IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-00292-RM-KMT

In re MOLYCORP, INC. SECURITIES LITIGATION

REPLY MEMORANDUM IN FURTHER SUPPORT OF (I) LEAD PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PLAN OF ALLOCATION AND (II) LEAD COUNSEL'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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Court-appointed Lead Plaintiffs Randall Duck, Jerry W. Jewell, individually and as trustee of the Jerry W. Jewell Trust, Philip Marner and Donald E. McAlpin (collectively, "Lead Plaintiffs") and their counsel Robbins Geller Rudman & Dowd LLP and Kessler Topaz Meltzer & Check, LLP ("Lead Counsel") respectfully submit this reply memorandum in further support of: (i) Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation (Dkt. No. 243) and (ii) Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses (Dkt. No. 244).[1]

I. INTRODUCTION

In accordance with this Court's Preliminary Approval Order, the Court-appointed claims administrator, Gilardi & Co. LLC ("Gilardi"), began mailing copies of the Notice and Proof of Claim (collectively, "Claim Packages") on March 16, 2017.[2] Through June 1, 2017, over 166,000 Claim Packages have been mailed to potential Class Members and nominees.[3] Separately, on March 16, 2017, the Notice, Proof of Claim and other Settlement-related documents were made available to download from the Settlement website (www.MolycorpIncSecuritiesLitigation.com) and, on March 28, 2017, the Summary Notice was published in *The Wall Street Journal* and transmitted over *PR Newswire*. *See* Mailing Decl., ¶¶13-14. These documents informed recipients of, *inter alia*, the terms of the Settlement and Plan of Allocation as well as Lead Counsel's intention

[1] All capitalized terms that are not defined herein shall have those meanings contained in the Stipulation of Settlement dated October 27, 2016 (Dkt. No. 234) and the Joint Declaration of Trig R. Smith and Matthew L. Mustokoff in Support of Motions for Final Approval of Class Action Settlement, Plan of Allocation of Settlement Proceeds, and an Award of Attorneys' Fees and Expenses (Dkt. No. 245). Unless otherwise noted, all emphasis in quotations is added, and citations and footnotes are omitted.

[2] *See* Declaration of Carole K. Sylvester, dated May 3, 2017 (Dkt. No. 251) ("Mailing Decl."), ¶5.

[3] *See* Supplemental Declaration of Carole K. Sylvester Regarding Further Dissemination of the Notice and Proof of Claim and Requests for Exclusion Received, dated June 1, 2017 (the "Supp. Mailing Decl."), submitted herewith, at ¶3.

to apply to the Court for attorneys' fees of 30% of the Settlement Amount, litigation expenses not to exceed $600,000, and reimbursement of Lead Plaintiffs' costs and expenses incurred in representing the Class up to $28,000 in the aggregate. The deadline to submit objections to the Settlement, or any aspect thereof, or to request exclusion from the Class has now passed.

The Class' response to the Settlement has been overwhelmingly positive. Following the comprehensive notice campaign conducted by Gilardi, Lead Counsel have received just two objections. The existence of only a small number of objections from class members "weighs heavily in favor of approval" of a settlement. *Ryskamp v. Looney*, No. 10-cv-00842-WJM-KM, 2012 WL 3397362, at *4 (D. Colo. Aug. 14, 2012). *See also Casados v. Safeco Ins. Co. of Am.*, No. CIV 10-751 JAP/SMV, 2015 WL 11089527, at *10 (D. N.M. Nov. 6, 2015) ("The small number of objections and the relatively few elections to opt out of a settlement agreement may be indicative of the adequacy of the settlement.").[4]

The two objections received – from Renee Krantz (Dkt. No. 257-1) and Brett Storm (Dkt. No. 258) – are both meritless and should be overruled. The primary complaint of these Objections is that the monetary amount of the Settlement is not enough – specifically, that the Settlement Amount does not "justify retribution for [Molycorp's] wrongdoing" and is "not enough compared to the real damages they have inflicted on . . . innocent investors." *See* Storm Obj. at 2; *see also generally* Krantz Objection. Both Objections, however, completely ignore the specific risks and circumstances

[4] In addition, a total of 13 requests for exclusion from the Class have been received – 12 of these requests were timely (*i.e.*, postmarked on or before May 22, 2017) and one of the requests was untimely. All 13 requests for exclusion were from small shareholders, further underscoring the positive reaction by the Class. *See* Supp. Mailing Decl., ¶4. *See Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1189 (10th Cir. 2002) (noting that a settlement "from which an extremely small percentage of class members opted out, was fair, reasonable and adequate"). Based upon the information provided, these 13 exclusion requests represent an aggregate of less than 5,500 shares of Molycorp, Inc. common stock purchased during the Class Period.

present in this Litigation, which were fully discussed in Lead Plaintiffs' and Lead Counsel's opening memoranda and supporting declarations filed with the Court on May 5, 2017 (Dkt. Nos. 243-256) ("Opening Papers"). *See Make a Difference Found., Inc. v. Hopkins*, No. 10-cv-00408-WJM-MJW, 2012 WL 917283, at *1 (D. Colo. Mar. 19, 2012) (in overruling three objections, the court noted that the objections "were all cursory in nature, not providing an adequate basis to call into question the propriety of the settlement"); *see also In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 378 (D.D.C. 2002) (rejecting broad, unsupported objections because "[they] are of little aid to the Court in determining whether these settlements are fair, adequate, and reasonable"). In addition to objecting to the Settlement, both Objections assert in only general terms that Lead Counsel's request for fees and expenses should not be approved, and the Storm Objection takes issue with the Class Period, asserting that it "is not reflective and sufficient." Storm Obj. at 2.[5]

Lead Plaintiffs and their counsel respectfully submit that the lack of meaningful objections is compelling evidence that the Settlement, Plan of Allocation and request for fees and expenses are fair and reasonable and should be approved by the Court. Accordingly, for the reasons set forth below and in Lead Plaintiffs' and Lead Counsel's Opening Papers, the Krantz and Storm Objections should be overruled.

[5] Mr. Storm also, at the beginning of his Objection, includes the Plan of Allocation in a list of items he disagrees with; however, the Plan of Allocation is never mentioned again in his Objection and therefore, will not be specifically addressed herein. *See* Storm Obj. at 1 ("Not only, but specifically, Terms of The Proposed Settlement, The Plan of Allocation, and Lead Counsel's application for attorneys' fees, expenses, and/or Lead Plaintiffs request for expenses to be very very unfair. I am in total disagreement.").

II. ARGUMENT

A. The Settlement Is Fair, Reasonable and Adequate

In their Opening Papers, Lead Plaintiffs and Lead Counsel established that the $20.5 million Settlement represents a highly favorable result for the Class. The Settlement recovers a significant portion of the Class' total recoverable damages estimated by Lead Plaintiffs' damages consultants, while avoiding the substantial risks and expense of continued, lengthy litigation. Moreover, the Settlement is the product of a mediator's proposal – obtained only after hard-fought, protracted settlement discussions that included two formal mediations conducted by a well-respected neutral. Considering the substantial risks and the results achieved, the Settlement is fair, reasonable and adequate, is in the best interests of the Class and warrants the Court's final approval.

1. The Objections to the Settlement Are Meritless and Should Be Overruled

As stated above, the primary challenge of both the Krantz and Storm Objections is the monetary amount of the Settlement.[6] Throughout his Objection, Mr. Storm complains that the

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[6] Although the Storm Objection is addressed herein, Mr. Storm has not provided the required documentation to establish his membership in the Class and thus, his standing to object. Pursuant to the Court's Preliminary Approval Order and as set forth in the Notice:

> The notice of objection must demonstrate the objecting person's membership in the Class, ***including the number and type of Molycorp securities purchased or acquired and sold during the Class Period*** and contain a statement of the reasons for objection. Only Members of the Class who have submitted written notices of objection in this manner will be entitled to be heard at the Final Approval Hearing, unless the Court orders otherwise.

See Notice at p. 12, §XIX (emphasis added). While Mr. Storm refers to himself as a "Class Member" (Storm Obj. at 1 & 2), bare assertions of class membership do not establish standing. *See Feder v. Elec. Data Sys. Corp.*, 248 F. App'x 579, 581 (5th Cir. 2007) (holding that an objector who produced no evidence to provide his class membership lacked standing to object to settlement, stating that "[a]llowing someone to object to settlement in a class action based on this sort of weak, unsubstantiated evidence would inject a great deal of unjustified uncertainty into the settlement process"); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 379 (S.D.N.Y. 2013) (excluding

Settlement is not sufficient to compensate injured investors. *See* Storm Obj. at 1 & 2 ("[t]he proposed recovery of $2.03 per share is not even close to representing the real damages inflicted," "$2.03 per share does not even come relatively close compared to what the stock was trading at the time of the incident," and "How does a minimal $2.03 per share justify retribution for their wrongdoing when we are the ones putting up the money and get the short end of the stick."). Similarly, the Krantz Objection asks "How can a few pennies per share be considered fair?" and "How can a mere $20,500,000 be accepted as appropriate given the fraud perpetrated on the public." *See* Krantz Obj. at 2. These Objections, however, ***completely ignore*** the specific risks and circumstances present in the Litigation and make no substantive evaluation of the Settlement in the context of the allegations set forth in the operative complaint or the likelihood that Lead Plaintiffs could ultimately prevail for a larger recovery. *See In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, No. 01-cv-01451-REB-CBS, 2006 U.S. Dist. LEXIS 71039, at *25 (D. Colo. Sept. 28, 2006) (rejecting objection that settlement fund was inadequate because class will recover small amount of damages and noting that "[this] assumption does not necessarily make the settlement unfair, unreasonable, and inadequate [because] the realistic alternatives which might lead to a greater recovery also present substantial risks, including the risk of no recovery").[7] The Objections also fail to recognize that any compromise involves concessions ***by both sides***; otherwise, it would be

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objections "from individuals who did not provide the required evidence of class membership or who provided evidence indicating they were not class members").

[7] *See also In re Skilled Healthcare Grp., Inc. Sec. Litig.*, No. CV 09-5416 DOC (RZx), 2011 WL 280991, at *6 (C.D. Cal. Jan. 26, 2011) (overruling objection that defendant should be required to pay more money in order to settle, noting "the fairness of a proposed settlement must not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators" and that the objector's "hope for a greater settlement amount – a desire unsupported by specific facts – appears to be based on little more than hypothesis or speculation").

impossible to settle any securities class action short of trial as no defendant would agree to make the class whole in a settlement. Indeed, "the very essence of a settlement is compromise, a yielding of absolutes and an abandoning of highest hopes." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982).

As in any case, the monetary result obtained must be viewed in light of the risks of litigation and the specific circumstances of the case. *See Lane v. Page*, 862 F. Supp. 2d 1182, 1255-56 (D.N.M. 2012) ("Although [the roughly $3.7 million] may not be as large a Settlement fund as members of the class hoped to receive, and is probably less than class counsel wanted upon filing this action, it is significant given the real likelihood that the class could receive nothing."). With every contingent action, there exists a risk of no recovery and in this case, the risk was heightened ***during the course of the Litigation***. In June 2015, over three years into the Litigation, Molycorp filed for Chapter 11 Bankruptcy and was subsequently dismissed from the case. Molycorp's absence from the Litigation substantially affected the resources available to fund a settlement or satisfy a future judgment.[8] It also presented obstacles to Lead Plaintiffs' litigation efforts, particularly with respect to their ability to obtain the discovery needed to prove their case. Moreover, throughout the Litigation Defendants asserted numerous defenses to Lead Plaintiffs' claims, aggressively challenging, among other things, Lead Plaintiffs' ability to prove falsity regarding the presence of

[8] Courts have found similar circumstances strongly support approval of a settlement. *See, e.g.*, *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, No. 05-232, 2008 WL 4974782, at *8 (E.D. Pa. Nov. 21, 2008) (where the company was bankrupt and the individual defendants had limited assets, "[c]ontinuing to trial in the hopes of obtaining a higher penalty would merely deplete the insurance policy proceeds . . . leaving the class, if successful, with a lesser judgment, not a greater one"); *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 460 (S.D.N.Y. 2004) (factor strongly supported settlement where the companies had filed for bankruptcy and the "main settlement funds available to the individuals are the insurance proceeds, which . . . would be largely consumed by defense costs if this litigation were to continue").

terbium and dysprosium at Molycorp's Mountain Pass facility. These points were explained in the Opening Papers but the Objections fail to address them. Going forward, there was simply no guarantee that Lead Plaintiffs would obtain class certification, defeat another motion for summary judgment or succeed at trial.

Despite these challenges, Lead Counsel were able to secure a highly favorable and meaningful monetary recovery for the Class. As set forth in the Opening Papers, the $20.5 million Settlement represents approximately 22% of the Class' total recoverable damages as estimated by Lead Plaintiffs' damages consultants – a percentage recovery that is ***nearly four times greater*** than recoveries obtained in recent similar securities class actions.[9] Courts have found settlements representing substantially smaller percentages of maximum class-wide damages to be reasonable. *See, e.g.*, *In re Merrill Lynch & Co., Inc. Research Reports Sec. Litig.*, No. 02 MDL 1484 (JFK), 2007 WL 313474, at *10 (S.D.N.Y. Feb. 1, 2007) ("The [$40.3 million] settlement . . . represents a recovery of approximately 6.25% of estimated damages. This is at the higher end of the range of reasonableness of recovery in class actions securities litigations."). In addition, prior to reaching the Settlement, the parties engaged in protracted settlement discussions and formal mediation with the assistance of the Honorable Layn R. Phillips (Ret.), a nationally recognized mediator of complex class actions. The parties ultimately reached the Settlement Amount pursuant to a "double-blind" mediator's proposal. These factors further support the reasonableness of the Settlement.

[9] *See* Laarni T. Bulan, Ellen M. Ryan & Laura E. Simmons, *Securities Class Action Settlements: 2016 Review and Analysis*, at 8, Fig. 7 (Cornerstone Research 2017) (Dkt. No. 245-1) (finding median securities settlement in 2016 recovered 5.8% of estimated damages where damages ranged from $50-$124 million, and 4.5% of estimated damages in the same range for years 2006-2015).

For all of the foregoing reasons, which are further detailed in the Opening Papers, the Settlement represents a favorable recovery for the Class, and there is nothing in the Krantz or Storm Objections to suggest otherwise. Therefore, the Court should reject the Objections to the Settlement.

2. Mr. Storm's Objection to the Class Period Should Be Rejected

The Storm Objection also presents a brief challenge to the Class Period. According to the Storm Objection, the Class Period should be longer. *See* Storm Obj. at 2 ("[T]he time period in which the common stock that was purchased is not reflective and sufficient. This should be extended. There seems to be a conflict that is greater than the time frame which is given. Why is only a specific time frame noted when the scheme was known all along, from start to finish."). This objection has no merit and should be overruled.

The Class Period pled in the operative complaint has been thoroughly investigated and, through Lead Plaintiffs' litigation efforts, has been determined to be the proper time period for the claims alleged by Lead Plaintiffs. As Lead Plaintiffs alleged, the truth about heavy rare earth elements ("HREEs") at Molycorp's Moutain Pass mine began to emerge between November 8 and 10, 2011, when a Molycorp senior executive informed participants at a trade conference that Molycorp had not found any quantities of HREEs in the Mountain Pass ore body and Defendants made certain statements concerning Molycorp's progress in identifying these elements at Mountain Pass. There were no factual grounds for the Class Period to be extended with respect to Lead Plaintiffs' allegations, and Mr. Storm fails to offer any.[10] Accordingly, the Court should reject this objection.

[10] A settlement of another lawsuit involving Molycorp recently obtained final approval in the United States District Court for the Southern District of New York. *See In re Molycorp, Inc. Securities Litigation*, No. 13-Civ-5697 (PAC), Final Judgment and Order of Dismissal with

B. Lead Counsel's Request for Attorneys' Fees and Expenses Is Justified and the Objections to This Request Should Be Rejected

The Krantz and Storm Objections also assert cursory and unsupported objections to Lead Counsel's request for an award of attorneys' fees and expenses. *See* Krantz Obj. at 2 ("How can 30% of the total Settlement Fund go to the lawyers?"); Storm Obj. at 1 ("It is unfair for Lead Plaintiff to request fees of 30% of the settlement amount, plus expenses, plus interest, while seeking up to $28,000 in aggregate expenses of $20,500,000 while the real victims are offered pennies of $2.03 per share. This is not right that attorneys involved receive an amount proposed of over $6,150,000 while the individual victims of this Fraud are left in the dust."). As with their objections to the Settlement, Krantz and Storm fail to address the points raised in the Opening Papers and fail to provide any support, other than the assertion that the amount of fees and expenses requested is too much. Such objections provide no grounds to deny the request for attorneys' fees and expenses, particularly because Lead Counsel have amply supported their request in their Opening Papers with declarations and case law. *See, e.g.*, *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 264 n.3 (S.D.N.Y. 2012) (overruling objection that proposed attorneys' fees are "excessive" for being "conclusory and bereft of factual or legal support"). Accordingly, the Objections to the requested fees and expenses are devoid of any merit and should be overruled.

As detailed in the Opening Papers, the $20.5 million Settlement obtained for the Class was only achieved through Lead Counsel's efforts over the course of more than four years. These efforts included, *inter alia*: (i) conducting a thorough factual investigation into the Class' claims and

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Prejudice, Dkt. No. 95 (S.D.N.Y. May 15, 2017). The $1,250,000 cash settlement resolves allegations over alleged false and misleading statements about Molycorp's business and operations from February 21, 2012 through October 15, 2013, inclusive.

drafting two detailed complaints based on this investigation; (ii) opposing two rounds of motions to dismiss filed by Defendants and a motion for summary judgment by the Individual Defendants; (iii) conducting targeted discovery, including litigating a motion to compel discovery from the United States Securities and Exchange Commission, and negotiating with Molycorp's counsel for the production of responsive information; (iv) preparing comprehensive responses to discovery propounded by Defendants; (v) consulting with experts and consultants in various disciplines; (vi) navigating Molycorp's bankruptcy proceedings with the assistance of experienced bankruptcy counsel; and (vii) engaging in protracted and hard-fought settlement negotiations, including two separate formal mediation sessions with an experienced and highly respected neutral mediator. In total, Plaintiffs' Counsel[11] devoted over 7,000 hours to this Litigation for an aggregate lodestar of $4,257,935.50. Without this devotion of substantial time and resources to the prosecution and settlement of the claims asserted in this Litigation, there would have been no recovery for the Class.

In consideration of Plaintiffs' Counsel's efforts, the contingent risk undertaken by counsel, and the highly favorable recovery obtained for the Class, Lead Counsel have respectfully moved this Court for an award of attorneys' fees in the amount of 30% of the Settlement Amount and expenses incurred by Plaintiffs' Counsel during the course of the Litigation in the amount of $249,327.83. *See Rosenbaum v. MacAllister*, 64 F.3d 1439, 1444 (10th Cir. 1995) (the common fund doctrine provides for "the successful plaintiff [to be] awarded attorney fees because his suit creates a common fund, the economic benefit of which is shared by all members of the class"); *see also Vaszlavik v. Storage*

[11] Plaintiffs' Counsel refers collectively to: (i) Lead Counsel - Robbins Geller Rudman & Dowd LLP and Kessler Topaz Meltzer & Check, LLP; (ii) Court-appointed liaison counsel, Berens Law LLC; and (iii) Lowenstein Sandler LLP, bankruptcy counsel for Lead Plaintiffs in connection with the Chapter 11 bankruptcy cases of Molycorp, Inc. and its affiliated Chapter 11 debtors. *See* Dkt. Nos. 253-256 for detailed time and expense submissions on behalf of these firms.

Tech. Corp., No. 95-B-2525, 2000 U.S. Dist. LEXIS 21140, at *11 (D. Colo. Mar. 9, 2000) ("As with attorneys' fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred."). Here, the requested 30% fee – representing a modest 1.4 multiplier on Plaintiffs' Counsel's lodestar – is well within the range of percentage attorneys' fees awarded in securities class actions and in other comparable class actions within this Circuit[12] and is otherwise fully supported by the Tenth Circuit's "*Johnson* factors," as fully addressed in the Opening Papers (*see* Dkt. No. 244 at 8-17). In addition, Plaintiffs' Counsel's expenses and charges are reasonable and were necessary to the prosecution of this four-plus-year Litigation.

As with his objection to Lead Counsel's fee and expense request, Mr. Storm's mention of his disagreement with "Lead Plaintiffs request for expenses" (Storm Obj. at 1) is also unsupported and should be rejected. Here, certain Plaintiffs have requested reimbursement of their costs and expenses incurred in representing the Class, in the aggregate amount of $10,251.69 – substantially less than the maximum amount of $28,000 set forth in the Notice. The Private Securities Litigation Act of 1995 ("PSLRA") permits an award of "reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of a class." 15 U.S.C. §78u-4(a)(4). *See In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1155-56 (D. Colo. 2009). As set forth in the Opening Papers, including the declarations submitted on behalf of the Plaintiffs seeking reimbursement (Dkt. Nos. 246-248), the awards sought

[12] *See Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 455 n.2 (10th Cir. 1988) (recognizing that a typical percentage award in a common fund case is around one-third of the recovery). *See also Lucken Family Ltd. P'ship, LLLP v. Ultra Res., Inc.*, No. 09-cv-01543-REB-KMT, 2010 WL 5387559, at *5 (D. Colo. Dec. 22, 2010) ("The customary fee awarded to class counsel in a common fund settlement is approximately one-third of the total economic benefit bestowed on the class.").

by Plaintiffs are reasonable and fully justified under the PSLRA based on their involvement in the Litigation.

III. CONCLUSION

For the reasons set forth herein and detailed in Lead Plaintiffs' and Lead Counsel's Opening Papers, Lead Plaintiffs and their counsel respectfully request that the Court approve: (i) the Settlement; (ii) the Plan of Allocation; and (iii) Lead Counsel's request for attorneys' fees and expenses, including those costs and expenses incurred by certain Plaintiffs. Proposed Orders approving these requests are being submitted concurrently herewith.

DATED: June 2, 2017

Respectfully submitted,

s/ Trig R. Smith

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2017, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 2, 2017.

s/ Trig R. Smith

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Mailing Information for a Case 1:12-cv-00292-RM-KMT Molycorp Shareholder Group et al v. Molycorp, Inc. et al

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

MANUAL SERVICE LIST FOR OBJECTORS

Renee Krantz
3635 Johnson Avenue
Bronx, NY 10463

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12121 Boston Post
Livonia, MI 48150

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-00292-RM-KMT

In re MOLYCORP, INC. SECURITIES LITIGATION

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

This matter came before the Court pursuant to the Order Preliminarily Approving Settlement, Approving Notice to the Class, and Scheduling a Final Approval Hearing ("Preliminary Approval Order") dated March 6, 2017, on the application of the parties for approval of the Settlement set forth in the Stipulation of Settlement dated as of October 27, 2016 (the "Stipulation"). Due and adequate notice having been given to the Class as required in said Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

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

2. This Court has jurisdiction over the subject matter of the Litigation and over all parties to the Litigation, including all Members of the Class.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of this Settlement only, this Court finally certifies this Litigation as a class action with a Class defined as all persons who purchased or otherwise acquired Molycorp securities from February 7, 2011 through November 10, 2011, inclusive, including all persons who purchased or acquired Molycorp common stock and/or Molycorp 5.50% Series A Mandatory Convertible Preferred Stock pursuant to the February 2011 offering, and all persons who purchased or acquired Molycorp common stock pursuant to the June 2011 offering, and who were damaged thereby. Excluded from the Class are: (i) Defendants and their families, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which any of the above excluded persons have or had a majority ownership interest; (ii) Molycorp (including any parent, subsidiary or corporate successor of Molycorp); and (iii) any putative member of the Class who timely and validly excluded himself, herself, or itself from the

Class in accordance with the requirements set forth in the Notice of Pendency and Proposed Settlement of Class Action and Rule 23 of the Federal Rules of Civil Procedure. The foregoing exclusion in (i) shall not cover "Investment Vehicles," which for these purposes shall mean any investment company or pooled investment fund, including, but not limited to, mutual fund families, exchange-traded funds, fund of funds, private equity funds, real estate funds, and hedge funds, in which any Underwriter Defendant or any of its affiliates or Molycorp or any Individual Defendant has or may have a direct or indirect interest or as to which any Underwriter Defendant or any of its affiliates may act as an investment advisor, general partner, managing member, or in other similar capacity, other than an investment vehicle of which the Underwriter Defendant or any of its affiliates is a majority owner or holds a majority beneficial interest and only to the extent of such Underwriter Defendant's or affiliate's ownership or interest.

4. With respect to the Class, and for purposes of this Settlement only, the Court finds and concludes that the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied as: (a) the Members of the Class are so numerous that joinder of all Class Members in the Litigation is impracticable; (b) there are questions of law and fact common to the Class that predominate over any individual questions; (c) the claims of the Lead Plaintiffs are typical of the claims of the Class; (d) the Lead Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of all the Class Members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the Members of the Class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by Members of the Class, (iii) the desirability or undesirability of continuing the litigation of these claims in this particular forum, and (iv) the difficulties likely to be encountered in the management of the Litigation. Accordingly, for settlement purposes only, the Class is certified, Lead Plaintiffs are appointed Class Representatives, and Lead Counsel are appointed Class Counsel.

5. The Notice of Pendency and Proposed Settlement of Class Action was given to all Class Members who could be identified with reasonable effort and was in accordance with the terms of the Stipulation and the Court's Preliminary Approval Order. The form and method of notifying the Class of the pendency of the Litigation as a class action and the terms and conditions of the proposed Settlement met the requirements of Federal Rule of Civil Procedure 23; Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. §78u-4(a)(7); Section 27(a)(7) of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; the Constitution of the United States (including the Due Process Clause); and any other applicable law, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

6. Two objections to the Settlement have been received (Dkt. Nos. 257-1 and 258), which the Court has considered and found to be without merit.

7. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby approves the Settlement set forth in the Stipulation and finds that:

(a) the Stipulation and the Settlement contained therein, are, in all respects, fair, reasonable, and adequate and in the best interest of the Class;

(b) there was no collusion in connection with the Stipulation;

(c) the Stipulation was the product of informed, arm's-length negotiations among competent, able counsel representing the interests of the Settling Parties and undertaken with the assistance of an experienced mediator; and

(d) the record is sufficiently developed and complete to have enabled the Lead Plaintiffs and the Defendants to have adequately evaluated and considered their positions.

8. Accordingly, the Court authorizes and directs implementation and performance of all the terms and provisions of the Stipulation, as well as the terms and provisions hereof. Except as to any individual claim of those Persons (identified in Exhibit 1 attached hereto) who have validly and

timely requested exclusion from the Class, the Court hereby dismisses the Litigation and all Released Claims of the Class with prejudice. The Settling Parties are to bear their own costs, except as and to the extent provided in the Stipulation and herein.

9. Pursuant to and in compliance with Federal Rule of Civil Procedure 23, the Court hereby finds that due and adequate notices of these proceedings was directed to all persons and entities who are Members of the Class, advising them of the Settlement, and of their right to object thereto, and a full and fair opportunity was accorded to all persons and entities that are Members of the Class to be heard with respect to the Settlement. Thus, it is hereby determined that all Members of the Class, other than those persons and entities that are listed in Exhibit 1 hereto, are bound by this Judgment.

10. Upon the Effective Date, the Lead Plaintiffs and each of the Class Members (on behalf of themselves and each of their respective present and former directors, officers, employees, parents, subsidiaries, related or affiliated entities, shareholders, members, divisions, partners, joint ventures, family members, spouses, domestic partners, heirs, principals, agents, owners, fiduciaries, personal or legal representatives, attorneys, auditors, accountants, advisors, banks or bankers, insurers, reinsurers, trustees, trusts, estates, executors, administrators, predecessors, successors, assigns, and any other person or entity who has the right, ability, standing, or capacity to assert, prosecute, or maintain on behalf of any Class Member any of the Released Claims (or to obtain the proceeds of any recovery therefrom)) shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever waived, released, relinquished, discharged, and dismissed all Released Claims against the Released Parties, whether or not such Class Member executes and delivers a Proof of Claim and Release Form, seeks or obtains a distribution from the Net Settlement Fund, is entitled to receive a distribution under the Plan of Allocation, or has objected to the Settlement, the Plan of Allocation, Lead Counsel's application for attorneys' fees and litigation expenses, or Lead Plaintiffs' application for expenses.

11. Upon the Effective Date, except as provided in ¶¶14, 19 below, any and all persons and entities are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting, or asserting any and all claims for contribution or indemnity (or any other claim when the alleged injury to that person or entity is their actual or threatened liability to the Class or a Class Member in the Litigation) based upon, relating to, arising out of, or in connection with the Released Claims, against each and every one of the Released Parties, whether arising under state, federal, common, statutory, administrative, or foreign law, regulation, or at equity, as claims, cross-claims, counterclaims, or third-party claims, in this Litigation or a separate action, in this Court or in any other court, arbitration proceeding, administrative proceeding, or other forum; and, except as provided in ¶¶14, 19 below, the Released Parties are permanently barred and enjoined, to the fullest extent permitted by law, from commencing, prosecuting or asserting any and all claims for contribution or indemnity (or any other claim when the alleged injury to any of the Released Parties is their actual or threated liability to the Class or a Class Member in the Litigation) based upon, relating to, or arising out of the Released Claims, against any person or entity, other than a person or entity whose liability to the Class has been extinguished pursuant to the Settlement and the Judgment, whether arising under state, federal, common, statutory, administrative, or foreign law, regulation, or at equity, as claims, cross-claims, counterclaims, or third-party claims, in this Litigation or a separate action, in this Court or in any other court, arbitration proceedings, administrative proceeding, or other forum. Nothing herein shall bar, release or alter in any way, any obligations, rights or claims among or between the Released Parties.

12. Upon the Effective Date, any final verdict or judgment that may be obtained by or on behalf of the Class or a Class Member against any person or entity subject to the bar order described in ¶11 above, shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of any of the Defendants for common damages; or (b) the Settlement Amount.

13. Upon the Effective Date, each of the Defendants and Affiliate Releasees shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiffs, Class Members, and their counsel, employees, successors, and assigns from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims.

14. Notwithstanding any of the releases or the bar order above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the Stipulation.

15. Neither the Stipulation nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement:

(a) shall be offered by a Settling Party or a Released Party against the Released Parties, Lead Plaintiffs, or other Class Members as evidence of, or deemed to be evidence of, any presumption, concession, or admission by any of the Released Parties, or by Lead Plaintiffs or any other Class Members, with respect to the truth of any fact alleged by Lead Plaintiffs or the validity, or lack thereof, of any claim that has or could have been asserted in the Litigation or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Litigation or in any litigation, or of any liability, negligence, fault or wrongdoing of the Released Parties;

(b) shall be offered by a Settling Party or a Released Party against the Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal as evidence of a presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Released Parties, or against Lead Plaintiffs or any of the other Class Members as evidence of any infirmity in the claims of Lead Plaintiffs and the other Class Members;

(c) is or may be deemed to be or may be used as an admission of, or evidence of, any presumption, concession, or admission by Lead Plaintiffs that any of their claims are without merit or that any of the Defendants had meritorious defenses;

(d) shall be construed against the Released Parties, Defendants' Counsel, Lead Counsel or Lead Plaintiffs or the other Class Members as an admission or concession that the consideration to be paid under the Stipulation represented the amount which could be or would have been recovered after trial or that any damages potentially recoverable in the Litigation would have exceeded or would have been less than the Settlement Amount; or

(e) shall be constructed as or received in evidence as an admission, concession or presumption against the Released Parties that class certification is appropriate in this Litigation, except for the purposes of this Settlement.

Defendants and/or any Released Parties may file the Stipulation and/or this Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of, without limitation, claim preclusion or issue preclusion or similar defense or counterclaim.

16. Any Plan of Allocation submitted by Lead Counsel or any order entered regarding any attorneys' fee and expense application or Lead Plaintiffs' expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

17. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees, expenses, and interest in the Litigation; and (d) all parties herein for the purpose of construing, enforcing, and administering the Stipulation, including any releases and bar orders executed in connection therewith.

18. The Court finds and concludes that during the course of the Litigation, the Settling Parties and their respective counsel at all times and in all respects have complied with the requirements of Federal Rule of Civil Procedure 11.

19. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants or any entity who paid such Settlement Amount on behalf of the Defendants, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated to the extent provided by the Stipulation and, in such event, (a) all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation; and (b) the Stipulation shall not be admissible in any trial of the Litigation and Lead Plaintiffs and Defendants reserve their rights to proceed in all respects as if the Stipulation had not been entered into, without any prejudice in any way from the negotiation, fact, or terms of the Stipulation.

20. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time or other reasonable modifications necessary to carry out any of the provisions of the Stipulation.

21. There is no just reason for delay in the entry of this Judgment and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED: _____

_____
RAYMOND P. MOORE
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

Persons Excluded from the Class Pursuant to Request

1. Marios Kagarlis
   Greece

2. Andreas S. Svoronos (Deceased)
   Betty Svoronos
   Katy, TX

3. Harvey Salevski Rollover IRA
   Mukwonago, WI

4. Arne Brinkland
   Orange, CA

5. James D. Jordan Living Trust
   James D. Jordan TTEE
   Tulsa, OK

6. William J. Krizsan
   Twinsburg, OH

7. Wilhelmina L. Seib Trust
   David C. Seib TTEE
   Olean, NY

8. Patti Johnstone
   Kagawong, Ontario
   Canada

9. Catherine Bergin
   Fountain Inn, SC

10. Henry M. Vlanin
    San Francisco, CA

11. W.W. Abbott & B.V. Abbott Trust
    William & Barbara Abbott TTEES
    Sherrills Ford, NC

12. Barry J. Fegely
    Quakertown, PA

13. Jon K. B. Riggs
    Bellbrook, OH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-00292-RM-KMT

In re MOLYCORP, INC. SECURITIES LITIGATION

[PROPOSED] ORDER APPROVING PLAN OF ALLOCATION

This matter is before the Court on Lead Plaintiffs' Motion for Final Approval of Class Action Settlement and Plan of Allocation, filed on May 5, 2017 (Dkt. No. 243). All capitalized terms used herein have the meanings set forth in the Stipulation of Settlement, dated October 27, 2016, and filed the same day (Dkt. No. 234). The Court having considered all papers filed and proceedings had herein and otherwise being fully informed of the matters hereto and good cause appearing therefore;

THE COURT HEREBY FINDS AND CONCLUDES that:

1. The Court has jurisdiction to enter this Order approving the proposed Plan of Allocation and over the subject matter of the Litigation and all parties to the Litigation, including all Class Members.

2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure and the Court's Order Preliminarily Approving Settlement, Approving Notice to the Class, and Scheduling a Final Approval Hearing dated March 6, 2017 (Dkt. No. 239) (the "Preliminary Approval Order"), due and adequate notice was directed to all Class Members, including individual notice to those Class Members who could be identified through reasonable effort, advising them of the Plan of Allocation and of their right to object thereto, and a full and fair opportunity was accorded to Class Members to be heard with respect to the Plan of Allocation, and there were no objections to the Plan of Allocation.

3. The Court finds and concludes that the formula for the calculation of the claims of claimants as provided in the Plan of Allocation set forth in the Notice approved by the Court's Preliminary Approval Order and disseminated to Class Members provides a fair and reasonable basis upon which to allocate the proceeds of the Net Settlement Fund among Class Members with due consideration having been given to administrative convenience and necessity.

4. The Court finds and concludes that the Plan of Allocation is, in all respects, fair and reasonable to the Class and approves the Plan of Allocation.

5. Any appeal or any challenge affecting this Court's approval of the Plan of Allocation will in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

6. Jurisdiction is hereby retained over the Settling Parties and Class Members for all matters relating to this Litigation, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order.

7. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED: _____

_____
RAYMOND P. MOORE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:12-cv-00292-RM-KMT

In re MOLYCORP, INC. SECURITIES LITIGATION

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND EXPENSES

This matter is before the Court on Lead Counsel's Motion for an Award of Attorneys' Fees and Expenses, filed on May 5, 2017 (Dkt. No. 244). All capitalized terms used herein have the meanings set forth in the Stipulation of Settlement, dated October 27, 2016, and filed the same day (Dkt. No. 234). The Court having considered all papers filed and proceedings had herein and otherwise being fully informed of the matters hereto and good cause appearing therefore;

THE COURT HEREBY FINDS AND CONCLUDES that:

1. The Court has jurisdiction to enter this Order awarding attorneys' fees and expenses and over the subject matter of the Litigation and all parties to the Litigation, including all Class Members.

2. Pursuant to and in compliance with Rule 23 of the Federal Rules of Civil Procedure and the Court's Order Preliminarily Approving Settlement, Approving Notice to the Class, and Scheduling a Final Approval Hearing dated March 6, 2017 (Dkt. No. 239) (the "Preliminary Approval Order"), due and adequate notice was directed to all Class Members, including individual notice to those Class Members who could be identified through reasonable effort, advising them of Lead Counsel's requests for attorneys' fees and expenses and reimbursement of costs and expenses to Plaintiffs in connection with their representation of the Class, and of their right to object thereto, and a full and fair opportunity was accorded to Class Members to be heard with respect to the requests for attorneys' fees and expenses.

3. Lead Counsel are awarded attorneys' fees in the amount of 30% of the Settlement Amount and expenses in the amount of $249,327.83, plus interest earned on both amounts at the same rate as earned on the Settlement Fund, which sums the Court finds to be fair and reasonable.

The attorneys' fees and expenses awarded will be paid in accordance with the terms of the Stipulation.

4. In making this award of attorneys' fees and expenses to be paid from the Settlement Fund, the Court has considered and found that:

(a) The Settlement has created a fund of $20,500,000 in cash that has been funded into escrow under the Stipulation, and numerous Class Members who submit acceptable Proofs of Claim will benefit from the Settlement that occurred because of the efforts of Plaintiffs' Counsel;

(b) The fee sought by Lead Counsel has been reviewed and approved as reasonable by Lead Plaintiffs, who were involved in overseeing the prosecution and resolution of the Litigation;

(c) Copies of the Notice were mailed to over 166,000 potential Class Members and nominees stating that Lead Counsel would apply to the Court for attorneys' fees of 30% of the Settlement Amount and expenses not to exceed $600,000, plus interest thereon, to be paid from the Settlement Fund. The Notice advised Class Members of their right to object to Lead Counsel's motion for attorneys' fees and expenses, and a full and fair opportunity was accorded to persons who are Class Members to be heard with respect to the motion. There were two objections to the requested attorneys' fees and expenses which the Court has considered and found to be without merit;

(d) Plaintiffs' Counsel have conducted the Litigation and achieved the Settlement with skill, perseverance, and diligent advocacy;

(e) The Litigation involves complex factual and legal issues, and, in the absence of settlement, would involve further lengthy proceedings with uncertain resolution if the case were to proceed to trial;

(f) Lead Counsel pursued the Litigation on a contingent basis, having received no compensation during the Litigation, and any fee award has been contingent on the result achieved;

(g) Plaintiffs' Counsel have devoted over 7,000 hours to this Litigation, with a lodestar value of $4,257,935.50, to achieve the Settlement;

(h) The amount of attorneys' fees is consistent with awards in similar cases and supported by public policy; and

(i) The amount of expenses awarded is fair and reasonable and these expenses were necessary for the prosecution and settlement of the Litigation.

5. The Court awards the following amounts from the Settlement Fund to Plaintiffs as reimbursement for their reasonable costs and expenses directly related to their representation of the Class: $8,027.44 to Randall Duck, $1,664.25 to Donald E. McAlpin, and $560.00 to Iron Workers Mid-South Pension Fund.

6. Any appeal or any challenge affecting this Court's approval of any attorneys' fee and expense application will in no way disturb or affect the finality of the Judgment entered with respect to the Settlement.

7. The Court retains exclusive jurisdiction over the parties and the Class Members for all matters relating to this Litigation, including the administration, interpretation, effectuation, or enforcement of the Stipulation and this Order.

8. If the Settlement is terminated or the Effective Date of the Settlement otherwise fails to occur, this Order will be rendered null and void to the extent provided by the Stipulation.

9. There is no just reason for delay in the entry of this Order, and immediate entry by the Clerk of the Court is expressly directed.

IT IS SO ORDERED.

DATED: _____

_____
RAYMOND P. MOORE
UNITED STATES DISTRICT JUDGE