.	No later than 21 calendar days after the entry of the Preliminary Approval Order. (¶11, 16)
Publication of the Summary Notice.	No later than 21 calendar days after entry of Preliminary Approval Order. (¶17)
Date for Plaintiffs to file papers in support of the Settlement, the Plan of Allocation, and for application of attorneys' fees and expenses.	No later than 28 calendar days before the Settlement Hearing. (¶27)
Submission deadline for requests for exclusion.	No later than 21 calendar days before the Settlement Hearing. (¶21)
Submission deadline for objections.	No later than 21 calendar days before the Settlement Hearing. (¶25)
Submission deadline for Claim Forms.	No later than 7 calendar days after the Settlement Hearing. (¶19)
Date for Plaintiffs to file reply papers in support of the Settlement, the Plan of Allocation, and for application of attorneys' fees and expenses.	No later than 7 calendar days before the Settlement Hearing. (¶28)
Date for Settlement Hearing	At the Court's earliest convenience at least 100 calendar days after the entry of the Preliminary Approval Order.

## **VII. CONCLUSION**

For the foregoing reasons, Plaintiffs request that the Court: (1) preliminarily certify the Settlement Class for the purposes of settlement; (2) preliminarily approve the Settlement as set forth in the Stipulation; (3) approve the form and manner of notice and direct that such notice be



disseminated to the Settlement Class; (4) schedule a Settlement Hearing to consider final approval of the Settlement and related matters; and (5) establish a schedule for various deadlines in connection with the Settlement.

Date: June 7, 2023

Respectfully submitted,

**POMERANTZ LLP**

/s/ Emma Gilmore

Jeremy A. Lieberman

Emma Gilmore

Dolgora Dorzhieva

Villi Shteyn

600 Third Avenue, 20th Floor

New York, New York 10016

Telephone: (212) 661-1100

Facsimile: (212) 661-8665

jalieberman@pomlaw.com

egilmore@pomlaw.com

ddorzhieva@pomlaw.com

vshteyn@pomlaw.com

*Lead Counsel for Plaintiffs and for the Class*

**BRONSTEIN, GEWIRTZ &**

**GROSSMAN, LLC**

Peretz Bronstein

(*pro hac vice* application forthcoming)

60 East 42nd Street, Suite 4600

New York, New York 10165

Telephone: (212) 697-6484

Facsimile: (212) 697-7296

peretz@bgandg.com

*Additional Counsel for Named Plaintiff and  
for the Class*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 7, 2023, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

By: /s/ Emma Gilmore  
Emma Gilmore

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE NORTHERN DYNASTY  
MINERALS LTD. SECURITIES  
LITIGATION

Case No. 1:20-cv-05917-ENV-TAM

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (together with all Exhibits hereto, the “Stipulation”), dated as of June 7, 2023, which is entered into by and among (a) Lead Plaintiff Lawrence Kelemen (“Lead Plaintiff”) and Named Plaintiff Charles Hymowitz (“Named Plaintiff” and, together with Lead Plaintiff, the “Plaintiffs”), on behalf of themselves and the Settlement Class (as defined herein); and (b) Defendant Northern Dynasty Minerals Ltd. (“Northern Dynasty”), and Defendants Ronald W. Thiessen (“Thiessen”) and Thomas C. Collier, Jr. (“Collier” and, together with Thiessen, the “Individual Defendants,” and together with Northern Dynasty, “Defendants”), by and through their undersigned attorneys, states all of the terms of the settlement and resolution of this matter by the Settling Parties (as defined herein) and is intended by the Settling Parties to fully and finally release, resolve, remise, and discharge the Released Claims (as defined herein) against the Released Parties (as defined herein), subject to the approval of the United States District Court for the Eastern District of New York (the “Court”).

Throughout this Stipulation, all terms used with initial capitalization, but not immediately defined, shall have the meanings ascribed to them in Section 1 below.

## WHEREAS:

### A. The Action

On December 4, 2020, Neil Darish filed an original complaint commencing this Action. Dkt. No. 1.<sup>1</sup> On December 17, 2020, Named Plaintiff Charles Hymowitz filed an original complaint in this Court in *Hymowitz v. Northern Dynasty Minerals Ltd., et al.*, Case No. 20-cv-6126-ENV (E.D.N.Y. Dec. 17, 2020) (“*Hymowitz Action*”) at Dkt. No. 1. The original complaints named Northern Dynasty, Thiessen, Collier, Mark C. Peters, and Marchand Snyman as defendants.

On February 2, 2021, Lead Plaintiff filed a motion for consolidation, appointment as lead plaintiff, and approval of lead counsel. Dkt. No. 14. By Order dated March 17, 2021, the Court consolidated this Action and the *Hymowitz Action*, appointed Lawrence Kelemen as Lead Plaintiff - and Pomerantz LLP (“Pomerantz”) as Lead Counsel for the putative class. Dkt. No. 32.

On June 15, 2021, Plaintiffs filed a Consolidated Amended Complaint against the Defendants, dropping Mr. Peters and Mr. Snyman. Dkt. No. 37. The Consolidated Amended Complaint asserted claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. The Consolidated Amended Complaint alleged, among other things, that during the Settlement Class Period, Defendants made false and misleading statements concerning the size, scope, and duration of the Pebble Project. The Consolidated Amended Complaint alleged that Northern Dynasty’s stock price was artificially inflated as a result of these alleged false and misleading statements, and that Northern Dynasty’s stock price declined when the truth regarding the alleged misrepresentations was revealed.

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<sup>1</sup> Unless otherwise specified, references to “Dkt. No. \_\_\_” refer to the docket in the above-captioned action, defined as the “Action” below: *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.).

On September 15, 2021, Defendants served a motion to dismiss the Consolidated Amended Complaint. Dkt. No. 39. Among other things, Defendants argued that there were no materially misleading or false statements or omissions made during the alleged class period. Defendants also argued that the Consolidated Amended Complaint failed to adequately plead any actionable misstatement or omission, failed to adequately plead loss causation, and failed to adequately allege scienter. On November 15, 2021, Plaintiffs served a brief opposing Defendants' motion to dismiss. Dkt. No. 40. On December 15, 2021, Defendants filed their reply brief in further support of their motion to dismiss. Dkt. No. 41.

On January 25, 2023, the Court denied Defendants' motion to dismiss in its entirety. Dkt. No. 47.

#### **B. The Settlement**

On March 27, 2023, the Settling Parties participated in an all-day private mediation session with experienced mediator Robert Meyer of JAMS. In advance of the mediation, the Parties submitted and exchanged detailed mediation statements and exhibits, which addressed, among other things, issues related to liability, loss causation, and damages. The Parties were unsuccessful in reaching a resolution during the mediation. Subsequently, and in consultation with Mr. Meyer, on April 11, 2023, the Parties reached an agreement in principle to settle the Action for a payment of \$6,375,000 for the benefit of the Settlement Class, subject to the execution of a settlement stipulation and related papers.

#### **C. Defendants' Denial of Wrongdoing and Liability**

Throughout the course of the Action and in this Stipulation, Defendants have denied and continue to deny each, any, and all allegations of wrongdoing, fault, liability, or damage whatsoever that have or could have been asserted in the Action. Defendants have also denied and

continue to deny, *inter alia*, the allegations and claims that have been or could have been asserted by Plaintiffs, as well as the allegations that Plaintiffs or the Settlement Class have suffered damages or that Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit and that the Action itself should not be certified as a class action for purposes of trial and adjudication of liability and damages. Defendants have not conceded or admitted any wrongdoing or liability, are not doing so by entering into this Stipulation, and disclaim any and all wrongdoing and liability whatsoever.

Defendants have agreed to enter into this Stipulation solely to avoid the uncertainties, burden, and expense of further litigation and to put the Released Claims to rest finally and forever. Nothing in this Stipulation shall be construed as or deemed evidence supporting an admission by either Defendants or any of the Released Defendant Parties with respect to any of Plaintiffs' allegations or claims, or of any wrongdoing, fault, liability, or damages whatsoever.

#### **D. Claims of Plaintiffs and Benefits of Settlement**

Plaintiffs believe that the claims asserted in the Action have merit. Plaintiffs, however, recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Plaintiffs have also considered the uncertain outcome and the risk of any litigation. In particular, Plaintiffs have considered the inherent problems of proof and possible defenses to the federal securities law violations asserted in the Action, including the defenses that have been or could be asserted by Defendants during the litigation, including during summary judgment, class certification, and trial. Plaintiffs have therefore determined that the Settlement set forth in this Stipulation is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

Nothing in this Stipulation shall be construed as or deemed evidence supporting an admission by Plaintiffs with respect to the merits of any of Defendants' defenses.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and among Plaintiffs, on behalf of themselves and each of the Settlement Class Members, and Defendants (by and through their respective undersigned counsel) that, subject to the approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Action and the Released Claims as against the Released Parties shall be finally and fully compromised, settled, and released, the Action shall be dismissed fully, finally, and with prejudice, and the Released Claims shall be finally and fully released as against the Released Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

**1. Definitions**

In addition to the terms defined above, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

**1.1.** "Action" means the putative class action captioned *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.).

**1.2.** "Additional Plaintiffs' Counsel" means Bronstein, Gewirtz & Grossman, LLC.

**1.3.** "Administrative Costs" means all costs and expenses associated with providing notice of the Settlement to the Settlement Class and otherwise administering or carrying out the terms of the Settlement. Such costs may include, without limitation: escrow agent costs, the costs of publishing the summary notice, the costs of printing and mailing, and/or emailing the Notice and Proof of Claim, as directed by the Court, and the costs of allocating and distributing the Net Settlement Fund (as defined in paragraph 8.2) to the Authorized Claimants. Such costs do

not include legal fees.

**1.4.** “Authorized Claimant” means any Settlement Class Member who is a Claimant and whose claim for recovery has been allowed pursuant to the terms of this Stipulation, the exhibits hereto, and any order of the Court.

**1.5.** “Award to Plaintiffs” means the requested award to Plaintiffs to compensate them for their time and contributions to the action, and for their reasonable costs and expenses (including lost wages), directly related to Plaintiffs’ representation of the Settlement Class in the Action.

**1.6.** “Business Day” means any day except Saturday or Sunday or any other day on which national banks are authorized by law or executive order to close in the State of New York.

**1.7.** “Claimant” means any Settlement Class Member who files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

**1.8.** “Claims” means any and all manners of claims, debts, demands, controversies, obligations, losses, costs, interest, penalties, fees, expenses, rights, duties, judgments, sums of money, suits, contracts, agreements, promises, damages, actions, causes of action and liabilities, of every nature and description in law or equity (including, but not limited to, any claims for damages, whether compensatory, special, incidental, consequential, punitive, exemplary, or otherwise, injunctive relief, declaratory relief, recession or recessionary damages, interest, attorneys’ fees, expert or consulting fees, costs, or expenses), accrued or unaccrued, known or unknown, arising under federal, state, common, administrative, or foreign law, or any other law, rule, or regulation.

**1.9.** “Claims Administrator” means Epiq Class Action & Claims Solutions, Inc.



(“Epiq”), which shall administer the Settlement.

**1.10.** “Defendants” means Northern Dynasty and the Individual Defendants.

**1.11.** “Defense Counsel” means Steptoe & Johnson LLP.

**1.12.** “Escrow Account” means an interest-bearing escrow account established by the Escrow Agent. The Escrow Account shall be managed by the Escrow Agent, subject to the Court’s supervisory authority, for the benefit of Plaintiffs and the Settlement Class in accordance with the terms of the Stipulation and any order of the Court.

**1.13.** “Escrow Agent” means Huntington National Bank. The Escrow Agent shall perform the duties as set forth in this Stipulation and any order of the Court.

**1.14.** “Effective Date” shall have the meaning set forth in ¶ 11.3 of this Stipulation.

**1.15.** “Final” when referring to the Final Judgment means exhaustion of all possible appeals, meaning (i) if no appeal or request for review is filed, the day after the date of expiration of any time for appeal or review of the Final Judgment, and (ii) if an appeal or request for review is filed, the day after the date the last-taken appeal or request for review is dismissed, or the Final Judgment is upheld on appeal or review in all material respects, and is not subject to further review on appeal or by certiorari or otherwise; provided, however, that no order of the Court or modification or reversal on appeal or any other order relating solely to the amount, payment, or allocation of attorneys’ fees and expenses or to the Plan of Allocation shall constitute grounds for cancellation or termination of this Settlement or affect its terms, including the release in ¶ 6.1, or shall affect or delay the date on which the Final Judgment becomes Final.

**1.16.** “Final Judgment” means the order and judgment to be entered by the Court finally approving the Settlement and dismissing the Action, materially in the form attached hereto

as **Exhibit B**.

**1.17.** “Insurers” means, collectively, the primary and excess insurers under director and officer liability policies under which Northern Dynasty was insured, for, among other policy periods, the date range of August 1, 2020 to August 1, 2021.

**1.18.** “Lead Counsel” means Pomerantz LLP.

**1.19.** “Notice” means collectively, the Notice of Pendency and Proposed Settlement of Class Action (“Long Notice”), the Summary Notice of Pendency and Proposed Securities Class Action Settlement (“Summary Notice”), and the Postcard Notice, which are to be made available to Settlement Class Members substantially in the forms attached hereto as **Exhibits A-1, A-3, and A-4** on the Claims Administrator’s website and/or mailed or emailed to Settlement Class Members.

**1.20.** “Opt-Out” means any one of, and “Opt-Outs” means all of, any Persons who otherwise would be Settlement Class Members that have timely and validly requested exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the Notice given pursuant thereto.

**1.21.** “Person” means an individual, corporation, fund, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

**1.22.** “Plan of Allocation” means a plan or formula for allocating the Settlement Fund to Authorized Claimants after payment of Administrative Costs, Taxes and Tax Expenses, and such attorneys’ fees, costs, and expenses as may be awarded by the Court. Any Plan of

Allocation is not a condition to the effectiveness of this Stipulation, and the Released Parties shall have no responsibility or liability with respect thereto.

**1.23.** “Plaintiffs” means Lead Plaintiff Lawrence Kelemen and Named Plaintiff Charles Hymowitz.

**1.24.** “Plaintiffs’ Counsel” means Lead Counsel and Additional Plaintiffs’ Counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of Plaintiffs and the Settlement Class in the Action.

**1.25.** “Preliminary Approval Order” means the order to be entered by the Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Settlement Class, materially in the form attached hereto as **Exhibit A**.

**1.26.** “Proof of Claim” or “Claim Form” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached hereto as **Exhibit A-2**.

**1.27.** “Related Parties” means, with respect to each Released Party, the immediate family members, heirs, executors, trustees, administrators, successors, assigns, and present and former employees, officers, directors, attorneys, legal representatives, accountants, insurers, reinsurers, managers, and agents of each of them, and any person or entity which is or was related to or affiliated with any Released Party or in which any Released Party has a controlling interest, and the present, former, and future direct and indirect parents, subsidiaries, divisions, affiliates, predecessors, successors, and the employees, officers, directors, attorneys, assigns, legal representatives, insurers, reinsurers, managers, and agents of each of them.

**1.28.** “Released Claims” means and includes any and all Released Plaintiffs’ Claims and Released Defendants’ Claim, as defined herein.

**1.29.** “Released Defendants’ Claims” means and includes any and all Claims and

Unknown Claims (as defined herein) that could have been asserted against any of the Released Plaintiff Parties arising out of, based upon, or relating in any way to the initiation, prosecution, or settlement of the Action. Notwithstanding the foregoing, “Released Defendants’ Claims” does not include claims to enforce the terms of this Stipulation or orders or judgments issued by the Court in connection with this Settlement.

**1.30.** “Released Defendant Parties” means Defendants Northern Dynasty, Thiessen, and Collier, and each and all of their Related Parties.

**1.31.** “Released Parties” means any and all Released Defendant Parties and Released Plaintiff Parties.

**1.32.** “Released Plaintiffs’ Claims” means and includes any and all Claims and Unknown Claims (as defined herein) that have been or could have been asserted by or on behalf of any of the Releasing Plaintiff Parties, in any capacity, which arise out of, are based upon, or relate in any way to the purchase or acquisition of Northern Dynasty securities during the Settlement Class Period, including but not limited to any claims alleged in the Action, and any claims related to the allegations, transactions, facts, events, matters, occurrences, acts, disclosures, representations, statements, omissions, failures to act, or any other matter whatsoever involved, set forth, referred to, or otherwise related, directly or indirectly, to the allegations in the Action or the disclosures made in connection therewith (including the adequacy and completeness of such disclosures). Notwithstanding the foregoing, “Released Plaintiffs’ Claims” does not include (i) claims in any shareholder derivative action on behalf of Northern Dynasty; or (ii) claims to enforce the terms of this Stipulation or orders or judgments issued by the Court in connection with this Settlement.

**1.33.** “Released Plaintiff Parties” means Plaintiffs, Settlement Class Members,

Plaintiffs' Counsel, and each and all of their Related Parties.

**1.34.** "Releasing Parties" means any and all Releasing Defendant Parties and Releasing Plaintiff Parties.

**1.35.** "Releasing Defendant Parties" means jointly and severally, individually and collectively, Defendants Northern Dynasty, Thiessen, and Collier, and each and all of their Related Parties, including all of Northern Dynasty's current and former officers, directors, and employees.

**1.36.** "Releasing Plaintiff Parties" means jointly and severally, individually and collectively, Plaintiffs, each and every Settlement Class Member, each of their respective present, former, and future direct and indirect parent entities, associates, affiliates, subsidiaries, predecessors, successors, and the officers, directors, attorneys, assigns, legal representatives, and agents of each of them, each of their respective officers, directors, attorneys, legal representatives, and agents, and any person or entity which is or was related to or affiliated with any Releasing Plaintiff Party or in which any Releasing Plaintiff Party has a controlling interest, and each of their respective immediate family members, heirs, representatives, administrators, executors, trustees, successors, assigns, devisees, legatees, and estates.

**1.37.** "Settlement" means the settlement contemplated by this Stipulation.

**1.38.** "Settlement Amount" means the sum of \$6,375,000 (six million and three hundred and seventy five thousand U.S. dollars). The Settlement Amount includes all Administrative Costs, Plaintiffs' Counsel's attorneys' fees and expenses (as allowed by the Court), Award to Plaintiffs (as allowed by the Court), Settlement Class Member benefits, as well as any other costs, expenses, or fees of any kind whatsoever associated with the Settlement.

**1.39.** "Settlement Class" means all Persons who purchased or otherwise acquired Northern Dynasty securities during the Settlement Class Period (i) on any stock exchanges located

in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and who were allegedly damaged thereby. Excluded from the Settlement Class are (i) Individual Defendants; (ii) the officers and directors of Northern Dynasty; (iii) members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns; and (iv) any entity in which Individual Defendants have or had a controlling interest. Also excluded from the Settlement Class is any individual or entity, who or which has: (i) asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) is entitled to a settlement or other distribution payment – regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation. Additionally excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion from the Settlement Class that is accepted by the Court.

**1.40.** “Settlement Class Member” means any one of, and “Settlement Class Members” means all of, the members of the Settlement Class.

**1.41.** “Settlement Class Period” means the period from December 21, 2017 through November 24, 2020, both dates inclusive.

**1.42.** “Settlement Fund” means all funds transferred to the Escrow Account pursuant to this Stipulation and any interest or other income earned thereon.

**1.43.** “Settlement Hearing” means the hearing at or after which the Court will make a final decision pursuant to Rule 23 of the Federal Rules of Civil Procedure as to whether

the Settlement contained in the Stipulation is fair, reasonable, and adequate, and, therefore, should receive final approval from the Court.

**1.44.** “Settling Party” means any one of, and “Settling Parties” means all of, the parties to the Stipulation, namely Defendants and Plaintiffs (on behalf of themselves and the Settlement Class).

**1.45.** “Unknown Claims” means and includes any and all claims that one or more Releasing Parties does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties. This includes claims which, if known by him, her, or it, might have affected his, her, or its settlement with and release of the Released Parties, or might have affected his, her, or its decision(s) with respect to the Settlement and the Released Claims, including his, her, or its decision to object or not to object to this Settlement. The Settling Parties expressly acknowledge, and the Releasing Parties by operation of the Judgment shall have, and shall be deemed to have expressly waived and relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any other jurisdiction, or principle of common law that is, or is similar, comparable, or equivalent to California Civil Code ¶ 1542, which provides:

***A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.***

The Settling Parties and Releasing Parties may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Settling Parties expressly, fully, finally, and forever settle and release, and each other Releasing Party and Released Party shall be deemed to have settled and released, and upon the Effective Date and by operation of the

Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. The Settling Parties expressly acknowledge, and each other Releasing Party and Released Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and a material element of the Settlement.

## **2. The Settlement Consideration**

**2.1.** In consideration of the full and final release, settlement, and discharge of all Released Claims against the Released Parties, Defendants agree to pay, or have paid on their behalf, the Settlement Amount to be funded, by wire transfer or check, into the Escrow Account within thirty (30) days after entry of the Preliminary Approval Order, provided that Lead Counsel or the Escrow Agent has provided Defense Counsel with complete wire and transfer information and instructions and a completed Form W-9.

**2.2.** Under no circumstances will Defendants or any of their Insurers be required to pay, or cause payment of, more than the Settlement Amount pursuant to this Stipulation and the Settlement for any reason whatsoever, including, without limitation, as compensation to any Settlement Class Member, as payment of attorneys’ fees and expenses awarded by the Court, in payment of any fees or expenses incurred by any Settlement Class Member or Plaintiffs’ Counsel, or as interest on the Settlement Amount of any kind and relating to any time period (including prior to the payment of the Settlement Amount into the Escrow Account).

## **3. Handling and Disbursement of Funds by the Escrow Agent**

**3.1.** No monies will be disbursed from the Settlement Fund until after the Effective Date except:



- (a) As provided in ¶ 3.4 below;
- (b) As provided in ¶ 8.2 below;
- (c) As provided in ¶ 11.9 below, if applicable; and
- (d) To pay Taxes and Tax Expenses (as defined in ¶ 4.1 below) on the

income earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the Settlement Fund and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court.

**3.2.** The Escrow Agent shall invest the Settlement Fund in short term instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Escrow Agent shall bear all responsibility and liability for managing the Escrow Account and cannot assign or delegate its responsibilities without approval of the Settling Parties and the Insurers. Defendants, their counsel, their Insurers, and the other Released Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to any investment or management decisions executed by the Escrow Agent. The Settlement Fund shall bear all risks related to the investments of the Settlement Amount in accordance with the guidelines set forth in this ¶ 3.2.

**3.3.** The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of Defense Counsel for Defendants.

**3.4.** At any time after the Court grants preliminary approval of the Settlement, the Escrow Agent may, without further approval from Defendants or the Court, disburse at the direction of Lead Counsel up to \$500,000 from the Settlement Fund prior to the Effective Date to

pay Administrative Costs. After the Effective Date, additional amounts, up to \$200,000, may be transferred from the Settlement Fund to pay for any necessary additional Administrative Costs without further order of the Court.

#### **4. Taxes**

**4.1.** The Settling Parties agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. In addition, Lead Counsel or their designee shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 4.1, including the “relation-back election” (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel or their designee to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

**(a)** For purposes of § 1.468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B-2(k)(3) promulgated thereunder, the “administrator” shall be Lead Counsel or their designee. Lead Counsel or their designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this ¶ 4.1) shall be consistent with this ¶ 4.1 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

**(b)** All Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax

detriments that may be imposed upon Defendants or their counsel or their Insurers with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and all expenses and costs incurred in connection with the operation and implementation of this ¶ 4.1 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶ 4.1) (“Tax Expenses”), shall be paid out of the Settlement Fund, as appropriate. Defendants, their counsel, their Insurers, and the other Released Parties shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be withheld under Treasury Regulation § 1.468B-2(1)(2)). Defendants, their counsel, their Insurers, and the other Released Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to the foregoing provided in this ¶ 4.1. The Settling Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this ¶ 4.1.

## **5. Preliminary Approval Order, Notice Order, and Settlement Hearing**

**5.1.** As soon as practicable after execution of this Stipulation, Lead Counsel shall submit this Stipulation and its exhibits to the Court and shall apply for preliminary approval of the Settlement set forth in this Stipulation, entry of the Preliminary Approval Order, and

approval for the mailing and dissemination of notice. The proposed preliminary approval order to be submitted to the Court shall contain the exhibits substantially in the form set forth in: (i) the Long Notice (**Exhibit A-1**); (ii) the Proof of Claim (**Exhibit A-2**); (iii) the Summary Notice (**Exhibit A-3**); and (iv) the Postcard Notice (**Exhibit A-4**). The Notice shall include the general terms of the Settlement and the provisions of the Plan of Allocation, and shall set forth the procedure by which recipients of the Notice may object to the Settlement or the Plan of Allocation or request to be excluded from the Settlement Class. The date and time of the Settlement Hearing shall be added to the Notice before they are disseminated or otherwise provided to Settlement Class Members. Defendants shall not object to, or have any responsibility for, Lead Counsel's proposed Plan of Allocation.

**5.2.** At the time of the submission described in ¶ 5.1 hereof, the Settling Parties, through their counsel, shall jointly request that, after the Notice is provided, the Court hold the Settlement Hearing and (i) approve the Settlement as set forth herein and (ii) enter a final order and judgment substantially in the form of **Exhibit B** hereto, as promptly after the Settlement Hearing as possible.

## **6. Releases, Injunctions, and Covenants Not to Sue**

**6.1.** Upon the Effective Date, the Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties and shall have covenanted not to sue the Released Parties with respect to all such Released Claims,

and shall be permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the Released Parties. Nothing contained herein shall, however, release or bar the Releasing Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment, and nothing herein shall release or bar any claims by Defendant Released Parties for any insurance coverage, indemnity, or advancement.

## **7. Contribution Bar Order**

**7.1.** The Settling Parties shall request that the Court enter a Contribution Bar Order in the Final Order and Judgment as follows: To the fullest extent permitted by law, all Persons shall be permanently enjoined, barred, and restrained from bringing, commencing, prosecuting, or asserting any claims, actions, or causes of action for contribution, indemnity, or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment, or settlement which they pay, are obligated to pay, agree to pay, or that are paid on their behalf to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning any acts, facts, statements, or omissions that were or could have been alleged in the Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, third-party claims, or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum. The foregoing text (beginning with the colon) shall be referred to herein as the “Contribution Bar Order.” For avoidance of doubt, nothing in the Contribution Bar Order shall bar or otherwise affect any claim for insurance coverage, indemnity, or advancement by any Defendant.

**8. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund**

**8.1.** Under the supervision of Lead Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, the Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined below) to Authorized Claimants.

**8.2.** The Settlement Fund shall be applied as follows:

(a) To pay the Taxes and Tax Expenses described in ¶ 4.1 above;

(b) To pay Administrative Costs;

(c) To pay Plaintiffs' Counsel's attorneys' fees with interest and expenses as well as to pay an Award to Plaintiffs for reimbursement of their time and expenses (the "Fee and Expense Application"), to the extent allowed by the Court, detailed in ¶ 9.1 below; and,

(d) To distribute the balance of the Settlement Fund, that is, the Settlement Fund less the items set forth in ¶ 8.2(a), (b), and (c) hereof (the "Net Settlement Fund"), plus all accrued interest, to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

**8.3.** Upon and after the Effective Date, the Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the terms of the Plan of Allocation set forth in the Notice and any orders of the Court.

**8.4.** This is not a claims-made settlement, and if all conditions of the Stipulation are satisfied and the Final Judgment becomes Final, no portion of the Settlement Fund will be returned to any of the Defendants or the Insurers. Defendants, Defense counsel, the Insurers, and

the other Released Parties shall have no responsibility for, involvement in, interest in, or liability whatsoever with respect to the investment or distribution of the Net Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith. No Person shall have any claims against Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or orders of the Court. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim filed, where doing so is in the interest of achieving substantial justice.

**8.5.** It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a condition of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Final Judgment and the releases contained therein, or any other orders entered pursuant to this Stipulation.

**8.6.** To assist in dissemination of notice, Northern Dynasty will cooperate in obtaining from Northern Dynasty's transfer records information concerning the identity of Settlement Class Members, including any names and addresses of Settlement Class Members and nominees or custodians that exists in such transfer records ("Settlement Class Information").

Provided, however, that nothing herein shall require Northern Dynasty to make efforts to identify Settlement Class Members other than record holders. Northern Dynasty shall provide, or cause to be provided, to Lead Counsel or the Claims Administrator, at no cost to Plaintiffs, within twenty-one (21) calendar days after the execution of this Stipulation and Agreement of Settlement, transfer records in electronic searchable form, such as Excel, containing the Settlement Class Information. The Settling Parties acknowledge that any information provided to Lead Counsel by Northern Dynasty pursuant to this Paragraph shall be treated as confidential and will be used by Lead Counsel solely to deliver the Notice and/or implement the Settlement, including the Plan of Allocation.

**8.7.** If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Settlement Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be re-distributed, if economically feasible, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such redistribution, to Settlement Class Members who have cashed their checks and who would receive at least \$10.00 from such re-distribution. If such re-distribution is not economically feasible, or if any funds shall remain in the Net Settlement Fund six months after such re-distribution, and another re-distribution is not economically feasible, then such balance shall be donated to an appropriate non-sectarian, non-profit charitable organization(s) unaffiliated with any party or their counsel serving the public interest selected by Lead Counsel, with the approval of the Court.

**9. Plaintiffs' Counsel's Attorneys' Fees and Reimbursement of Expenses**



**9.1.** Plaintiffs' Counsel may submit a Fee and Expense Application(s) for distributions from the Settlement Fund to Plaintiffs' Counsel for: (i) an award of attorneys' fees with interest from the Settlement Fund; (ii) reimbursement of actual costs and expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Action; and (iii) the Awards to Plaintiffs. Defendants shall take no position with respect to the Fee and Expense Application(s).

**9.2.** Except as otherwise provided in this paragraph, the attorneys' fees and expenses awarded by the Court shall be paid to Plaintiffs' Counsel from the Settlement Fund within ten (10) calendar days after the date the Court enters the Final Judgment and an order awarding such fees and expenses, notwithstanding any objections to or appeals of such order or of the Final Judgment. In the event that the Effective Date does not occur, or the Final Judgment is reversed or modified in any way that affects the award of attorneys' fees and expenses, or the Stipulation is terminated for any other reason, then Plaintiffs' Counsel shall be jointly and severally obligated to refund to the Escrow Account, within ten (10) Business Days from receiving notice from Defendants' counsel or from a court of appropriate jurisdiction, either the full amount of the fees and expenses or an amount consistent with any modification of the Final Judgment with respect to the fee and expense award, including accrued interest at the same rate as is earned by the Settlement Fund. Plaintiffs' Counsel agrees that the Pomerantz LLP and Bronstein, Gewirtz, and Grossman LLC law firms and their partners are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph, and shall be jointly and severally liable for repayment of all attorneys' fees and expenses awarded by the Court. Furthermore, without limitation, Plaintiffs' Counsel agrees that the Court may, upon application of Defendants, summarily issue orders, including, without limitation, judgments and attachment orders and may make appropriate

findings of or sanctions for contempt against the firms should they fail timely to repay fees and expenses pursuant to this paragraph. Any Award to Plaintiffs shall not be paid from the Settlement Fund until after the Effective Date.

**9.3.** The procedure for, and allowance or disallowance by the Court of, the Fee and Expense Application are not a condition of the Settlement set forth in this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order or proceeding relating to the Fee and Expense Application, or any objection to, motion regarding, or appeal from any order or proceeding relating thereto or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Stipulation, or affect or delay the finality of the Final Judgment or the releases contained therein or any other orders entered pursuant to this Stipulation.

**9.4.** Any award of attorneys' fees and interest and/or expenses to Plaintiffs' Counsel or Awards to Plaintiffs shall be paid solely from the Settlement Fund and shall reduce the settlement consideration paid to the Settlement Class accordingly. No Defendant shall have any responsibility for payment of Plaintiffs' Counsel's attorneys' fees and interest, expenses, or other awards to Plaintiffs beyond the obligation of Defendants to cause the funding of the Settlement Amount as set forth in ¶ 2.1 above. The Released Defendant Parties and the Insurers shall have no responsibility for, and no liability whatsoever with respect to, any payments to Plaintiffs' Counsel, Plaintiffs, the Settlement Class and/or any other Person who receives payment from the Settlement Fund.

## **10. Class Certification**

**10.1.** In the Final Judgment, the Settlement Class shall be certified solely for purposes of this Settlement, but in the event that the Final Judgment does not become Final or the

Settlement fails to become effective for any reason, the Settling Parties do not agree to any class certification, and all Settling Parties reserve all their rights on all issues, including class certification. For purposes of this Settlement only, in connection with the Final Judgment, Defendants shall consent to (i) the appointment of Plaintiffs as the class representatives, (ii) the appointment of Plaintiffs' Lead Counsel as class counsel, and (iii) the certification of the Settlement Class pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

## **11. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

**11.1.** Plaintiffs, on behalf of the Settlement Class, and Defendants shall each have the right to terminate the Settlement and Stipulation by providing written notice of his or its election to do so ("Termination Notice") to all other Settling Parties within seven (7) Business Days of:

- (i) entry of a Court order declining to enter the Preliminary Approval Order in any material respect;
- (ii) entry of a Court order declining to approve this Stipulation in any material respect;
- (iii) entry of a Court order declining to enter the Contribution Bar Order in any material respect;
- (iv) entry of a Court order declining to enter the Final Judgment in any material respect;
- (v) entry of a Court order declining to dismiss the Action with prejudice;
- (vi) entry of an order by which the Final Judgment is modified or

reversed in any material respect by any appeal or review; or

(vii) failure on the part of any Settling Party to abide, in any material respect, with the terms of this Stipulation.

In the absence of any of the events enumerated in the preceding sentence, ¶11.2, ¶ 11.5, or ¶ 11.6, no Party shall have the right to terminate the Stipulation for any reason.

**11.2.** If the Settlement Amount is not paid into the Escrow Account in accordance with ¶ 2.1 of this Stipulation, then Plaintiffs, on behalf of the Settlement Class, shall have the right to: (a) terminate the Settlement and Stipulation by providing written notice to Defendants at any time prior to the Court's entry of the Final Judgment; or (b) enforce the terms of the Settlement and this Stipulation and seek a judgment effecting the terms herein.

**11.3.** The Effective Date of this Stipulation ("Effective Date") shall not occur unless and until each of the following events occurs, and it shall be the date upon which the last in time of the following events occurs:

(a) Defendants have not exercised their option to terminate the Settlement pursuant to ¶ 11.5;

(b) The Court has entered **Exhibit A** attached hereto, or an order containing materially the same terms, as the Preliminary Approval Order;

(c) The sum of \$6,375,000 (six million and three hundred and seventy five thousand U.S. dollars) has been paid into the Escrow Account, as set forth in ¶ 2.1;

(d) The Court has approved the Settlement, following notice to the Settlement Class and the Settlement Hearing, and has entered the Final Judgment;

(e) The Court has entered the Contribution Bar Order.

(f) The Final Judgment has become Final as defined in ¶ 1.15; and

(g) The Action has been dismissed with prejudice.

**11.4.** Upon the occurrence of the Effective Date, any and all interest or right of Defendants or the Insurers in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation.

**11.5.** If, prior to Final Judgment, Persons who otherwise would be Settlement Class Members have filed with the Court valid and timely requests for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto (“Opt-Outs”), or requests for exclusion that are otherwise accepted by the Court, and such Persons in the aggregate purchased Northern Dynasty securities during the Settlement Class Period in an amount greater than the amount specified in a separate Supplemental Agreement between the Settling Parties (“Supplemental Agreement”), then Defendants shall have, each in their sole and absolute discretion, the option to terminate this Stipulation and Settlement in strict accordance with the requirements and procedures set forth in the Supplemental Agreement (hereinafter, the “Supplemental Termination Option”). The Supplemental Agreement shall not be filed with the Court unless and until a dispute among the Settling Parties concerning its interpretation or application arises, or if the Court otherwise requests such filing.

**11.6.** Defendants shall not have the right to terminate the Stipulation if the Settlement Amount is not paid pursuant to ¶ 2.1. None of the Settling Parties, or any of them individually, shall have any obligation whatsoever to proceed under any terms other than those provided for and agreed herein. If any Settling Party engages in a material breach of the terms hereof, any other Settling Party, provided that it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on notice to all the Settling Parties.

**11.7.** In the event the Stipulation shall terminate, or be canceled, or shall not

become effective for any reason, the Settling Parties shall be restored to their respective positions in the Action immediately prior to April 11, 2023, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice.

**11.8.** In the event that the Stipulation is not approved by the Court or the Settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the terms and provisions of this Stipulation, except as otherwise provided herein, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

**11.9.** In the event the Stipulation shall be terminated, or be canceled, or shall not become effective for any reason, within seven (7) Business Days (except as otherwise provided in the Supplemental Agreement) after the occurrence of such event, the Settlement Fund (less taxes already paid and any Administrative Costs, which have either been disbursed or are determined to be chargeable) shall be refunded by the Escrow Agent to Defense Counsel, to be held in a client trust account for further distribution as appropriate, plus accrued interest attributable to that amount by check or wire transfer pursuant to written instructions from Defense Counsel. At the request of Defense Counsel or the Insurers, the Escrow Agent or their designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, pursuant to written direction from Defense Counsel or the Insurers.

**11.10.** No order of the Court or modification or reversal on appeal of any order of

the Court concerning the Plan of Allocation or the Fee and Expense Application shall constitute grounds for cancellation or termination of the Stipulation.

## **12. No Admission of Liability or Wrongdoing**

**12.1.** The Settling Parties covenant and agree that neither this Stipulation, nor the fact nor any terms of the Settlement, nor any communication relating thereto, nor the Supplemental Agreement, is evidence, or an admission, presumption, or concession by any Settling Party or their counsel, any Settlement Class Member, or any of the Released Parties of any fault, liability, or wrongdoing whatsoever, as to any facts or claims alleged or that have been or could have been asserted in the Action, or in any other actions or proceedings, or as to the validity or merit of any of the claims or defenses alleged or that have been or could have been asserted in any such action or proceeding. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by any Settling Party, Settlement Class Member, or any of the Released Parties, or any damages or injury to any Settling Party, Settlement Class Member, or any Released Parties. Neither this Stipulation, nor the Supplemental Agreement, nor any of the terms and provisions of this Stipulation or the Supplemental Agreement, nor any of the negotiations or proceedings in connection therewith, nor any of the documents or statements referred to herein or therein, nor the Settlement, nor the fact of the Settlement, nor the Settlement proceedings, nor any statement in connection therewith, (a) shall (i) be argued to be, used or construed as, offered or received in evidence as, or otherwise constitute an admission, concession, presumption, proof, evidence, or a finding of any liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any Released Party, or of any infirmity of any defense, or of any damages to the Plaintiffs or any other Settlement Class Member, or (ii) otherwise be used to create or give rise to any inference or presumption against any of the Released

Parties concerning any fact or any purported liability, fault, or wrongdoing of the Released Parties or any injury or damages to any person or entity, or (b) shall otherwise be admissible, referred to, or used in any proceeding of any nature, for any purpose whatsoever; provided, however, that the Stipulation or the Supplemental Agreement or the Final Judgment may be introduced in any proceeding, whether in the Court or otherwise, as may be necessary to enforce the Settlement or Supplemental Agreement or Final Judgment, or as otherwise required by law.

### **13. Miscellaneous Provisions**

**13.1.** Except in the event of the filing of a Termination Notice pursuant to ¶¶ 11.1, 11.2, 11.5, or 11.6 of this Stipulation or termination notice in accordance with the Settling Parties' Supplemental Agreement, the Settling Parties shall take all actions necessary to consummate this agreement; and agree to cooperate with each other to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation.

**13.2.** The Settling Parties and their counsel represent that they will not encourage or otherwise influence (or seek to influence) any Settlement Class Members to request exclusion from, or object to, the Settlement.

**13.3.** Each of the attorneys executing this Stipulation, any of its exhibits, or any related settlement documents on behalf of any Settling Party hereto hereby warrants and represents that he or she has been duly empowered and authorized to do so by the Settling Party he or she represents.

**13.4.** Plaintiffs and Lead Counsel represent and warrant that the Plaintiffs are Settlement Class Members and none of Plaintiffs' claims or causes of action against one or more Defendants in the Action, or referred to in this Stipulation, or that could have been alleged against one or more Defendants in the Action have been assigned, encumbered, or in any manner



transferred in whole or in part.

**13.5.** This Stipulation, together with the Supplemental Agreement, constitute the entire agreement between the Settling Parties related to the Settlement and supersede any prior agreements. No representations, warranties, promises, inducements, or other statements have been made to or relied upon by any Settling Party concerning this Stipulation, other than the representations, warranties, and covenants expressly set forth herein and in the Supplemental Agreement. Plaintiffs, on behalf of themselves and the Settlement Class, acknowledge and agree that any and all other representations and warranties of any kind or nature, express or implied, are specifically disclaimed and were not relied upon in connection with this Stipulation. In entering this Stipulation, the Settling Parties relied solely upon their own knowledge and investigation. Except as otherwise provided herein, each Settling Party shall bear its own costs.

**13.6.** This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Settling Parties or their counsel or their respective successors in interest.

**13.7.** This Stipulation shall be binding upon, and shall inure to the benefit of, the Settling Parties and their respective agents, successors, executors, heirs, and assigns.

**13.8.** The Released Parties who do not appear on the signature lines below are acknowledged and agreed to be third party beneficiaries of this Stipulation and Settlement.

**13.9.** The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

**13.10.** This Stipulation may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Stipulation as if

all signatories hereto had executed the same document. Copies of this Stipulation executed in counterpart shall constitute one agreement.

**13.11.** This Stipulation, the Settlement, the Supplemental Agreement, and any and all disputes arising out of or relating in any way to this Stipulation, whether in contract, tort, or otherwise, shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles.

**13.12.** The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation. The Court shall retain exclusive jurisdiction to enforce all injunctions set forth herein.

**13.13.** The Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties.

**13.14.** Plaintiffs, Plaintiffs' Counsel, Defendants, Defense Counsel, and the attorneys, staff, experts, and consultants assisting them in this Action agree that (a) they will not intentionally assist or cooperate with any person or entity in the pursuit of legal action related to the subject matter of this Action against the Released Parties, (b) they will not intentionally assist or cooperate with any person or entity seeking to publicly disparage or economically harm the Released Parties with respect to any matter relating to the subject matter of this Action, and (c) they will not discuss any confidential matters related to this Action or the Settlement with anyone.

**13.15.** All agreements by, between, or among the Settling Parties, their counsel, and their other advisors as to the confidentiality of information exchanged between or among them

shall remain in full force and effect, and shall survive the execution and any termination of this Stipulation and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement.

**13.16.** The Settling Parties shall not assert or pursue any action, claim, or rights that any party violated any provision of Rule 11 of the Federal Rules of Civil Procedure and/or the Private Securities Litigation Reform Act of 1995 in connection with this Action, the Settlement, the Stipulation, or the Supplemental Agreement. The Settling Parties agree that the Action was resolved in good faith following arm's-length bargaining, in full compliance with applicable requirements of good faith litigation under the Securities Exchange Act of 1934, Rule 11 of the Federal Rules of Civil Procedure and/or the Private Securities Litigation Reform Act of 1995.

**13.17.** Any failure by any of the Settling Parties to insist upon the strict performance by any other Settling Party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Settling Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by the other Settling Parties to this Stipulation.

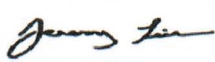
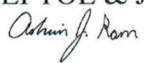
**13.18.** The waiver, express or implied, by any Settling Party of any breach or default by any other Settling Party in the performance of such other Settling Party's obligations under the Stipulation shall not be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

**13.19.** Pursuant to the Class Action Fairness Act ("CAFA"), no later than ten (10) calendar days after this Stipulation is filed with the Court, and the parties agree such filing will be made by June 8, 2023, the Defendants shall complete service on the appropriate federal and state government officials of all notices required under the Class Action Fairness Act, 28 U.S.C. § 1715,

and shall thereafter notify Lead Counsel as to completion of such service. Defendants shall pay the costs of providing CAFA notice.

**13.20.** The Settling Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

**IN WITNESS WHEREOF**, the Settling Parties have executed this Stipulation by their undersigned counsel effective as of May 24, 2023.

<p>POMERANTZ LLP</p>  <hr/> <p>Jeremy A. Lieberman Emma Gilmore Dolgora Dorzhieva Villi Shteyn 600 Third Avenue New York, New York 10016 Telephone: (212) 661-1100 Facsimile: (212) 661-8665 jalieberman@pomlaw.com egilmore@pomlaw.com ddorzhieva@pomlaw.com vshteyn@pomlaw.com</p> <p><i>Lead Counsel for Plaintiffs and for the Class</i></p> <p>BRONSTEIN, GEWIRTZ &amp; GROSSMAN, LLC Peretz Bronstein 60 East 42nd Street, Suite 4600 New York, New York 10165 Telephone: (212) 697-6484 Facsimile: (212) 697-7296 peretz@bgandg.com</p> <p><i>Additional Counsel for Named Plaintiff and for the Class</i></p>	<p>STEPTOE &amp; JOHNSON LLP</p>  <hr/> <p>Ashwin J. Ram 633 W. 5th Street, Ste. 1900 Los Angeles, CA 90071 Telephone: 213-439-9443 aram@steptoe.com</p> <p>Thomas Barba David Matthew Fragale 1330 Connecticut Ave NW Washington, DC 20036 Telephone: 202-429-8195 tbarba@steptoe.com dfragale@steptoe.com</p> <p>Evan M. Goldstick 1114 Avenue of the Americas New York, NY 10036 Telephone: 212-378-7506 egoldstick@steptoe.com</p> <p><i>Counsel for Defendants Northern Dynasty Minerals, Ltd., Ronald W. Thiessen, and Tom Collier</i></p>
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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE NORTHERN DYNASTY  
MINERALS LTD. SECURITIES  
LITIGATION

Case No. 1:20-cv-05917-ENV-TAM

EXHIBIT A

**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Lead Plaintiff Lawrence Kelemen (“Lead Plaintiff”) and Named Plaintiff Charles Hymowitz (“Named Plaintiff” and, together with Lead Plaintiff, the “Plaintiffs”), on behalf of themselves and the Settlement Class, and Defendants Northern Dynasty Minerals Ltd. (“Northern Dynasty”), and Defendants Ronald W. Thiessen (“Thiessen”) and Thomas C. Collier, Jr. (“Collier” and, together with Thiessen, the “Individual Defendants,” and together with Northern Dynasty, “Defendants”), have entered into the Stipulation and Agreement of Settlement, dated June 7, 2023 (“Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal of the class action pending before the Court, entitled *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.) (the “Action”); and the Court having read and considered the Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and the Settling Parties having consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2023, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all Persons (including, without limitation, their beneficiaries) who purchased or otherwise acquired Northern Dynasty securities during the period from December 21, 2017 through November 24, 2020, both dates inclusive, (i) on any stock exchanges located in the United

States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and who were allegedly damaged thereby.

3. Excluded from the Settlement Class are (i) Individual Defendants; (ii) the officers and directors of Northern Dynasty; (iii) members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns; and (iv) any entity in which the Individual Defendants have or had a controlling interest. Also excluded from the Settlement Class is any individual or entity, who or which has: (i) asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) is entitled to a settlement or other distribution payment – regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation. Additionally excluded from the Settlement Class are any persons who, and entities which, exclude themselves by submitting a request for exclusion from the Settlement Class that is accepted by the Court.

4. This Court finds, preliminarily and for purposes of this Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately represent the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class predominate

over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of this Settlement only, Plaintiffs are certified as the class representatives on behalf of the Settlement Class (“Class Representatives”) and Lead Counsel, previously selected by Plaintiffs and appointed by the Court, are hereby appointed as class counsel for the Settlement Class (“Class Counsel”).

6. The Court finds that (a) the Stipulation resulted from good faith, arm’s length negotiations, and (b) the Stipulation is sufficiently fair, reasonable, and adequate to the Settlement Class Members to warrant providing notice of the Settlement to Settlement Class Members and holding a Settlement Hearing.

7. The Court hereby preliminarily approves the Settlement, subject to further consideration at a hearing (“Settlement Hearing”) pursuant to Federal Rule of Civil Procedure 23(e), which is hereby scheduled to be held before the Court on \_\_\_\_\_ for the following purposes: (a) to determine finally whether the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b) are satisfied; (b) to determine finally whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court; (c) to determine finally whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Action with prejudice, and to determine whether the release by the Releasing Parties of the Released Claims against the Released Parties, as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to prosecute or attempt to prosecute any Released Claims extinguished by the release against any of the Released Parties, as also set forth in the Stipulation; (d) to determine finally whether the proposed Plan of



Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court; (e) to consider the application of Class Counsel for an award of attorneys' fees with interest and expenses and an award to the Class Representatives; (f) to consider Settlement Class Members' objections to the Settlement, if any, whether submitted previously in writing or presented orally at the Settlement Hearing by Settlement Class Members (or by counsel on their behalf), provided that they gave proper notice that they intend to appear at the Settlement Hearing; and (g) to rule upon such other matters as the Court may deem appropriate.

8. The Court approves the form, substance, and requirements of (a) the Notice of Pendency and Proposed Settlement of Securities Class Action ("Long Notice"), (b) the Proof of Claim and Release Form, (c) the Summary Notice of Pendency and Proposed Securities Class Action Settlement ("Summary Notice"), and (d) the Postcard Notice, all of which are attached as Exhibits A-1, A-2, A-3, and A-4, respectively, to the Stipulation.

9. Class Counsel have the authority to enter into the Settlement on behalf of the Settlement Class and have the authority to act on behalf of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Stipulation or such other acts that are reasonably necessary to consummate the Settlement.

10. For settlement purposes only, Epiq Class Action & Claims Solutions, Inc. ("Epiq") is appointed and approved as the Claims Administrator to supervise and administer the notice procedure as well as the processing of claims.

11. Within twenty-one (21) calendar days of the entry of this Order, Class Counsel, through the Claims Administrator, shall either: (a) email the Summary Notice to Settlement Class Members for whom the Claims Administrator is able to obtain email addresses, substantially in the form annexed to the Settlement Stipulation as Exhibit A-3 or (b) cause the Postcard Notice,

substantially in the form annexed to the Settlement Stipulation as Exhibit A-4, if no electronic mail address can be obtained, mailed, by first class mail, postage prepaid, to Settlement Class Members who can be identified with reasonable effort by Class Counsel, through the Claims Administrator.

12. The Court approves the appointment of Huntington National Bank as the Escrow Agent. The Escrow Agent may, at any time after entry of this Order and without further approval from Defendants or the Court, disburse at the direction of Class Counsel up to \$500,000 from the Settlement Fund prior to the Effective Date to pay Administrative Costs. After the Effective Date, additional amounts, up to \$200,000, may be transferred from the Settlement Fund to pay for any necessary additional Administrative Costs without further order of the Court.

13. If not yet completed according to ¶ 8.6 of the Stipulation, no later than ten (10) calendar days after the date of this Order, Northern Dynasty shall provide and/or cause its transfer agent to provide to Class Counsel, at no cost to Plaintiffs, transfer records information concerning the identity of Settlement Class Members in a usable electronic format, such as an excel spreadsheet. This information will be kept confidential and not used for any purpose other than to provide the notice contemplated by this Order.

14. Class Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominees or custodians who held Northern Dynasty securities during the Settlement Class Period as record owners but not as beneficial owners. Such nominees or custodians shall, within ten (10) calendar days of receipt of the notice, either: (i) request copies of the Postcard Notice sufficient to send the Postcard Notice to all beneficial owners for whom they are nominee or custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial owners; (ii) request an electronic copy of the Summary Notice and email the Summary Notice in electronic format to each beneficial owner for whom they are nominee or

custodian within ten (10) calendar days after receipt thereof; or (iii) provide the Claims Administrator with lists of the names, last known addresses, and email addresses (to the extent known) of such beneficial owners, in which event the Claims Administrator shall promptly deliver the Postcard Notice to such beneficial owners. If the Claims Administrator receives an email address, it will send a Summary Notice electronically. Nominees or custodians who elect to send the Postcard Notice to their beneficial owners shall send a written certification to the Claims Administrator confirming that the mailing has been made as directed. Additional copies of the Postcard Notice shall be made available to any nominee or custodian requesting the same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the providing names and addresses, up to \$0.05 per name and address; mailing of Postcard Notice up to \$0.05 per unit, plus postage at the rate used by the Claims Administrator; or emailing of notice up to \$0.05 per email, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

15. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing (*i.e.*, on or before \_\_\_\_\_), serve upon Defense Counsel and file with the Court proof of the mailing of the Postcard Notice as required by this Order.

16. Class Counsel, through the Claims Administrator, shall cause the Stipulation and its exhibits, this Order, and a copy of the Notice to be posted on the Claims Administrator's website within twenty-one (21) calendar days after entry of this Order.

17. Class Counsel, through the Claims Administrator, shall cause the Summary Notice to be published electronically once on the *PR Newswire* and in print once in the *Investor's Business*

Daily within twenty-one (21) calendar days after the entry of this Order. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing (*i.e.*, no later than \_\_\_\_\_), serve upon Defense Counsel and file with the Court proof of publication of the Summary Notice.

18. The forms and methods set forth herein of notifying the Settlement Class Members of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and 15 U.S.C. § 77z-1(a)(7); constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

19. In order to be entitled to participate in recovery from the Net Settlement Fund after the Effective Date, each Settlement Class Member shall take the following action and be subject to the following conditions:

(a) A properly completed and executed Proof of Claim and Release Form must be submitted to the Claims Administrator: (a) electronically through the Claims Administrator's website, [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com) by 11:59 p.m. EST on \_\_\_\_\_; or (b) at the Post Office Box indicated in the Notice, postmarked no later than \_\_\_\_\_ (seven (7) calendar days after the Settlement Hearing). Such deadline may be further extended by Order of the Court. Each Proof of Claim and Release Form shall be deemed to have been submitted when: (a) the Person submitting the claim ("Claimant") receives a confirmation notice from the Claims Administrator for electronic submissions; or (b) legibly postmarked (if properly addressed and mailed by first class mail) provided such Proof of Claim and Release Form is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement

Fund. Any Proof of Claim and Release Form submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.

(b) The Proof of Claim and Release Form submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly completed, signed, and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Class Counsel; (iii) if the person executing the Proof of Claim and Release Form is acting in a representative capacity, a certification of his, her, or its current authority to act on behalf of the Settlement Class Member must be provided with the Proof of Claim and Release Form; and (iv) the Proof of Claim and Release Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) Once the Claims Administrator has considered a timely submitted Proof of Claim and Release Form, it shall determine whether such claim is valid, deficient, or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined. Persons who timely submit a Proof of Claim and Release Form that is deficient or otherwise rejected shall be afforded a reasonable time (at least ten (10) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured. If any Claimant whose claim has

been rejected in whole or in part wishes to contest such rejection, the Claimant must, within ten (10) calendar days after the date of mailing of the notice, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If an issue concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court.

(d) As part of the Proof of Claim and Release Form, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall, upon the Effective Date, release all claims as provided in the Stipulation. No discovery shall be allowed on the merits of the Action or the Settlement in connection with processing of the Proof of Claim and Release Forms.

20. All Settlement Class Members who do not submit valid and timely Proof of Claim and Release Forms will be forever barred from receiving any payments from the Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered.

21. Settlement Class Members shall be bound by all determinations and judgments in this Action whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request for exclusion shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than \_\_\_\_\_ (twenty-one (21) calendar days prior to the Settlement Hearing) ("Exclusion Deadline"), to the addresses listed in the Notice. In order to be valid, such request for exclusion (A) must clearly indicate the name and address and phone number and e-mail contact information (if any) of the

Person seeking exclusion, and state that the sender specifically “requests to be excluded from the Settlement Class in *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.)”, and (B) state the identity and number of Northern Dynasty securities that the person or entity requesting exclusion purchased/acquired and sold during the Settlement Class Period, as well as the dates and prices of each such purchase/acquisition and sale, and the number of securities held at the beginning of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof (i) of each purchase or acquisition and, if applicable, sale transaction of Northern Dynasty securities during the Settlement Class Period and (ii) demonstrating the Person’s status as a beneficial owner of the Northern Dynasty securities. Any such request for exclusion must be signed and submitted by the beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Class Counsel may contact any Person filing a request for exclusion, or their attorney if one is designated, to discuss the exclusion.

22. The Claims Administrator shall provide all requests for exclusion and supporting documentation submitted therewith (including untimely requests and revocations of requests) to counsel for the Settling Parties as soon as possible and no later than the Exclusion Deadline or upon the receipt thereof (if later than the Exclusion Deadline). The Settlement Class will not include any Person who delivers a valid and timely request for exclusion.

23. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator a written revocation of that request for exclusion, provided that it is received no later than two (2) Business Days before the Settlement Hearing, in which event that Person will be included in the Settlement Class.

24. All Persons who submit a valid, timely, and unrevoked request for exclusion will be forever barred from receiving any payments from the Net Settlement Fund.

25. The Court will consider objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, provided, however, that no Settlement Class Member or other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement or, if approved, the Order and Final Judgment, or any other order relating thereto, unless that Person has (A) served copies of any objections, papers, and briefs to each of the following counsel at least twenty-one (21) calendar days prior to the Settlement Hearing date (*i.e.*, no later than \_\_\_\_\_):

PLAINTIFFS' COUNSEL:

Jeremy A. Lieberman, Esq.  
POMERANTZ LLP  
600 Third Avenue, 20<sup>th</sup> Floor  
New York, New York 10016

DEFENSE COUNSEL:

Ashwin J. Ram  
Steptoe & Johnson LLP  
633 W. 5th Street, Ste. 1900  
Los Angeles, CA 90071

and (B) that Person has no later than \_\_\_\_\_ (at least twenty-one (21) calendar days prior to the Settlement Hearing date) filed said objections, papers, and briefs, showing due proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, Eastern District of New York, 225 Cadman Plaza East Brooklyn, New York 11201. To be valid, any such objection must contain the Settlement Class Member's (1) name, address, and telephone number, (2) a list of all purchases and sales of Northern Dynasty securities during the Settlement Class Period in order to show membership in the Settlement Class, (3) all grounds for the objection, including any



legal support known to the Settlement Class Member and/or his, her, or its counsel, (4) the name, address, and telephone number of all counsel who represent the Settlement Class Member, including former or current counsel who may be entitled to compensation in connection with the objection, and (5) the number of times the Settlement Class Member and/or his, her, or its counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case. Attendance at the Settlement Hearing is not necessary but Persons wishing to be heard orally in opposition to the approval of the Settlement Stipulation, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

26. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, unless otherwise ordered by the Court; shall be bound by all the terms and provisions of the Stipulation and by all proceedings, orders, and judgments in the Action; and shall also be foreclosed from appealing from any judgment or order entered in this Action.

27. All papers in support of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application shall be filed and served no later than twenty-eight (28) calendar days before the Settlement Hearing, that is, no later than \_\_\_\_\_.

28. Any submissions filed in response to any objections or in further support of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application shall be filed no later than seven (7) calendar days before the Settlement Hearing, that is, no later than \_\_\_\_\_.

29. Defendants, Defense Counsel, the Insurers, and other Released Defendant Parties shall have no responsibility for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees and interest, or expenses or payments to the Class Representatives submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

30. Pending final determination of whether the Settlement should be approved, all Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute any Released Claims against any Released Party in any court or tribunal or proceeding. Unless and until the Stipulation is cancelled or terminated pursuant to the Stipulation, all proceedings, including motions and discovery, in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Stipulation, are hereby stayed and suspended until further order of the Court.

31. All funds held by the Escrow Agent shall be deemed and considered to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and Plan of Allocation and/or further order(s) of the Court.

32. Neither the Stipulation, nor any of its terms or provision, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants, Defense Counsel, the Insurers, or any of the other Released Parties of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind and shall not be construed as, or deemed to be evidence of or an admission or concession that Class Representatives or any Settlement Class Members have suffered any damages, harm, or loss. Further, neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Order shall be construed as an admission or concession by the Class Representatives of the validity of any factual or legal defense or of the infirmity of any of the claims or facts alleged in this Action.

33. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Order (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each Settling Party shall be restored to his, her or its respective litigation positions as they existed before April 11, 2023, pursuant to the terms of the Stipulation.

34. The Court reserves the right to alter the time or the date of the Settlement Hearing without further notice to the Class Members, provided that the time or the date of the Settlement Hearing shall not be set at a time or date earlier than the time and date set forth in ¶ 7 above, or to adjourn the Settlement Hearing without any further notice other than entry of an Order on the Court's docket. The Court further reserves the right to approve the Settlement without modification, or with such modifications as may be agreed to by the Settling Parties, without

further notice to the Settlement Class, and reserves the right to enter an order and final judgment approving the Settlement and dismissing the Action with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of, or relating to, the Stipulation, including by way of illustration and not limitation, any dispute concerning any Proof of Claim and Release Form submitted and any future requests by one or more of the Parties that the Order and Final Judgment, the releases and/or the permanent injunction set forth in the Settlement Stipulation be enforced.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
HON. ERIC N. VITALIANO  
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE NORTHERN DYNASTY  
MINERALS LTD. SECURITIES  
LITIGATION

Case No. 1:20-cv-05917-ENV-TAM

**NOTICE OF PENDENCY AND  
PROPOSED SETTLEMENT OF CLASS ACTION**

If you purchased or otherwise acquired securities of Northern Dynasty Minerals Ltd. (“Northern Dynasty” or the “Company”) during the period from December 21, 2017 through November 24, 2020, both dates inclusive (“Settlement Class Period”), (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, you could get a payment from a proposed class action settlement (“Settlement”).

*Under law, a federal court has authorized this Notice. This is not attorney advertising.*

- If approved by the Court, the Settlement will provide six million and three hundred and seventy five thousand dollars) (\$6,375,000) (“Settlement Amount”) gross, plus interest as it accrues, minus attorneys’ fees, costs, administrative expenses, and net of any taxes on interest, to pay claims of investors who purchased or otherwise acquired Northern Dynasty securities during the Settlement Class Period.
- Based on Plaintiffs’ expert’s estimates of the number of Northern Dynasty securities purchased or otherwise acquired during the Settlement Class Period that may have been affected by the alleged conduct at issue in the Action and assuming that all Settlement Class Members elect to participate in the Settlement, the estimated average recovery (before the deduction of any Court-approved fees, expenses and costs as described herein) per allegedly damaged security is \$0.02. Settlement Class Members should note, however, that the foregoing average recovery per security is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased/acquired or sold their Northern Dynasty securities, and the total number and recognized loss amount of valid Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* paragraph 7 below) or such other plan of allocation as may be ordered by the Court.

- Plaintiffs' Counsel, who have been prosecuting the Action on a wholly contingent basis since its inception, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel Pomerantz LLP will apply to the Court for an award of attorneys' fees in an amount not to exceed one-third of the Settlement Fund for Plaintiffs' Counsel. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$500,000. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. An estimate of the average cost per allegedly damaged Northern Dynasty security, if the Court approves Lead Counsel's fee and expense application, is \$0.008 per allegedly damaged security. In addition, Lead Counsel may apply for awards to Plaintiffs in connection with their representation of the Settlement Class in an amount not to exceed \$25,000, combined.
- The Settlement resolves the Action concerning whether Northern Dynasty and certain of its officers, Ronald W. Thiessen, and Thomas C. Collier, Jr. (collectively, "Defendants") violated federal securities laws, specifically Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, by allegedly making misrepresentations and/or omissions of material fact in various filings with the U.S. Securities and Exchange Commission and in other public statements to the investing public concerning the size, scope, and duration of the Pebble Project, Northern Dynasty's plan to develop what Defendants deemed "one of the world's most important mineral resources." The Settlement also bars any and all claims for contribution or indemnity against any of the Released Parties arising out of, relating to or concerning any acts, facts, statements, or omissions that were or could have been alleged in the Action. Defendants have denied and continue to deny each, any, and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted by Plaintiffs. Defendants have also denied, *inter alia*, the allegations that Plaintiffs or the Settlement Class have suffered damages or that Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this Notice carefully.

### YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT

<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN _____, 202_.</b>	This is the only way to be potentially eligible to receive a payment from the Settlement Fund. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and by the release of claims against Defendants and other
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	Released Defendant Parties (as described in paragraph 9 below) so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN _____, 202_.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you to be part of any other lawsuit against any of the Defendants or the other Released Defendant Parties concerning the Released Claims.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN _____, 202_.</b>	If you do not like the proposed Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>ATTEND A HEARING ON _____, 202_ AT ____:____.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN _____, 202_.</b>	Filing a written objection and notice of intention to appear by _____, 202_, allows you to speak in Court, at the discretion of the Court, about the fairness of the proposed Settlement, the Plan of Allocation, and/or the request for attorneys' fees and reimbursement of Litigation Expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

### INQUIRIES

**Please do not contact the Court regarding this Notice.** All inquiries concerning this Notice, the Proof of Claim and Release Form, or any other questions by Settlement Class Members should be directed to:

*Northern Dynasty Securities Settlement*  
c/o Epiq Class Action & Claims Solutions, Inc.  
PO Box 4990  
Portland, OR 97208-4990  
888-270-9130  
Info@NorthernDynastySecuritiesSettlement.com

Claims Administrator

**OR**

Emma Gilmore  
Dolgora Dorzhieva  
Villi Shteyn  
POMERANTZ LLP  
600 Third Avenue, 20th Floor,  
New York, NY, 10606  
(212) 661-1100  
egilmore@pomlaw.com  
ddorzhieva@pomlaw.com  
vshteyn@pomlaw.com

Lead Counsel

**DEFINITIONS**

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation of Settlement, dated June 7, 2023 (“Stipulation”).

**COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT**

**1. Why did I get this Notice?**

You or someone in your family may have acquired Northern Dynasty Securities between December 21, 2017 through November 24, 2020, both dates inclusive.

**2. What is this lawsuit about?**

The case is known as *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.) (“Action”). The Court in charge of the case is the United States District Court for the Eastern District of New York.

The Action involves allegations that Defendants violated certain federal securities laws by making misrepresentations or omissions of material fact concerning the size, scope, and duration of the Pebble Project, Northern Dynasty’s plan to develop what Defendants deemed “one of the world’s most important mineral resources.” The Consolidated Amended Complaint (“Complaint”) alleges that once true facts were disclosed, Northern Dynasty’s share price plummeted. Defendants have denied and continue to deny each, any, and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted in the Action. The Settlement shall in no event be construed as, or deemed to be evidence of, liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts, or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damages to the Plaintiffs or any other Settlement Class Member. The



Settlement resolves all of the claims in the Action, as well as certain other claims or potential claims, whether known or unknown.

**3. Why is this a class action?**

In a class action, one or more persons and/or entities, called plaintiffs, sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a class, and these individual persons and/or entities are known as class members. One court resolves all of the issues for all class members, except for those class members who exclude themselves from the class.

**4. Why is there a Settlement?**

Plaintiffs and Defendants do not agree regarding the merits of Plaintiffs' allegations and Defendants' defenses with respect to liability or the average amount of damages per share, if any, that would be recoverable if Plaintiffs were to prevail at trial on each claim. The issues on which Plaintiffs and Defendants disagree include, but are not limited to: (1) whether the challenged statements were materially false or misleading or otherwise actionable under federal securities law; (2) whether the challenged statements were made with scienter; (3) whether the alleged disclosures were corrective disclosures; (4) the causes of the loss(es) in the value of Northern Dynasty securities; and (5) the amount of alleged damages, if any, that could be recovered at trial.

This matter has not gone to trial and the Court has not decided in favor of either Plaintiffs or Defendants. Instead, Plaintiffs and Defendants have agreed to settle the case. Plaintiffs and Lead Counsel believe the Settlement is best for all Settlement Class Members because of the risks associated with continued litigation and the nature of the defenses raised by Defendants. Among the reasons that Plaintiffs and Lead Counsel believe the Settlement is fair is the fact that there is uncertainty about whether they will be able to prove that any challenged statement was false or misleading, that the alleged misstatements and omissions actually caused the Settlement Class any damages, and the amount of damages, if any.

Even if Plaintiffs were to win at trial, and also prevail on any on appeal, Plaintiffs might not be able to collect some, or all, of any judgment they are awarded. Moreover, while litigation of this type is usually expensive, there is also a significant risk that, even if Plaintiffs' allegations were found to be true, the total amount of damages to which Settlement Class Members would be entitled could be substantially reduced.

**5. How do I know if I am part of the Settlement?**

The Settlement Class consists of all Persons who purchased or otherwise acquired Northern Dynasty securities during the Settlement Class Period (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and who were allegedly damaged thereby. Excluded from the Settlement Class are (i) Individual Defendants; (ii)

the officers and directors of Northern Dynasty; (iii) members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns; and (iv) any entity in which Individual Defendants have or had a controlling interest. Also excluded from the Settlement Class is any individual or entity, who or which has: (i) asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) is entitled to a settlement or other distribution payment – regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation. Additionally excluded from the Settlement Class are any persons and entities who or which exclude themselves by timely and validly submitting a request for exclusion from the Settlement Class that is accepted by the Court.

**6. I am still not sure whether I am included.**

If you are still not sure whether you are included, you can ask for free help. For more information, you can contact the Claims Administrator by telephone at 888-270-9130, by email at [Info@NorthernDynastySecuritiesSettlement.com](mailto:Info@NorthernDynastySecuritiesSettlement.com), or visit the website at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com) or fill out and return the Proof of Claim and Release Form described in Paragraph 8, to see if you qualify.

**7. What does the Settlement provide?**

**a. What is the Settlement Fund?**

The proposed Settlement provides for Defendants and/or Defendants' insurers to pay six million and three hundred and seventy five thousand dollars) (\$6,375,000) into a settlement fund. The Settlement is subject to Court approval. Also, subject to the Court's approval, a portion of the Settlement Fund will be used to pay attorneys' fees with interest and reasonable litigation expenses to Plaintiffs' Counsel, and any awards to Plaintiffs. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and the costs of the claims administration, including the costs of printing and mailing this Notice and the costs of publishing notice. After the foregoing deductions from the Settlement Fund have been made, the amount remaining ("Net Settlement Fund") will be distributed to Settlement Class Members who submit timely, valid claims, according to the Plan of Allocation to be approved by the Court.

**b. What can you expect to receive under the proposed Settlement?**

Your share of the Net Settlement Fund will or may depend on: (i) the number of claims filed; (ii) the dates you purchased/acquired and sold Northern Dynasty securities; (iii) the prices of your purchases and sales; (iv) the amount of administrative costs, including the

costs of notice; and (v) the amount awarded by the Court to Plaintiffs' Counsel for attorneys' fees, costs, and expenses and to Plaintiffs.

The Claims Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Fund based upon each Settlement Class Member's valid "Recognized Loss." The Recognized Loss formula is not intended to be an estimate of the amount that a Settlement Class Member might have been able to recover after a trial; it also is not an estimate of the amount that will be paid to Settlement Class Members pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Settlement Class Members with valid claims.

The Net Settlement Fund will be distributed to Settlement Class Members who submit a Proof of Claim and Release Form and whose claims for recovery are allowed by the Claims Administrator pursuant to the terms of the Settlement Stipulation or by order of the Court under the below Plan of Allocation, which reflects Plaintiffs' contention that the price of Northern Dynasty securities declined following disclosure of allegedly misrepresented or omitted material information. Defendants have denied and continue to deny these allegations and any and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted in the Action.

#### **PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND AMONG SETTLEMENT CLASS MEMBERS**

A. The objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants based on their respective alleged economic losses as a result of the alleged misstatements and omissions, as opposed to losses caused by market- or industry-wide factors, or company-specific factors unrelated to the alleged fraud. The Claims Administrator shall determine each Authorized Claimant's share of the Net Settlement Fund based upon the recognized loss formula ("Recognized Loss") described below.

B. A Recognized Loss will be calculated for each share of Northern Dynasty common stock purchased or otherwise acquired during the Settlement Class Period on a U.S. stock exchange or in a transaction in the U.S.<sup>1</sup> The calculation of Recognized Loss will depend upon several factors, including when the Northern Dynasty common stock was purchased or otherwise acquired during the Settlement Class Period, and in what amounts, and whether such stock was sold, and if sold, when it was sold, and for what

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<sup>1</sup> This includes purchases of Northern Dynasty common stock executed on a U.S. stock exchange or U.S. alternative trading system. During the Settlement Class Period, Northern Dynasty common stock was dual-listed on the NYSE American Exchange and the Toronto Stock Exchange ("TSX") under the ticker symbol "NAK" and "NDM," respectively. Purchases of Northern Dynasty common stock on a non-U.S. stock exchange, including the TSX, are not included in the Settlement.

amounts. The Recognized Loss is not intended to estimate the amount a Settlement Class Member might have been able to recover after a trial, nor to estimate the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. The Claims Administrator will use its best efforts to administer and distribute the Net Settlement Fund to the extent that it is equitably and economically feasible.

C. The Plan of Allocation was created with the assistance of a consulting damages expert and reflects the assumption that the price of Northern Dynasty common stock was artificially inflated throughout the Settlement Class Period. The estimated alleged artificial inflation in the price of Northern Dynasty common stock during the Settlement Class Period is reflected in Table 1 below. The computation of the estimated alleged artificial inflation in the price of Northern Dynasty common stock during the Settlement Class Period is based on certain misrepresentations alleged by Plaintiffs and the price change in the stock, net of market- and industry-wide factors, in reaction to the public announcements that allegedly corrected the misrepresentations alleged by Plaintiffs.

D. The U.S. federal securities laws allow investors to recover for losses caused by allegedly misleading statements or omissions. Thus, in order to have recoverable damages, the corrective disclosure of the allegedly misrepresented information must be the cause of the decline in the price or value of Northern Dynasty common stock. In this Action, Plaintiffs allege that Defendants made false or misleading statements and/or omitted material facts during the Settlement Class Period, which had the purported effect of artificially inflating the price of Northern Dynasty common stock. Plaintiffs further allege that corrective disclosures removed artificial inflation from the price of Northern Dynasty common stock on the following dates: August 24, 2020; August 25, 2020; September 23, 2020; October 28, 2020; October 30, 2020; November 18, 2020; and November 25, 2020 (the “Corrective Disclosure Dates”). Thus, in order for a Settlement Class Member to have a Recognized Loss under the Plan of Allocation, Northern Dynasty common stock must have been purchased or acquired during the Settlement Class Period and held through at least one of the Corrective Disclosure Dates.

<b>Table 1</b>		
<b>Artificial Inflation in Northern Dynasty Common Stock*</b>		
<b>From</b>	<b>To</b>	<b>Per-Share Price Inflation</b>
December 21, 2017	August 23, 2020	\$1.46
August 24, 2020	August 24, 2020	\$0.90
August 25, 2020	September 22, 2020	\$0.61
September 23, 2020	October 27, 2020	\$0.54
October 28, 2020	October 29, 2020	\$0.50
October 30, 2020	November 17, 2020	\$0.45
November 18, 2020	November 24, 2020	\$0.40
November 25, 2020	Thereafter	\$0.00

\* For each day during the Settlement Class Period, per-share price inflation shall not exceed the closing price of Northern Dynasty common stock that day.

E. The “90-day look back” provision of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) is incorporated into the calculation of the Recognized Loss for Northern Dynasty common stock. The limitations on the calculation of the Recognized Loss imposed by the PSLRA are applied such that losses on Northern Dynasty common stock purchased during the Settlement Class Period and held as of the close of the 90-day period subsequent to the Settlement Class Period (the “90-Day Lookback Period”) cannot exceed the difference between the purchase price paid for such stock and its average price during the 90-Day Lookback Period. The Recognized Loss on Northern Dynasty common stock purchased during the Settlement Class Period and sold during the 90-Day Lookback Period cannot exceed the difference between the purchase price paid for such stock and its rolling average price during the portion of the 90-Day Lookback Period elapsed as of the date of sale.

F. In the calculations below, all purchase and sale prices shall exclude any fees, taxes and commissions. If a Recognized Loss amount is calculated to be a negative number, that Recognized Loss shall be set to zero. Any transactions in Northern Dynasty common stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session for the U.S. financial markets.

G. A Recognized Loss will be calculated as set forth below for each purchase or acquisition of Northern Dynasty common stock during the Settlement Class Period that is listed in the Claim Form and for which adequate documentation is provided.

#### **Per-Share Recognized Loss Calculation**

H. For each share of Northern Dynasty common stock purchased or otherwise acquired during the Settlement Class Period (*i.e.*, December 21, 2017 through November 24, 2020, inclusive), the Recognized Loss per share shall be calculated as follows:

- i. For each share of Northern Dynasty common stock sold prior to August 24, 2020, the Recognized Loss Per share is \$0.

- ii. For each share of Northern Dynasty common stock sold during the period August 24, 2020 through November 24, 2020, inclusive, the Recognized Loss per share is the price inflation on the date of purchase/acquisition as provided in Table 1 above, *minus* the price inflation on the date of sale as provided in Table 1 above.
- iii. For each share of Northern Dynasty common stock sold during the period November 25, 2020 through February 22, 2021, inclusive (*i.e.*, sold during the 90-Day Lookback Period), the Recognized Loss per share is *the lesser of*:
  - a) price inflation on the date of purchase/acquisition as provided in Table 1 above; or
  - b) the purchase/acquisition price *minus* the “90-Day Lookback Value” on the date of sale provided in Table 2 below.
- iv. For each share of Northern Dynasty common stock that was still held as of the close of trading on February 22, 2021, the Recognized Loss per share is *the lesser of*:
  - a) price inflation on the date of purchase/acquisition as provided in Table 1 above; or
  - b) the purchase/acquisition price *minus* the average closing price for Northern Dynasty common stock during the 90-Day Lookback Period, which is \$0.50.

Table 2 90-Day Lookback Value					
Sale/ Disposition Date	90-Day Lookback Value	Sale/ Disposition Date	90-Day Lookback Value	Sale/ Disposition Date	90-Day Lookback Value
11/25/2020	\$0.40	12/24/2020	\$0.35	1/26/2021	\$0.39
11/27/2020	\$0.39	12/28/2020	\$0.35	1/27/2021	\$0.40
11/30/2020	\$0.38	12/29/2020	\$0.34	1/28/2021	\$0.40
12/1/2020	\$0.38	12/30/2020	\$0.34	1/29/2021	\$0.40
12/2/2020	\$0.37	12/31/2020	\$0.34	2/1/2021	\$0.41
12/3/2020	\$0.37	1/4/2021	\$0.34	2/2/2021	\$0.42
12/4/2020	\$0.37	1/5/2021	\$0.35	2/3/2021	\$0.42
12/7/2020	\$0.37	1/6/2021	\$0.35	2/4/2021	\$0.42
12/8/2020	\$0.37	1/7/2021	\$0.35	2/5/2021	\$0.43
12/9/2020	\$0.36	1/8/2021	\$0.35	2/8/2021	\$0.43
12/10/2020	\$0.36	1/11/2021	\$0.35	2/9/2021	\$0.44
12/11/2020	\$0.36	1/12/2021	\$0.36	2/10/2021	\$0.45
12/14/2020	\$0.36	1/13/2021	\$0.36	2/11/2021	\$0.46
12/15/2020	\$0.35	1/14/2021	\$0.37	2/12/2021	\$0.47
12/16/2020	\$0.35	1/15/2021	\$0.37	2/16/2021	\$0.48
12/17/2020	\$0.35	1/19/2021	\$0.38	2/17/2021	\$0.48
12/18/2020	\$0.35	1/20/2021	\$0.38	2/18/2021	\$0.49

12/21/2020	\$0.35	1/21/2021	\$0.38	2/19/2021	\$0.49
12/22/2020	\$0.35	1/22/2021	\$0.39	2/22/2021	\$0.50
12/23/2020	\$0.35	1/25/2021	\$0.39	N/A	N/A

### INSTRUCTIONS APPLICABLE TO ALL CLAIMANTS

I. The payment you receive will reflect your proportionate share of the Net Settlement Fund. Such payment will depend on the number of eligible shares that participate in the Settlement, and when those shares were purchased/acquired and sold. The number of claimants who send in claims varies widely from case to case.

J. A purchase or sale of Northern Dynasty common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date.

K. Acquisition by Gift, Inheritance, or Operation of Law: If a Settlement Class Member acquired Northern Dynasty common stock during the Settlement Class Period by way of gift, inheritance or operation of law, such a claim will be computed by using the date and price of the original purchase and not the date and price of transfer. To the extent that Northern Dynasty common stock was originally purchased prior to commencement of the Settlement Class Period, the Recognized Loss for that acquisition shall be deemed to be zero (\$0.00).

L. Notwithstanding any of the above, receipt of Northern Dynasty common stock during the Settlement Class Period in exchange for securities of any other corporation or entity shall not be deemed a purchase or sale of Northern Dynasty common stock.

M. The first-in-first-out (“FIFO”) basis will be applied to purchases and sales. Sales will be matched in chronological order, by trade date, first against Northern Dynasty common stock held as of the close of trading on December 20, 2017 (the last trading day before the Settlement Class Period begins) and then against the purchases of Northern Dynasty common stock during the Settlement Class Period.

N. The date of covering a “short sale” is deemed to be the date of purchase of shares. The date of a “short sale” is deemed to be the date of sale of shares. In accordance with the Plan of Allocation, however, the Recognized Loss on “short sales” is zero. In the event that a claimant has an opening short position in Northern Dynasty common stock, the earliest Settlement Class Period purchases shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

O. Option contracts are not securities eligible to participate in the Settlement. With respect to Northern Dynasty common stock purchased through the exercise of a call or

put option,<sup>2</sup> the purchase date of Northern Dynasty common stock shall be the exercise date of the option and the purchase price shall be the strike price of the option. Any Recognized Loss arising from purchases of Northern Dynasty common stock acquired during the Settlement Class Period through the exercise of an option on Northern Dynasty common stock shall be computed as provided for other purchases of Northern Dynasty common stock in the Plan of Allocation.

P. Payment according to the Plan of Allocation will be deemed conclusive against all Authorized Claimants. A Recognized Loss will be calculated as defined herein and cannot be less than zero. The Claims Administrator shall allocate to each Authorized Claimant a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants. No distribution will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

Q. Settlement Class Members who do not submit an acceptable Claim Form will not share in the Settlement proceeds. The Stipulation and the Final Judgment dismissing this Action will nevertheless bind Settlement Class Members who do not submit a valid and timely request for exclusion and/or do not submit an acceptable Proof of Claim.

R. Please contact the Claims Administrator or Lead Counsel if you disagree with any determinations made by the Claims Administrator regarding your Proof of Claim. If you are unsatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Settlement Class Members and the claims-administration process, to decide the issue by submitting a written request.

S. Defendants, their Defense Counsel, the Insurers, and all other Released Defendant Parties will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. Plaintiffs and Lead Counsel likewise will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

T. Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. If any funds remain in the Net Settlement Fund by reason of uncashed distribution checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Settlement Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions, any balance remaining in the Net Settlement Fund after at least six (6) months after the initial distribution of such funds will be used in the following fashion: (i) first, to pay any amounts mistakenly omitted from the initial disbursement; (ii) second, to pay any additional settlement administration fees, costs, and expenses, including those of Lead Counsel as may be approved by the Court; and (iii) finally, to make a second distribution to claimants who cashed their checks from the

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<sup>2</sup> Including (1) purchases of Northern Dynasty common stock as the result of the exercise of a call option, and (2) purchases of Northern Dynasty common stock by the seller of a put option as a result of the buyer of such put option exercising that put option.



initial distribution and who would receive at least \$10.00, after payment of the estimated costs, expenses, or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. These redistributions shall be repeated, if economically feasible, until the balance remaining in the Net Settlement Fund is *de minimis* and such remaining balance will then be distributed to a non-sectarian, not-for-profit organization identified by Lead Counsel.

**8. How can I get a payment?**

To qualify for a payment, you must send in a form entitled “Proof of Claim and Release Form.” This Proof of Claim and Release Form is attached to this Notice. You may also obtain a Proof of Claim and Release Form on the Internet at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com). Read the instructions carefully, fill out the form, and sign it in the location indicated. The Proof of Claim and Release Form may be completed in two ways: (1) by completing and submitting it electronically at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com) by 11:59 p.m. EST on \_\_\_\_\_, 202\_\_; or (2) by mailing the claim form together with all documentation requested in the form, postmarked no later than \_\_\_\_\_, 202\_\_, to:

*Northern Dynasty Securities Settlement*  
c/o Epiq Class Action & Claims Solutions, Inc.  
PO Box 4990  
Portland, OR 97208-4990

The Claims Administrator will process your claim and determine whether you are an Authorized Claimant.

**9. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself from the Settlement Class by the \_\_\_\_\_, 202\_\_ deadline, you will remain a member of the Settlement Class and will be bound by the release of claims against Defendants and other Released Defendant Parties if the Settlement is approved. That means you and all other Settlement Class Members and each of their respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) as against Defendants and other Released Defendant Parties any and all claims which arise out of, are based upon, or relate in any way to the purchase or acquisition of Northern Dynasty securities during the Settlement Class Period. It means that all of the Court’s orders will apply to you and legally bind you. That means you will accept a share of the Net Settlement Fund as sole compensation for any losses you suffered in the purchase, acquisitions, sale, or ownership of Northern Dynasty

securities during the Settlement Class Period. The specific terms of the release are included in the Stipulation.

**10. How do I get out of the Settlement?**

If you do not want to receive a payment from this Settlement, and you want to keep any right you may have to sue or continue to sue Defendants or other Released Defendant Parties on your own about the claims being released in this Settlement, then you must take steps to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must mail a letter that (A) clearly indicates your name, address, phone number, and e-mail contact information (if any) and states that you “request to be excluded from the Settlement Class in *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.)”, and (B) state the identity and number of Northern Dynasty securities that you purchased/acquired and sold during the Settlement Class Period, as well as the dates and prices of each such purchase/acquisition and sale, and the number of securities held at the beginning of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof (i) of each purchase/acquisition and, if applicable, sale transaction of Northern Dynasty securities during the Settlement Class Period and (ii) demonstrating your status as a beneficial owner of the Northern Dynasty securities. Any such request for exclusion must be signed and submitted by you, as the beneficial owner, under penalty of perjury. You must mail your exclusion request, to be received no later than \_\_\_\_\_, 202\_\_\_\_, to the Claims Administrator at the following address:

*Northern Dynasty Securities Settlement*  
c/o Epiq Class Action & Claims Solutions, Inc.  
PO Box 4990  
Portland, OR 97208-4990

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will not receive a payment from the Net Settlement Fund, you cannot object to the Settlement, and you will not be legally bound by the judgment in this case.

**11. If I do not exclude myself, can I sue Defendants or the other Released Defendant Parties for the same thing later?**

No. Unless you followed the procedure outlined in the Notice to exclude yourself, you give up any right to sue Defendants or other Released Defendant Parties for the claims being released in this Settlement. If you have a pending lawsuit related to any Released Claims, speak to your lawyer in that case immediately, because you must exclude yourself from this Settlement Class to continue your own lawsuit.

**12. Do I have a lawyer in this case?**

The Court appointed Pomerantz LLP as Lead Counsel for the Class to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for Lead Counsel is provided below.

**13. How will the lawyers be paid?**

Plaintiffs' Counsel have expended considerable time litigating this Action on a contingent fee basis, and have paid for the expenses of the case themselves. They have not been paid attorneys' fees or reimbursed for their expenses in advance of this Settlement. Plaintiffs' Counsel have done so with the expectation that, if they are successful in recovering money for the Settlement Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. Plaintiffs' Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Settlement Fund. Therefore, Lead Counsel will file a motion asking the Court at the Settlement Hearing to make an award of attorneys' fees to Plaintiffs' Counsel in an amount not to exceed one third plus interest of the Settlement Amount (\$2,125,000, plus interest), reimbursement of litigation expenses of no more than \$500,000 and awards to Plaintiffs collectively not to exceed \$25,000 (up to \$20,000 for Lead Plaintiff Lawrence Kelemen and \$5,000 for Named Plaintiff Charles Hymowitz). The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund. Lead Counsel may choose to share part of any attorneys' fees awarded by the Court with Bronstein, Gewirtz & Grossman, LLC, in accordance with the level of its respective work and responsibility in the prosecution of the Action. Berger Montague PC will receive a nominal amount of attorneys' fees in accordance with their contribution to the case and the remainder of any attorneys' fees awarded by the Court will be divided pursuant to fee sharing agreements as follows: Pomerantz (95%); Bronstein, Gewirtz & Grossman, LLC (5%), in accordance with Bronstein, Gewirtz & Grossman, LLC's level of contribution to the Action. The choice of Lead Counsel to share any of the attorneys' fees awarded by the Court is not subject to Court approval, and it will not influence the amount of attorneys' fees awarded by the Court.

**14. How do I tell the Court that I do not like the Settlement?**

You can tell the Court you do not agree with the Settlement, any part of the Settlement, Lead Counsel's motion for attorneys' fees and expenses and application for awards to Plaintiffs, and that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of *In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.). Be sure to include (1) your name, address, and telephone number, (2) a list of all purchases/acquisitions and sales of Northern Dynasty securities during the Settlement Class Period in order to show membership in the Settlement Class, (3) all grounds for the objection, including any legal support known to you or your counsel, (4) the name,

address, and telephone number of all counsel, if any, who represent you, including your former or current counsel who may be entitled to compensation in connection with the objection, and (5) the number of times you and/or your counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case. Attendance at the Settlement Hearing is not necessary. Objectors wishing to be heard orally at the Settlement Hearing are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Be sure to serve copies of any objections, papers, and briefs to **each** of the addresses listed below, to be received no later than \_\_\_\_\_, 202\_\_:

<b>Clerk of the Court</b>	<b>PLAINTIFFS' COUNSEL:</b>	<b>DEFENDANTS' COUNSEL</b>
United States District Court Eastern District of New York 225 Cadman Plaza East Brooklyn, New York 11201	Jeremy A. Lieberman, Esq. POMERANTZ LLP 600 Third Avenue, 20 <sup>th</sup> Floor New York, New York 10016	Ashwin J. Ram, Esq. STEPTOE & JOHNSON LLP 633 W. 5th Street, Ste. 1900 Los Angeles, CA 90071

**15. What is the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court you do not like something about the Settlement or some portion thereof. You can object only if you stay in the Settlement Class. Requesting exclusion is telling the Court you do not want to be part of the Settlement Class and Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer concerns you. If you stay in the Settlement Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself.

**16. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Settlement Hearing on \_\_\_\_\_, 202\_\_, at \_\_:\_\_ .m., at the United States District Court, Eastern District of New York, Courtroom \_\_\_\_\_, 225 Cadman Plaza East Brooklyn, New York 11201. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means. In the event the Court decides to hold the Settlement Hearing telephonically or by other virtual means, Lead Counsel will cause the Claims Administrator to update its website, on the page dedicated to this Settlement, to note the telephonic or other virtual means for the Settlement Hearing.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing.

The Court may also decide how much to pay Plaintiffs' Counsel for attorneys' fees and expenses and how much to award Plaintiffs.

**17. Do I have to come to the hearing?**

No. Lead Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it.

**18. What happens if I do nothing at all?**

If you do nothing, you will not receive a payment from the Settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Defendant Parties about the Released Claims (as defined in the Settlement Stipulation) ever again.

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If, between December 21, 2017 through November 24, 2020, both dates inclusive, you purchased, otherwise acquired, or sold Northern Dynasty securities for the beneficial interest of a person or entity other than yourself, the Court has directed that, **WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either (a) provide to the Claims Administrator the name, last known address, and email address, if an email address is available, of each person or entity for whom or which you purchased, otherwise acquired, or sold such Northern Dynasty securities during such time period; (b) request an electronic copy of the Summary Notice and email the Summary Notice in electronic format to each beneficial owner for whom you are nominee or custodian within ten (10) days after receipt thereof; or (c) request additional copies of the Postcard Notice, which will be provided to you free of charge, and within ten (10) days mail the Postcard Notice directly to the beneficial owners of the Northern Dynasty securities. If you choose to follow alternative procedures (b) or (c), the Court has directed that, upon such mailing or emailing, you send a statement to the Claims Administrator confirming that the mailing or emailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses actually incurred in connection with the foregoing, up to a maximum of \$0.05 plus postage at the rate used by the Claims Administrator per Postcard Notice mailed, \$0.05 per Summary Notice emailed, or \$0.05 per name and address provided to the Claims Administrator. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications regarding the foregoing should be addressed to the Claims Administrator at the address listed on page 3 above.

DATED: \_\_\_\_\_, 2023

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK

**PROOF OF CLAIM AND RELEASE FORM****Deadline for Submission:** \_\_\_\_\_

If you purchased or otherwise acquired Northern Dynasty Minerals Ltd. (“Northern Dynasty”) securities during the period from December 21, 2017 through November 24, 2020, both dates inclusive (“Settlement Class Period”), (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, you are a “Settlement Class Member” and you may be entitled to share in the settlement proceeds.

Excluded from the Settlement Class are (i) the Individual Defendants; (ii) the officers and directors of Northern Dynasty; (iii) members of the Individual Defendants’ immediate families and their legal representatives, heirs, successors or assigns; and (iv) any entity in which Individual Defendants have or had a controlling interest. Also excluded from the Settlement Class is any individual or entity, who or which has: (i) asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) is entitled to a settlement or other distribution payment – regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation. Additionally excluded from the Settlement Class are any persons and entities who or which exclude themselves by timely and validly submitting a request for exclusion from the Settlement Class that is accepted by the Court.

If you are a Settlement Class Member, you must complete and submit this form in order to be eligible for any settlement benefits.

You must complete and sign this proof of claim and release form (“Proof of Claim And Release Form”). You can complete and submit the electronic version of this Proof of Claim And Release Form by 11:59 p.m. EST on \_\_\_\_\_, 202\_\_ at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com) or mail this Proof of Claim and Release Form by first class mail, postmarked no later than \_\_\_\_\_, 202\_\_ to Epiq Class Action & Claims Solutions, Inc., the Claims Administrator, at the following address:

*Northern Dynasty Securities Settlement*  
c/o Epiq Class Action & Claims Solutions, Inc.  
PO Box 4990  
Portland, OR 97208-4990

YOUR FAILURE TO SUBMIT YOUR CLAIM BY \_\_\_\_\_, 202\_\_ WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOU FROM RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR

COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR.

IF YOU ARE A SETTLEMENT CLASS MEMBER AND DO NOT SUBMIT A PROPER PROOF OF CLAIM AND RELEASE FORM, YOU WILL NOT SHARE IN THE SETTLEMENT BUT YOU NEVERTHELESS WILL BE BOUND BY THE ORDER AND FINAL JUDGMENT OF THE COURT UNLESS YOU EXCLUDE YOURSELF.

SUBMISSION OF A PROOF OF CLAIM DOES NOT ASSURE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

### CLAIMANT'S STATEMENT

1. I (we) purchased or otherwise acquired Northern Dynasty Minerals Ltd. ("Northern Dynasty") securities during the Settlement Class Period. (Do not submit this Proof of Claim and Release Form if you did not purchase or otherwise acquire Northern Dynasty securities during the Settlement Class Period.)
2. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above and in the Notice of Pendency and Proposed Settlement of Class Action ("Notice"), or am (are) acting for such Person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Settlement Class Member (e.g., as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim and Release Form. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim and Release Form.
4. I (we) have set forth where requested below all relevant information with respect to each purchase or acquisition of Northern Dynasty securities during the Settlement Class Period, and each sale, if any, of such stock. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.

5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase/acquisition and sale of Northern Dynasty securities listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)
6. I (we) understand that the information contained in this Proof of Claim and Release Form is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your recognized claim. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise, and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers, and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate, or one or more other Persons, by it, him, her, or them, and by its, his, her, or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Defendant Parties" of all "Released Plaintiffs' Claims," as those terms are defined in the Stipulation.
8. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a covenant by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers, and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate, or one or more other Persons, by it, him, her, or them, and by its, his, her, or their heirs, executors, administrators, predecessors, successors, and assigns) to permanently refrain from prosecuting or attempting to prosecute any Released Plaintiffs' Claims against any of the Released Defendant Parties.
9. "Released Defendant Parties" has the meaning laid out in the Stipulation.
10. "Released Plaintiffs' Claims" has the meaning laid out in the Stipulation.
11. "Unknown Claims" has the meaning laid out in the Stipulation.
12. I (we) acknowledge that the inclusion of "Unknown Claims" in the definition of claims released pursuant to the Settlement Stipulation was separately bargained for and is a material element of the Settlement of which this release is a part.



13. NOTICE REGARDING INSTITUTIONAL FILERS: Representatives with authority to file on behalf of (a) accounts of multiple Settlement Class Members and/or (b) institutional accounts with large numbers of transactions (“Representative Filers”) must submit information regarding their transactions in an electronic spreadsheet format. If you are a Representative Filer, you must contact the Claims Administrator at [Info@NorthernDynastySecuritiesSettlement.com](mailto:Info@NorthernDynastySecuritiesSettlement.com) or visit their website at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com) to obtain the required file layout. Claims which are not submitted in electronic spreadsheet format and in accordance with the Claims Administrator’s instructions may be subject to rejection. All Representative Filers MUST also submit a manually signed Proof of Claim and Release Form, as well as proof of authority to file (see Item 2 of the Claimant’s Statement), along with the electronic spreadsheet format. No claims submitted in electronic spreadsheet format will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.
14. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Proof of Claim and Release Form hosted at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com). If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Proof of Claim and Release Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at [Info@NorthernDynastySecuritiesSettlement.com](mailto:Info@NorthernDynastySecuritiesSettlement.com) or 888-270-9130. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Proof of Claim and Release Form.

**I. CLAIMANT INFORMATION**

Name:		
Address:		
City	State	ZIP
Foreign Province	Foreign Country	
Day Phone	Evening Phone	
Email		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.):

**II. SCHEDULE OF TRANSACTIONS IN NORTHERN DYNASTY MINERALS LTD. SECURITIES****Beginning Holdings:**

- A. State the total number of shares of Northern Dynasty common stock held at the close of trading on December 20, 2017 (*must be documented*). If none, write “zero” or “0.”

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**Purchases/Acquisitions:**

- B. Separately list each and every purchase or acquisition of Northern Dynasty common stock between December 21, 2017 through February 22, 2021, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Price per Share	Total Cost (Excluding Commissions, Taxes, and Fees)

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**Sales:**

C. Separately list each and every sale of Northern Dynasty common stock between December 21, 2017 through February 22, 2021, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Price per Share	Amount Received (Excluding Commissions, Taxes, and Fees)

**Ending Holdings:**

D. State the total number of shares of Northern Dynasty common stock held at the close of trading on February 22, 2021 (*must be documented*). If none, write “zero” or “0.”

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**If additional space is needed, attach separate, numbered sheets, giving all required information, substantially in the same format, and print your name and Social Security or Taxpayer Identification number at the top of each sheet.**

**III. SUBSTITUTE FORM W-9**

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service (“I.R.S.”) requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)	<b>or</b>	Taxpayer Identification Number (for estates, trusts, corporations, etc.)
_____		_____

**IV. CERTIFICATION**

I (we) submit this Proof of Claim and Release Form under the terms of the Stipulation of Settlement described in the Notice. I (we) also submit to the jurisdiction of the United States District Court for the Eastern District of New York, with respect to my (our) claim as a Settlement Class Member and for purposes of enforcing the release and covenant not to sue set forth herein. I (we) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in this Action. I (we) have not submitted any other claim covering the same purchases/acquisitions or sales of Northern Dynasty securities during the Settlement Class Period and know of no other Person having done so on my (our) behalf.

I (we) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (we are) exempt from backup withholding; or (b) I (we) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT, AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign):

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Capacity of person(s) signing, *e.g.*, beneficial purchaser(s), executor, administrator, trustee, *etc.*)  
Check here if proof of authority to file is enclosed.  
(See Item 2 under Claimant's Statement)

Date: \_\_\_\_\_

**THIS PROOF OF CLAIM AND RELEASE FORM MUST BE SUBMITTED NO LATER THAN \_\_\_\_\_, 202\_\_ AND MUST BE MAILED TO:**

*Northern Dynasty Securities Settlement*  
c/o Epiq Class Action & Claims Solutions, Inc.  
PO Box 4990  
Portland, OR 97208-4990

A Proof of Claim and Release Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by \_\_\_\_\_, 202\_\_ and if a postmark is indicated on the envelope and it is mailed first class and addressed in accordance with the above instructions. In all other cases, a Proof of Claim and Release Form shall be deemed to have been submitted when actually received by the Claims Administrator.

The Claims Administrator will acknowledge receipt of your Proof of Claim and Release Form by mail or e-mail within 45 days of receipt. Your claim is not deemed filed until you receive such an acknowledgement. If you do not receive an acknowledgement within 45 days, please contact the Claims Administrator by telephone toll free at 888-270-9130 or by e-mail at [Info@NorthernDynastySecuritiesSettlement.com](mailto:Info@NorthernDynastySecuritiesSettlement.com).

You should be aware that it will take a significant amount of time to process fully all of the Proof of Claim and Release Forms and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim and Release Form. Please notify the Claims Administrator of any change of address.

#### **REMINDER CHECKLIST**

- Please be sure to sign this Proof of Claim and Release Form on page 7. If this Proof of Claim and Release Form is submitted on behalf of joint claimants, then each claimant must sign.
- Please remember to attach supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.
- Do NOT use highlighter on the Proof of Claim and Release Form or any supporting documents.
- If you move or change your address, telephone number, or e-mail address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you. NOTE: Failure to submit updated information to the Claims Administrator may result in the Claims Administrator's inability to contact you regarding issues with your claim or deliver payment to you.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE NORTHERN DYNASTY  
MINERALS LTD. SECURITIES  
LITIGATION

Case No. 1:20-cv-05917-ENV-TAM

**SUMMARY NOTICE OF PENDENCY AND  
PROPOSED CLASS ACTION SETTLEMENT**

**TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE  
ACQUIRED NORTHERN DYNASTY MINERALS LTD. SECURITIES FROM  
DECEMBER 21, 2017 THROUGH NOVEMBER 24, 2020, BOTH DATES  
INCLUSIVE, (I) ON ANY STOCK EXCHANGES LOCATED IN THE UNITED  
STATES, (II) ON ANY ALTERNATIVE TRADING SYSTEMS LOCATED IN  
THE UNITED STATES, OR (III) PURSUANT TO OTHER DOMESTIC  
TRANSACTIONS, AND WHO WERE ALLEGEDLY DAMAGED THEREBY.**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Eastern District of New York, that a hearing will be held on \_\_\_\_\_, 202\_\_, at \_\_\_\_:\_\_\_\_.m., before the Honorable Eric N. Vitaliano, at the United States District Court, Eastern District of New York, Courtroom \_\_\_\_\_, 225 Cadman Plaza East Brooklyn, New York 11201, for the purpose of determining: (1) whether the proposed Settlement of the claims in the above-captioned Action for the sum of \$6,375,000 in cash should be approved by the Court as fair, reasonable, and adequate; (2) whether the proposed Plan of Allocation to distribute the Settlement proceeds is fair, reasonable, and adequate; (3) whether the application of Lead Counsel for an award of attorneys' fees of no more than one third plus interest of the Settlement Amount, reimbursement of expenses of not more than \$500,000, and awards of no more than \$25,000, in aggregate, or \$20,000 for Lead Plaintiff Lawrence Kelemen and \$5,000 for Named Plaintiff Charles Hymowitz, should be approved; and (4) whether this Action should be

dismissed with prejudice as set forth in the Stipulation of Settlement dated June 7, 2023 (“Stipulation”). The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means.

If you purchased or otherwise acquired Northern Dynasty Minerals Ltd. (“Northern Dynasty”) securities during the period from December 21, 2017 through November 24, 2020, both dates inclusive (“Settlement Class Period”), (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and: (i) have not asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) have been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) are entitled to a settlement or other distribution payment – regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation, your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in Northern Dynasty securities. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release Form, you may obtain copies by writing to, calling, or contacting the Claims Administrator: *Northern Dynasty Securities Settlement*, c/o Epiq Class Action & Claims Solutions, Inc., PO Box 4990, Portland, OR 97208-4990; 888-270-9130; Info@NorthernDynastySecuritiesSettlement.com. If you are a member of the Settlement Class, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release Form electronically or

postmarked no later than \_\_\_\_\_, 202\_\_, establishing that you are entitled to recovery. Unless you submit a written exclusion request, you will be bound by any judgment rendered in the Action whether or not you make a claim.

If you desire to be excluded from the Settlement Class, you must submit to the Claims Administrator a request for exclusion so that it is received no later than \_\_\_\_\_, 202\_\_, in the manner and form explained in the Notice. All members of the Settlement Class who have not requested exclusion from the Settlement Class will be bound by any judgment entered in the Action pursuant to the Settlement Stipulation.

Any objection to the Settlement, Plan of Allocation, or Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses and awards to Plaintiffs must be in the manner and form explained in the detailed Notice and received no later than \_\_\_\_\_, 202\_\_, to each of the following:

CLERK OF THE COURT:

United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

LEAD COUNSEL:

Jeremy A. Lieberman, Esq.  
POMERANTZ LLP  
600 Third Avenue, 20<sup>th</sup> Floor  
New York, New York 10016

DEFENDANTS' COUNSEL:

Ashwin J. Ram, Esq.  
STEPTOE & JOHNSON LLP  
633 W. 5th Street, Ste. 1900  
Los Angeles, CA 90071

If you have any questions about the Settlement, you may call or write to Lead Counsel for Plaintiffs:



Emma Gilmore  
Dolgora Dorzhieva  
Villi Shteyn  
POMERANTZ LLP  
600 Third Avenue, 20th Floor,  
New York, NY, 10606  
(212) 661-1100  
egilmore@pomlaw.com  
ddorzhieva@pomlaw.com  
vshteyn@pomlaw.com

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING  
THIS NOTICE.**

Dated: \_\_\_\_\_, 2023

BY ORDER OF THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK

**Court-Ordered Legal Notice**  
**Forwarding Service Requested**

*Important Notice about a Securities  
Class Action Settlement*

*You may be entitled to a payment.  
This Notice may affect your legal  
rights.*

*Please read it carefully.*

*Northern Dynasty Securities Settlement*  
c/o Epiq Class Action & Claims Solutions, Inc.  
PO Box 4990, Portland, OR 97208-4990

Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.)

Case Pending in the United States  
District Court for the Eastern District of New York

[NAME 1]

[NAME 2]

[NAME 3]

[ADDRESS 1]

[ADDRESS 2]

PRESORTED  
FIRST-CLASS  
MAIL U.S.  
POSTAGE PAID

*In re Northern Dynasty Minerals Ltd. Securities Litigation*, Case No. 1:20-cv-05917-ENV-TAM (E.D.N.Y.)

***THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT.***

***PLEASE VISIT [WWW.NORTHERNDYNASTYSECURITIESSETTLEMENT.COM](http://WWW.NORTHERNDYNASTYSECURITIESSETTLEMENT.COM) OR CALL 888-270-9130 FOR MORE INFORMATION.***

The U.S. District Court for the Eastern District of New York (the “Court”) has preliminarily approved a proposed Settlement of claims against Northern Dynasty Minerals Ltd. (“Northern Dynasty”), Ronald W. Thiessen, and Thomas C. Collier, Jr. (collectively, “Defendants”). The proposed Settlement would resolve a putative class action lawsuit alleging that Defendants made false and/or misleading misstatements and/or omissions concerning the size, scope, and duration of the Pebble Project. Defendants deny the allegations in their entirety.

You received this notice because you may have purchased or otherwise acquired publicly traded Northern Dynasty securities between December 21, 2017 and November 24, 2020, inclusive, (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and you may be a Settlement Class Member. The Settlement provides that, in exchange for the dismissal and release of all claims against Defendants, a fund consisting of \$6,375,000, less attorneys’ fees and expenses, will be divided among Settlement Class Members who timely submit valid Proof of Claim and Release Forms (“Claim Forms”). For a full description of the Settlement and your rights, and to make a claim, please view the Stipulation and Agreement of Settlement and obtain a copy of the Notice of Pendency and Proposed Settlement of Securities Class Action (“Notice”) and Claim Form by visiting the website: [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com). You may request copies of the Notice and Claim Form by: (1) mail: *Northern Dynasty Securities Settlement*, c/o Epiq Class Action & Claims Solutions, Inc., PO Box 4990, Portland, OR 97208-4990; (2) call toll-free: 888-270-9130; or (3) email: [Info@NorthernDynastySecuritiesSettlement.com](mailto:Info@NorthernDynastySecuritiesSettlement.com).

To qualify for payment, you must submit a Proof of Claim, which can be found on the website [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com). CLAIM FORMS ARE DUE BY \_\_\_\_, 202\_\_ TO *NORTHERN DYNASTY SECURITIES SETTLEMENT*, c/o Epiq Class Action & Claims Solutions, Inc., PO Box 4990, Portland, OR 97208-4990, or submitted electronically at [www.NorthernDynastySecuritiesSettlement.com](http://www.NorthernDynastySecuritiesSettlement.com). If you do not want to be legally bound by the Settlement, you must exclude yourself by \_\_\_\_, 202\_\_. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement, you may object to it by \_\_\_\_, 202\_\_. The Notice explains how to exclude yourself or to object.

The Court will hold a hearing in this case on \_\_\_\_, 202\_\_ at \_\_:00 \_\_m. at 225 Cadman Plaza East, Courtroom \_\_\_\_, Brooklyn, New York 11201, to consider whether to approve the Settlement, the Plan of Allocation, and a request by Lead Counsel for no more than one-third of the Settlement Fund for attorneys’ fees, plus up to \$500,000 in expenses, and awards to Plaintiffs of no more than \$25,000 in total, for litigating the case and negotiating the Settlement. You may, but do not have to, attend the hearing and ask to be heard by the Court. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE NORTHERN DYNASTY  
MINERALS LTD. SECURITIES  
LITIGATION

Case No. 1:20-cv-05917-ENV-TAM

EXHIBIT B

**[PROPOSED] ORDER AND FINAL JUDGMENT**

On the \_\_\_\_ day of \_\_\_\_\_, 2023, a hearing having been held before this Court to determine: (1) whether the terms and conditions of the Stipulation of Settlement dated June 7, 2023 (“Settlement Stipulation”) are fair, reasonable, and adequate for the settlement of all claims asserted by Plaintiffs and the Settlement Class against Defendants (as defined in the Stipulation), including the release of the Released Claims against the Released Parties, and should be approved; (2) whether judgment should be entered dismissing the Action with prejudice; (3) whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund among the Settlement Class Members; (4) whether and in what amount to award Plaintiffs’ Counsel fees and reimbursement of expenses; and (5) whether and in what amount to award Plaintiffs an incentive award; and

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing in the record that the Notice substantially in the form approved by the Court in the Court’s Order Granting Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, dated \_\_\_\_\_ (“Preliminary Approval Order”) was mailed to all reasonably identifiable Settlement Class Members and posted to the website of the Claims Administrator, both in accordance with the Preliminary Approval Order and the specifications of the Court; and

It appearing in the record that the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with the Preliminary Approval Order and the specifications of the Court;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED  
THAT:

1. This Order and Final Judgment incorporates by reference the definitions in the Settlement Stipulation, and all capitalized terms used herein shall have the same meanings as set forth therein.

2. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Settlement Class Members, and Defendants.

3. The Court finds that, for settlement purposes only, the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that:

(a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable;

(b) there are questions of law and fact common to the Settlement Class;

(c) the claims of the Plaintiffs are typical of the claims of the Settlement Class they seek to represent;

(d) Plaintiffs and Lead Counsel fairly and adequately represent the interests of the Settlement Class;

(e) questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of this Action, considering:

i. the interests of the Settlement Class Members in individually controlling the prosecution of the separate actions;

ii. the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members;

iii. the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and

iv. the difficulties likely to be encountered in the management of the class action.

The Settlement Class is being certified for settlement purposes only.

4. The Court hereby finally certifies this action as a class action for purposes of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all Persons (including, without limitation, their beneficiaries) who purchased or otherwise acquired Northern Dynasty securities during the period from December 21, 2017 through November 24, 2020, both dates inclusive, (i) on any stock exchanges located in the United States, (ii) on any alternative trading systems located in the United States, or (iii) pursuant to other domestic transactions, and who were allegedly damaged thereby, except excluded from the Settlement Class are all: (i) Individual Defendants; (ii) the officers and directors of Northern Dynasty; (iii) members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns; and (iv) any entity in which the Individual Defendants have or had a controlling interest. Also excluded from the Settlement Class is any individual or entity, who or which has: (i) asserted claims against any or all of the Defendants in any cross-border litigation initiated outside of the United States, including in, but not limited to, the cases captioned *Haddad v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-2012849 and *Woo v. Northern Dynasty Minerals Ltd. et al.*, Case No. VLC-S-S-211530 in Canada; (ii) been deemed by a court to be a member of a class in such litigation, for settlement purposes or otherwise; and (iii) is entitled to a settlement or other distribution payment –

regardless of whether such payment is cashed – in connection with the resolution of the cross-border litigation.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of this Settlement only, Plaintiffs are certified as the class representatives on behalf of the Settlement Class (“Class Representatives”) and Lead Counsel previously selected by Plaintiffs and appointed by the Court are hereby appointed as Class Counsel for the Settlement Class (“Class Counsel”).

6. In accordance with the Court’s Preliminary Approval Order, the Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and 15 U.S.C. § 77z-1(a)(7); constituted the best notice practicable under the circumstances; and constituted due and sufficient notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons and entities entitled to such notice. No Settlement Class Member is relieved from the terms and conditions of the Settlement, including the releases provided for in the Settlement Stipulation, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all Settlement Class Members are bound by this Order and Final Judgment, except those persons listed on Exhibit B-1 to this Order and Final Judgment.

7. The Settlement is approved as fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure, and in the best interests of the Settlement Class. This Court



further finds that the Settlement set forth in the Settlement Stipulation is the result of good faith, arm's-length negotiations between experienced counsel representing the interests of the Class Representatives, Settlement Class Members, and Defendants. The Settling Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Settlement Stipulation.

8. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against Defendants and the Released Parties. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Stipulation.

The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim and Release Form, any disbursement from the Settlement Fund, shall be deemed to have, and by operation of this Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties. The Releasing Parties shall be deemed to have, and by operation of this Order and Final Judgment shall have, covenanted not to sue the Released Parties with respect to any and all Released Claims in any forum and in any capacity. The Releasing Parties shall be and hereby are permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the Released Parties. Nothing contained herein shall be understood to release any shareholder derivative claims on behalf of Northern Dynasty. Moreover, nothing

contained herein shall bar Releasing Parties from bringing any action or claim to enforce the terms of the Settlement Stipulation or this Order and Final Judgment.

9. To the fullest extent permitted by law, all Persons shall be permanently enjoined, barred, and restrained from bringing, commencing, prosecuting, or asserting any claims, actions, or causes of action for contribution, indemnity, or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment, or settlement which they pay, are obligated to pay, agree to pay, or that are paid on their behalf to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning any acts, facts, statements, or omissions that were or could have been alleged in the Action, whether arising under state, federal, or foreign law as claims, cross-claims, counterclaims, third-party claims, or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum. Further, nothing in the Settlement Stipulation or this Order and Final Judgment shall apply to bar or otherwise affect any claim for insurance coverage by any Defendant.

10. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members, and Class Counsel and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

11. Plaintiffs' Counsel is awarded attorneys' fees in the amount of \$\_\_\_\_\_ and expenses in the amount of \$\_\_\_\_\_, plus any applicable interest, such amounts to be paid out of the Settlement Fund immediately following entry of this Order. Lead Counsel shall thereafter be solely responsible for allocating the attorneys' fees and expenses among other

Plaintiffs' Counsel in the manner in which Lead Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action.

12. Plaintiffs are awarded \$\_\_\_\_\_ in total, or \$\_\_\_\_\_ for Lead Plaintiff Lawrence Kelemen and \$\_\_\_\_\_ for Named Plaintiff Charles Hymowitz, as a compensatory award for their service to the Class and for reasonable costs and expenses directly relating to the representation of the Settlement Class as provided in 15 U.S.C. §78u-4(a)(4), such amounts to be paid from the Settlement Fund upon the Effective Date of the Settlement.

13. The Court finds that the Settling Parties and their counsel have complied with all requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 as to all proceedings herein.

14. Neither this Order and Final Judgment, the Stipulation (nor the Settlement contained therein), nor any of its terms and provisions, nor any of the negotiations, documents, or proceedings connected with them:

(a) is or may be deemed to be, or may be used as an admission, concession, or evidence of the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by the Class Representatives, the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence, or fault of Defendants, the Released Parties, or each or any of them;

(b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by Defendants or Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal;

(c) is or may be deemed to be or shall be used, offered, or received against the Settling Parties, Defendants, or the Released Parties, or each or any of them, as an admission, concession, or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by Plaintiffs or the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is or may be deemed to be or shall be construed as or received in evidence as an admission or concession against Defendants, or the Released Parties, or each or any of them, that any of Class Representatives' or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages recoverable in the Action would have been greater or less than the Settlement Fund or that the consideration to be given pursuant to the Settlement Stipulation represents an amount equal to, less than or greater than the amount which could have or would have been recovered after trial.

15. The Released Parties may file the Stipulation and/or this Order and Final Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Settling Parties may file the Stipulation and/or this Order and Final Judgment in any proceedings that may be necessary to consummate or enforce the Stipulation, the Settlement, or this Order and Final Judgment.

16. Except as otherwise provided herein or in the Stipulation, all funds held by the Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction

of the Court until such time as the funds are distributed or returned pursuant to the Stipulation and/or further order of the Court.

17. Without affecting the finality of this Order and Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over the Settling Parties and the Settlement Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the Settlement proceeds to the Settlement Class Members.

18. Without further order of the Court, Defendants and Class Representatives may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

20. The finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the Court may make on Class Counsels' application for an award of attorneys' fees and expenses or an award to the Class Representatives.

21. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Order and Final Judgment (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Settling Parties or the Released Parties, and each Settling Party shall be restored to

his, her or its respective litigation positions as they existed before April 11, 2023, pursuant to the terms of the Stipulation.

Dated: \_\_\_\_\_, 2023

\_\_\_\_\_  
HON. ERIC N. VITALIANO  
UNITED STATES DISTRICT JUDGE