

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**LBP HOLDINGS LTD.**

Plaintiff

- and -

**HYCROFT MINING CORPORATION, SCOTT A. CALDWELL,  
ROBERT M. BUCHAN, CORMARK SECURITIES INC., and  
DUNDEE SECURITIES LTD.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**

**(NOTICE OF ACTION ISSUED JULY 16, 2014)  
(STATEMENT OF CLAIM FILED AUGUST 14, 2014)  
(AMENDED NOTICE OF ACTION ISSUED MARCH 5, 2015)  
(AMENDED STATEMENT OF CLAIM FILED MARCH 5, 2015)  
(FRESH AS AMENDED STATEMENT OF CLAIM FILED MARCH 15, 2017)**

AMENDED THIS Aug. 10, 2017 PURSUANT TO  
MODIFIÉ CE \_\_\_\_\_ CONFORMÉMENT A \_\_\_\_\_  
 RULE/LA RÈGLE 26.02 ( A )  
 THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_  
REGISTRAR / GREFFIER  
SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE

## DEFINED TERMS

1. In addition to the terms defined in the *Securities Act*, R.S.O. 1990, c. S.5, and elsewhere herein the following terms used throughout this Second Fresh as Amended Statement of Claim have the meanings indicated below:

- (a) “**33 Act**” means the United States *Securities Act of 1933*;
- (b) “**34 Act**” means the United States *Securities Exchange Act of 1934*;
- (c) “**Allied Nevada**” means Allied Nevada Gold Corp., the former legal name of the Defendant, Hycroft;
- (d) “**Buchan**” means Robert M. Buchan, Hycroft’s President and Chief Executive Officer at all material times up until July 7, 2013;
- (e) “**Caldwell**” means Scott A. Caldwell, Hycroft’s President and Chief Executive Officer at all material times up until March 26, 2013;
- (f) “**Cash Costs**” means, as defined by Hycroft in its MD&A on Form 10-K for the year ended December 31, 2012, the cash costs per ounce of gold sold, including mining, processing, third party refining, site administration and support, royalties, production taxes, net of by-product revenue earned from silver sales;
- (g) “**Class**” and “**Class Member(s)**” means all persons, other than Excluded Persons, who acquired Hycroft’s SPO securities in a transaction occurring outside the United States offered by the Prospectus and during its distribution period;

- (h) “**CIM**” means the Canadian Institute of Mining, Metallurgy and Petroleum, which is responsible for publishing definitions on reserves and resources to be used in Canada and pursuant to *NI 43-101*;
- (i) “**CJA**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) “**Company**” means Hycroft;
- (k) “**Cormark**” means Cormark Securities Inc.;
- (l) “**Corporate Defendants**” means Hycroft and Individual Defendants;
- (m) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (n) “**CSA**” means the Canadian Securities Administrators;
- (o) “**Defendants**” means Hycroft, the Individual Defendants and the Underwriters;
- (p) “**Dundee**” means Dundee Securities Ltd.;
- (q) “**EDGAR**” means the SEC’s Electronic Data Gathering, Analysis, and Retrieval system;
- (r) “**Equivalent Securities Acts**” means, collectively, the *Securities Act*, R.S.A. 2000, c. S-4, as amended; the *Securities Act*, R.S.B.C. 1996, c 418, as amended; *The Securities Act*, C.C.S.M. c. S50, as amended; the *Securities Act*, S.N.B. 2004, c. S-5.5, as amended; the *Securities Act*, R.S.N.L. 1990, c S-13, as amended; the *Securities Act*, S.N.W.T. 2008, c. 10, as amended; the *Securities Act*, R.S.N.S. 1989, c. 418, as amended; the *Securities Act*, S Nu 2008, c. 12, as amended; the

*Securities Act*, R.S.P.E.I. 1988, c S-3.1, as amended; the *Securities Act*, R.S.Q. c V-1.1, as amended; *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2, as amended; and the *Securities Act*, S.Y. 2007, c. 16, as amended;

- (s) “**Excluded Persons**” means Hycroft and the Underwriters’ subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns, and any member of the Individual Defendants’ immediate families and any entity in which any of the foregoing has or had an interest during the distribution period for the Prospectus, or at any time that a document incorporated by reference in the Prospectus was released, and, with respect to the Class definition in paragraph 1(g) means United States citizens or residents who acquired Hycroft’s securities in the SPO in a trade under the U.S. prospectus;
- (t) “**Form 10-K**” means an annual report pursuant to ss. 13 or 15(d) of the *34 Act*;
- (u) “**Form 10-Q**” means a quarterly report pursuant to ss. 13 or 15(d) of the *34 Act*;
- (v) “**g/t**” means grams per tonne;
- (w) “**Hycroft Mine**” means Hycroft’s conventional, open-pit mine located in north-western Nevada, which is the subject of this action;
- (x) “**Hycroft**” means Hycroft Mining Corporation, formerly known as Allied Nevada Gold Corp.;
- (y) “**Individual Defendants**” means Buchan and Caldwell;

- (z) “**Lewis Leach Pad**” means a 12 million square foot leaching facility located at the Hycroft Mine, whereby mined ore, e.g. directly from the mine or crushed, is placed on an impermeable pad and irrigated with a weak alkaline lime cyanide solution via a drip system that dissolves the gold and silver from the ore, which was the only source of gold production for Hycroft;
- (aa) “**MD&A**” means Management’s Discussion and Analysis within the meaning of Item 303 of Regulation S-K and Parts 1 and 4 of *NI 71-102*;
- (bb) “**NI 43-101**” means the CSA’s *National Instrument 43-101 – Standards of Disclosure for Mineral Projects*;
- (cc) “**NI 44-101**” means the CSA’s *National Instrument 44-101 – Short Form Prospectus Distributions*;
- (dd) “**NI 71-102**” means the CSA’s *National Instrument 71-102 – Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
- (ee) “**NYSE MKT**” means the New York Stock Exchange for small cap companies;
- (ff) “**OSA**” means the *Securities Act*, R.S.O. 1990, c. S.5;
- (gg) “**Plaintiff**” means LBP Holdings Ltd.;
- (hh) “**Prospectus**” means Hycroft’s final short form prospectus dated May 9, 2013 filed in Canada, including all related SPO documents and all documents incorporated by reference therein;

- (ii) “**Q1**”, “**Q2**”, “**Q3**”, and “**Q4**” mean, respectively, the three months ended March 31, June 30, September 30 and December 31;
- (jj) “**Regulation S-K**” means the SEC’s Regulation S-K under the *33 Act*;
- (kk) “**SEC**” means the United States Securities and Exchange Commission;
- (ll) “**SEC Foreign Issuer**” means as defined in *NI 71-102* a reporting issuer, other than an investment fund, that is incorporated outside of Canada and that has a class of securities registered under s. 12 of the *34 Act*, or is required to file reports under paragraphs 15(d) of the *34 Act* and is not registered as an investment company under the United States *Investment Company Act of 1940*;
- (mm) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval, which is a filing system developed for the CSA;
- (nn) “**SPO**” means Hycroft’s May 17, 2013 secondary public offering in the form of a bought deal co-lead by the Underwriters;
- (oo) “**Strip Ratio**” means the average number of tonnes of waste rock which must be mined in order to mine one tonne of gold;
- (pp) “**TPD**” means tonnes per day;
- (qq) “**TSX**” means the Toronto Stock Exchange;
- (rr) “**Underwriters**” means Cormark and Dundee; and

- (ss) “**U.S. Prospectus**” means the prospectus dated May 2, 2013 and the prospectus supplement dated May 9, 2013 filed in the United States.

## **RELIEF CLAIMED**

2. The Plaintiff claims on its own behalf and on behalf of the other Class Members:
- (a) an order certifying this action as a class proceeding under the *CPA*, and
    - (i) approving the Class definition;
    - (ii) appointing it as the representative plaintiff for the certified Class;
    - (iii) certifying the statutory primary market cause of action under Part XXIII of the *OSA*, and approving the associated common issues, as against the Corporate Defendants;
    - (iv) certifying the common law cause of action in negligence *simpliciter* negligent misrepresentation, and approving the associated common issues, as against the Underwriters; and
    - (v) specifying the manner in which Class members may opt-out of this class proceeding and the corresponding dead-line to opt-out.
  - (b) A declaration that in the period leading up to the SPO, the Corporate Defendants:
    - (1) made misrepresentations related to the Company’s ability to process and leach ore placed on the Lewis Leach Pad and resulting unreasonable gold production and cash cost guidance projections; and (2) omitted to disclose materially adverse facts about operational problems with the Lewis Leach Pad;

- (c) A declaration that the Corporate Defendants: (1) negligently omitted materially adverse facts from statements in core documents that were incorporated by reference into the Prospectus; and (2) negligently omitted materially adverse facts about operational problems with the Lewis Leach Pad in the Prospectus for the Company's May 17, 2013 SPO;
- (d) A declaration that the Corporate Defendants breached s. 56 of the *OSA* and the comparable provisions in the Equivalent Securities Acts;
- (e) A declaration that the Corporate Defendants breached s. 57 of the *OSA* and the comparable provisions in the Equivalent Securities Acts;
- (f) A declaration that Hycroft is directly or vicariously liable for the acts and omissions of the Individual Defendants;
- (g) Special and general damages in the sum not to exceed the offering price of the SPO or such other sum this Court finds appropriate;
- (h) A declaration that the Underwriters owed a duty of care to the Class to perform their due diligence associated with the underwriting and pricing of the SPO in a reasonably prudent manner;
- (i) A declaration that the Underwriters owed a duty of care to the Class to price the securities offered by the Prospectus in a manner that included all the material facts about the operational problems at the Lewis Leach Pad;

- (j) A declaration that the Underwriters were negligent in performing their due diligence associated with the SPO and, thereby, fell below the applicable standard of care, resulting in the price of the securities offering by the Prospectus being artificially priced higher than they should have been;
- (k) A declaration that the Underwriters owed a duty of care to the Class to release their s. 59 of the *OSA* underwriter certificates annexed to the Prospectus free of misrepresentations;
- (l) A declaration that the Underwriters were negligent in releasing their s. 59 of the *OSA* underwriter certificates containing a misrepresentation and, thereby, fell below the applicable standard of care, resulting in the Class purchasing the over-priced SPO securities and holding all or some of them until after the corrective disclosures;
- (m) Special and general damages in the sum of \$47 million or such other sum as this Court finds appropriate at the trial of the common issues or at a reference or references;
- (n) An order directing a reference or giving such other directions as may be necessary to determine issues not determined in the trial of the common issues;
- (o) Prejudgment and post-judgment interest, compounded, or pursuant to ss. 128 and 129 of the *CJA*;

- (p) Costs of this action on a full indemnity scale, or in an amount that provides substantial indemnity plus, pursuant to s. 26(9) of the *CPA*, the costs of administering the plan of distribution of the recovery in this action; and
- (q) Such further and other relief as this Honourable Court deems just.

### **NATURE OF THE ACTION**

3. This primary market securities action relates to Hycroft and the Individual Defendants releasing documents and making other statements in the period leading up to the SPO, and releasing the Prospectus for the SPO, with misrepresentations of material fact about the Company's business and operations concerning: (1) its ability to process and leach ore placed on the Lewis Leach Pad and resulting unreasonable gold production and cash cost guidance projections; and (2) the retention of a third-party engineering firm to investigate material problems with the Lewis Leach Pad weeks prior to releasing the Prospectus for the SPO.

4. This action also claims damages for the Underwriters' negligence in (a) performing their due diligence associated with and pricing of the SPO, and (2) thereafter releasing a certificate to the Class that the Prospectus contained no misrepresentation when, as the Plaintiff alleges, the Prospectus contained multiple misrepresentations by omitting material facts about the operational problems at the Lewis Leach Pad.

5. As Hycroft was already a public company at the time of the May 17, 2013 SPO, these misrepresentations were priced into the offering price for the SPO, and were otherwise incorporated by reference in the Prospectus for the SPO, to which both the Company and the Underwriters had a statutory obligation under ss. 56 and 59 of the *OSA* to make full, true and

plain disclosure of all material facts in relation to the securities issued or proposed to be distributed.

6. As particularized herein, Hycroft released core and other documents that were incorporated by reference in the Prospectus, and otherwise made statements in the Prospectus, that omitted material facts necessary to render those statements not misleading in light of the circumstances in which they were made. The Plaintiff acquired Hycroft's securities in the SPO pursuant to the Prospectus without knowledge that those statements were misleading or otherwise contained misrepresentations.

7. Prior to the issuance of the Prospectus, the Corporate Defendants recognized or negligently failed to recognize a series of discrepancies between the amounts of gold and silver being recovered from the Lewis Leach Pad and Hycroft's corresponding published gold production guidance numbers. This discrepancy was underscored by known, but undisclosed, operational problems besetting the Lewis Leach Pad, which would materially reduce the gold actually being extracted from the ore placed on the Lewis Leach Pad, while at the same time increasing total cash costs per ounce of gold produced.

8. Hycroft omitted to disclose in its core and other statements released to the public that the problems at the Lewis Leach Pad rose to a level of sufficient materiality to require the retention of a third-party mining consulting and engineering firm to investigate, report, and propose extraordinary drilling of the ore placed on the Lewis Lead Pad, requiring additional regulatory approval from the State of Nevada. These misrepresentations were in turn incorporated by reference in the Prospectus for the May 17, 2013 SPO.

9. The Underwriters either failed to discover these material operational problems at the Lewis Leach Pad during their underwriting process or, learned of these operational problems and chose not to disclose them because such disclosure would impact all or some of the underwriting fees that they were going to earn for their due diligence and distribution of the SPO securities.

10. On July 22, and August 6 and 7, 2013, Hycroft released corrective disclosures about the Lewis Leach Pad's operational problems and reduced its corresponding gold production guidance numbers, while increasing operating cost guidance. The share price collapsed after the release of these corrective disclosures.

11. Prior to the release of the Prospectus, and as a result of the Corporate Defendants' failure to disclose adverse material facts about Hycroft's business and operations concerning the Company's Lewis Leach Pad, corresponding Metallurgical Recovery Rates, and operational problems that were so severe that the Corporate Defendants were forced to engage third-party consulting and engineering firms and seek variances of the Company's mining and environmental permits with the State of Nevada in order to cure the problems with the ore then placed on the Lewis Leach Pad, Hycroft's securities traded at prices and values on the TSX and the NYSE MKT that were artificially inflated.

12. Because the Prospectus' offering price was determined by reference to the closing prices of Hycroft's securities in the secondary market, which were artificially inflated by the omission of adverse material facts, the prices at which the Underwriters distributed the Company's securities in the SPO was also distorted. Had the truth been disclosed, or the Underwriters performed their due diligence reasonably (and discovered the omitted material facts), Hycroft would not have engaged in the SPO at all or would have sold the securities distributed therein for

substantially less. Concurrently, the Underwriters would have earned lower fees because they earned a fixed commission of 5% of the aggregate gross cash proceeds received from the sale of the SPO securities.

#### **THE PLAINTIFF**

13. LBP Holdings Ltd. is a Nova Scotia limited company and maintains its registered office in Halifax. On May 17, 2013, LBP Holdings Ltd. purchased 20,000 shares of Hycroft (then known as Allied Nevada) in the SPO pursuant to the Prospectus at a price of US\$ 10.75 per share, and held all of those shares until after the corrective disclosures described herein.

#### **THE DEFENDANTS**

##### **Hycroft Mining Corporation**

14. At all material times, Hycroft was a gold miner and explorer in the State of Nevada that maintained its headquarters in Reno. Hycroft was incorporated under the name Allied Nevada Gold Corp. in the State of Delaware in September of 2006 and, until May 10, 2007, was a wholly owned subsidiary of Vista Gold Corp., a company incorporated under the laws of the Yukon Territory, Canada.

15. At all material times, Hycroft's securities were publicly traded and were listed on and traded under the ticker symbol "ANV" on the NYSE MKT and the TSX. Hycroft was formerly a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and the Yukon.

16. Hycroft irrevocably and unconditionally submitted to the non-exclusive jurisdiction of this Court by, *inter alia*, becoming a reporting issuer in Ontario, listing its securities on the TSX,

by distributing securities in the SPO, and by appointing Cassels Brock and Blackwell LLP as its agent for the service of process in Ontario.

17. The Ontario Securities Commission is Hycroft's principal securities regulator in Canada. Hycroft is regulated in the United States by, *inter alia*, the SEC. In connection with its continuous disclosure obligations, Hycroft filed documents on EDGAR in the United States and SEDAR in Canada.

18. At all material times, Hycroft was a SEC Foreign Issuer as that term is defined in *NI 71-102*. Pursuant to Part 4 of *NI 71-102*, in order to comply with its continuous disclosure obligations in Canada, the Company was required to comply with, *inter alia*, Regulation S-K under the *33 Act*.

19. Item 303 of Regulation S-K and the SEC's related interpretive releases thereto required Hycroft to disclose known trends, uncertainties or risks that have had, or are reasonably likely to have, a materially adverse impact on net sales or revenues or income from continuing operations. Such disclosure is required by an issuer regulated by the SEC in Form 10-K and 10-Q filings and registration statements filed in connection with public offerings.

20. As Hycroft was already a reporting issuer prior to the SPO, it was permitted to use the short form prospectus distribution process set out in *NI 44-101*, by relying upon, *inter alia*, its contemporaneous continuous public disclosures. Under Part 3 of *NI 44-101* and Item 11 of Form 44-101F1, the Prospectus for those securities distributed in Canada in the SPO was deemed to incorporate by reference several of Hycroft's continuous public disclosure documents, and the Prospectus in fact did so.

21. On March 9, 2015, Hycroft and certain of its direct and indirect subsidiaries and affiliates filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware.

22. Following the approval of its Amended Chapter 11 Joint Plan of Reorganization, dated August 27, 2015, by order of the U.S. Bankruptcy Court for the District of Delaware, dated October 8, 2015, Allied Nevada changed its legal name to Hycroft Mining Corporation by filing a Certificate of Amendment to its First Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware on October 9, 2015.

23. On May 27, 2016, the Ontario Securities Commission and the other securities regulators in each of the jurisdictions in which Hycroft was a reporting issuer granted an application under the *OSA* and the Equivalent Securities Acts that Hycroft cease to be a reporting issuer.

### **The Individuals Defendants**

24. Caldwell was Hycroft's President and Chief Executive Officer until March 26, 2013. On or around April 2, 2013, Caldwell's employment with Hycroft was terminated. Caldwell certified Hycroft's annual and interim filings on Form 10-K and Form 10-Q, authorized the dissemination of the news releases and participated in conference calls with investors as referred to herein. By doing so, he made statements that had the effect of artificially inflating or maintaining the price of Hycroft's securities in the secondary market to which the price of those securities qualified by the Prospectus in the SPO was determined by Hycroft and the Underwriters.

25. Buchan was Hycroft's President and Chief Executive Officer from March 27 to July 7, 2013. He certified Hycroft's interim filings on Form 10-Q, authorized the dissemination of the news releases and participated in conference calls with investors as referred to herein. By doing so, he also made statements that had the effect of artificially inflating or maintaining the price of Hycroft's securities in the secondary market to which the price of those securities qualified by the Prospectus in the SPO was determined by Hycroft and the Underwriters. Buchan also certified that the Prospectus constituted full, true and plain disclosure of all material facts.

### **The Underwriters**

26. Cormark and Dundee acted as co-lead underwriters in connection with Hycroft's May 17, 2013 SPO to which the Prospectus relates. Darren Wallace on behalf of Cormark and Brad Ralph on behalf of Dundee both certified that the Prospectus together with each and every document incorporated by reference therein, constituted full, true and plain disclosure of all material facts relating to the securities offered in connection therewith.

27. Cormark and Hycroft entered into an underwriting agreement for the SPO, which resulted in a special relationship with the members of the Class. Cormark owed a duty of care to the members of the Class to perform its due diligence in a reasonably prudent manner to Hycroft's then known investors that purchased the SPO shares. Cormark allocated 30% of the SPO shares to the Class. It earned an underwriting fee equal to 5% of the aggregate gross cash proceeds received from the sale of the SPO securities as consideration for the services rendered by it in connection with the SPO.

28. Dundee and Hycroft entered into an underwriting agreement for the SPO, which resulted in a special relationship with the members of the Class. Dundee owed a duty of care to the

members of the Class to perform its due diligence in a reasonably prudent manner to Hycroft's then known investors that purchased the SPO shares. Dundee allocated 70% of the SPO shares to the Class. It earned an underwriting fee equal to 5% of the aggregate gross cash proceeds received from the sale of the SPO securities as consideration for the services rendered by it in connection with the SPO.

## **THE HYCROFT MINE**

29. At the time of the SPO, Hycroft's principal operating property was the open pit Hycroft Mine, which was the only significant source of its revenue. Hycroft mines gold and silver from oxide ore at the Hycroft Mine by employing surface mining techniques followed by the standard practice of an open-pit operation with conventional drill and blast, load and haul cycle using a drill/truck/shovel mining fleet.

30. Hycroft's *NI 43-101 Technical Report*, dated March 6, 2013, indicates that the Hycroft Mine is divided into five domains or areas: Bay, Boneyard, Brimstone, Central and Vortex. During the relevant period leading up to the SPO, active mining operations were being conducted by truck and shovel open pit mining methods from the Brimstone, Bay, and Central domains.

31. After ore is extracted, it is crushed, placed on impermeable leach pads and irrigated with a weak alkaline cyanide solution via a drip system that dissolves the gold from the ore in a process known as "heap leaching". The "pregnant" leach solution containing the dissolved precious minerals is then collected and treated using Carbon-in-Column or Merrill-Crowe methods to recover gold and silver. This is followed by onsite smelting to produce unrefined doré bars, which are sold to generate revenues. Hycroft produced silver as a byproduct of its

gold recovery process. Therefore, the efficacy of the Company's heap leach process is critical to its ability to generate revenue (and continue as a going concern).

32. Availability of freshwater and the infrastructure necessary to deliver the alkaline cyanide solution to the Lewis Leach Pad via its drip system in sufficient volumes, while distributing it effectively over and throughout the oxide ore is critical to the heap leach process. However, as particularized below, Hycroft and the Individual Defendants knew or ought to have known that prior to and at the time of the release of the Prospectus, the Lewis Leach Pad was beset with operating deficiencies, inadequate freshwater and the infrastructure necessary to pipe the alkaline cyanide solution via the Company's drip system.

## SUBSTANTIVE ALLEGATIONS

### I. The January 18, 2013 Statements

33. On January 18, 2013, Hycroft announced its 2013 guidance production and sales numbers. Relevant to its guidance, the Company advised the market that annual gold production would be 225,000 to 250,000 ounces with sales of 90,000 to 100,000 ounces during the first six months, with increasing sales in the second half of the year. The Company also announced that it would produce 1.5 million to 1.8 million ounces of silver. Hycroft provided these figures expressly based upon there being no material problems with its leach pads, including the Lewis Leach Pad, the new Merrill-Crowe facility or the operation of additional mobile equipment.

34. On that same day, Hycroft hosted an investor conference call. During that call, equity research analysts questioned Caldwell about why the Company produced less gold than anticipated during Q4 2012. The Company's official response was that it was not primarily weather-related, but rather ore reacting to the leach process and how quickly the Company could see solution breakthrough on the Lewis Leach Pad. Caldwell expressly stated that there was a breakthrough, implying that there were no more operational problems.

35. These statements were misrepresentations because Hycroft did not disclose that during late 2012 it was having operational problems with its Lewis Leach Pad that would result in gold and silver not being released from the ore, or otherwise not produced, as disclosed in the August 6 and 7, 2013 statements, *infra*.

36. These misrepresentations also had the effect of artificially inflating or maintaining Hycroft's share price on the TSX and the NYSE MKT.

## II. The February 25, 2013 Statements

37. On February 25, 2013, Hycroft announced its operational and financial results for the year ending December 31, 2012 and provided year-to-date operational results. The Company disclosed that up to and including February 21, 2013, it had mined and placed on its leach pads 6 million tons of ore containing approximately 67,000 ounces of gold and 513,000 ounces of silver. Hycroft confirmed its first six months and annual guidance production and sales figures that were previously articulated on January 18, 2013.

38. Caldwell further advised that with the completion of the Lewis Leach Pad, Hycroft was able to increase the quantity of tons on the pad by 77% and that since more than 40% of the ounces were placed on the Lewis Leach Pad in Q4 2012, it was well positioned to achieve its 2013 guidance.

39. Hycroft also released its annual 2012 MD&A on Form 10-K, which was signed by the Individual Defendants. Hycroft's 2012 Form 10-K acknowledged that the Company had encountered slower than anticipated leach kinetics times related to ore being placed on its leach pads during Q3 and Q4 2012, resulting in lower gold production numbers. However, the 2012 Form 10-K confirmed Hycroft's first six months and annual guidance production and sales figures. With respect to liquidity, the Company represented that its primary future cash requirements centered on the expansion of the Hycroft Mine. The Company further represented that the Hycroft Mine had sufficient water to support its current heap leach operations.

40. These statements violated Hycroft's disclosure obligations under Regulation S-K (and therefore *NI 71-102*) and were misrepresentations because Hycroft did not disclose that during late 2012 it was having operational problems with its Lewis Leach Pad that had not been

rectified but continued to persist at the time when these statements were made and that would result in gold and silver not being released from the ore, or otherwise not produced, as disclosed in the August 6 and 7, 2013 statements, *infra*.

41. These misrepresentations again also had the effect of artificially inflating or maintaining Hycroft's share price on the TSX and the NYSE MKT.

### **III. The April 8-9, 2013 Statements**

42. On April 8, 2013, Hycroft released a press release reporting its preliminary operational results for Q1 2013. The Company advised that it was on track to meet its previously disclosed six-month production guidance of 90,000 to 100,000 ounces of gold.

43. Following the release of Hycroft's preliminary results for Q1 2013, the Company held a conference call with analysts and investors to discuss its operations. During that call, Hycroft and the Individual Defendants assured investors that there were "no surprises to come" no "smoking guns", that there was nothing wrong with the ore body or business plan, and that the Company had turned the corner and was back on track.

44. These statements violated Hycroft's disclosure obligations under Regulation S-K (and therefore *NI 71-102*) and were misrepresentations because Hycroft did not disclose that during late 2012 it was having operational problems with its Lewis Leach Pad that had not been rectified but continued to persist at the time when these statements were made and that would result in gold and silver not being released from the ore, or otherwise not produced, as disclosed in the August 6 and 7, 2013 statements, *infra*. This statement further omitted that Hycroft had

hired SRK Consulting and other professionals to investigate why the ore placed on the Lewis Leach Pad was not being properly leached.

45. These misrepresentations again also had the effect of artificially inflating or maintaining Hycroft's share price on the TSX and the NYSE MKT.

#### **IV. The April 30, 2013 Statements**

46. On April 30, 2013, Hycroft released a news statement announcing its financial results for Q1 2013 in which it, *inter alia*, repeated its 2013 guidance that it had first issued on January 18, 2013.

47. Concurrently on that same date, the Company announced its plan to conduct the SPO by disclosing that it had entered into an agreement with the Underwriters, the latter of which had agreed to purchase, on a bought deal basis, 14 million shares of the Company's securities at a price of US \$10.75 per share, for aggregate gross proceeds of US \$150.5 million. Hycroft represented that it intended to use the net proceeds of this secondary public offering to "fund capital expenditures at its Hycroft Mine".

48. On April 30, 2013, Hycroft also released its Q1 2013 interim report on Form 10-Q, which was signed by Buchan. In its Q1 2013 Form 10-Q, the Company repeated many of the previous representations made and reaffirmed its 2013 production guidance for 2013. The Company further represented that there had been no material changes in its risk factors during Q1 2013.

49. These statements violated Hycroft's disclosure obligations under Regulation S-K (and therefore *NI 71-102*) and were misrepresentations because Hycroft did not disclose that during late 2012 it was having operational problems with its Lewis Leach Pad that had not been

rectified but continued to persist at the time when these statements were made and that would result in gold and silver not being released from the ore, or otherwise not produced, as disclosed in the August 6 and 7, 2013 statements, *infra*. This statement further omitted that Hycroft had hired SRK Consulting and other professionals to investigate why the ore placed on the Lewis Leach Pad was not being properly leached.

50. The operational problems at the Lewis Leach Pad rose to a level of sufficient materiality to require the retention of third party consulting and engineering firms to investigate, report, and propose substantial remedial measures requiring additional regulatory approval from the State of Nevada.

51. These misrepresentations also had the effect of artificially inflating or maintaining Hycroft's share price on the TSX and the NYSE MKT.

#### **V. The Prospectus for the May 17, 2013 SPO**

52. On May 9, 2013, Hycroft released a Prospectus and published it on SEDAR, raising an aggregate of US \$150.5 million, issuing 140,000,000 shares priced at US \$10.75 per share. According to the Prospectus, this offering price was determined by reference to the closing price of Hycroft's securities on the TSX and the NYSE MKT on April 29, 2013, the last trading day prior to the announcement of the secondary public offering, and May 8, 2013, the last trading day prior to the date of the filing of the Prospectus.

53. Therefore, any previously-released misrepresentations in core other documents had the effect of artificially inflating the price at which Hycroft's securities were priced and distributed in the SPO by Hycroft and the Underwriters.

54. On May 17, 2013, this secondary public offering closed as a bought deal by the Underwriters. This financing was offered in Canada by way of a short form prospectus, which was filed in all provinces of Canada, other than Quebec, pursuant to *NI 44-101*.

55. Dundee was responsible for underwriting and distributing 70% of the SPO. Cormark was responsible for underwriting and distributing 30% of the SPO. The Underwriters received US \$7.525 million in underwriting fees in connection with the SPO.

56. Buchan on behalf of Hycroft, Brad Ralph on behalf of Dundee, and Darren Wallace on behalf of Cormark all certified that the Prospectus, together with the documents incorporated by reference therein, constituted full, true and plain disclosure of all material facts relating to the securities offered or proposed to be distributed in the SPO. This statement was false, and Buchan, Hycroft and the Underwriters were negligent in making it.

57. The Prospectus expressly incorporated several documents by reference, which contained misrepresentations, including, *inter alia*, Hycroft's 2012 Form 10-K and Q1 2013 Form 10-Q, and largely repeated the representations previously made by the Company during the relevant period leading up to the SPO. These core documents, along with the other information released by the Corporate Defendants into the market prior to the release of the final Prospectus, directly influenced the price of the securities being offered by the Prospectus.

58. Specifically, the Prospectus contained, *inter alia*, material misrepresentations: (1) about Hycroft's ability to achieve its 2013 gold production guidance; (2) by omitting to disclose operational difficulties with its Lewis Leach Pad, and the retention of third-party consulting and engineering firms to investigate, report and propose remedial measures; and (3) in the s. 59 of the

OSA underwriter certification forms, which represented that the Prospectus made full, true and plain disclosure when it failed to do so.

59. The Defendants knew or should have known that even under the best possible business and operating conditions (e.g. internal factors that were known or should have been known by the Company, the Individual Defendants, and discovered by the Underwriters through reasonable due diligence), that the Company could not produce the then target of between 225,000 to 250,000 ounces of gold because of the operating problems with the Lewis Leach Pad identified in the corrective disclosures.

60. The Prospectus omitted the material facts about the operational problems at the Lewis Leach Pad, which rose to a level of sufficient materiality to require the retention of a third-party engineering firm to investigate, report, and propose extraordinary drilling of the ore placed on the Lewis Lead Pad, requiring additional regulatory approval from the State of Nevada.

61. The due diligence performed by the Underwriters was below the standard of care that was owed to the members of the Class and, as a direct and foreseeable result, the securities offered by the final Prospectus were over-priced (*supra*, at *para 2(j)*).

62. Had the Underwriters performed adequate due diligence (i.e., reviewed the materials and statements concerning the operational problems at the Lewis Leach Pad, correspondences with the third-party consulting and engineering firms, correspondences with the State of Nevada, etc.) in connection with the SPO, they would have discovered that the Prospectus contained misrepresentations and did not otherwise make full, true and plain disclosure of all material facts.

## **VI. The July 22, 2013 Statements**

63. On July 22, 2013, Hycroft released its preliminary Q2 2013 operating results, reporting that it only produced 39,195 ounces of gold and 132,841 ounces of silver as opposed to the anticipated statistics it repeatedly confirmed in its prior statements, including in the Prospectus.

64. Hycroft admitted to investors that in the “last five months” senior management uncovered “a number of previous operating errors that have set the mine back in achieving targets” resulting in reduced production and sales guidance.

65. For the first time, Hycroft disclosed that ore placed on the Lewis Leach Pad in late 2012 and early 2013 had not been properly leached because of “insufficient solution application”.

66. Hycroft reduced annual production and sales guidance to 175,000 to 200,000 ounces of gold and 0.9 to 1.1 million ounces of silver down from 225,000 to 250,000 ounces of gold and 1.5 million to 1.8 million ounces of silver.

67. These material facts concerning the “operating errors” with the Lewis Leach Pad should have been known and disclosed by all the Defendants prior to the release of and disclosed in the Prospectus, which also incorporated by reference the Company’s MD&As dated February 25 and April 30, 2013 on the Company’s annual report on Form 10-K and Q1 2013 interim report on Form 10-Q respectively.

68. By failing to do so, the Company violated its disclosure obligations under Regulation S-K and *NI 71-102*, and failed to make full, true and plain disclosure of all material facts in the Prospectus. The Underwriters also breached s. 59 of the *OSA*.

## **VII. The August 6 and 7, 2013 Statements**

69. On August 6, 2013, after the TSX closed and on August 7, 2013, Hycroft released its Q2 2013 financial and operating results for the six months ending June 30, 2013.

70. Now, and correcting prior statements and providing materially more detail than the July 22 statement, Hycroft disclosed that: (a) it was deferring the construction of the mill at the Hycroft Mine until a revised economic feasibility study was completed and supported by an updated *NI 43-101* technical report, evaluating the most economic method of processing the sulfide ore (none leachable) within the Hycroft Mine; (b) production and sales did not meet guidance because the gold and silver that was placed on the Lewis Leach Pad during late 2012 and early 2013 had not been properly leached due to insufficient solution application; and (c) annual cash costs were increasing from \$665 to \$685 per ounce to \$800 to \$825 per ounce (with silver as a byproduct credit).

71. Hycroft also published an MD&A for Q2 2013 on Form 10-Q, and acknowledged that: (a) the Company had increased ore production but in late 2012 and early 2013 did not increase the quantity of solution application resulting in certain ore not being leached or insufficiently leached; (b) it had lower silver recoveries from the carbon columns used to extract the silver from the post-leach ore solutions; and (c) the Company decided to defer its earlier plans to construct a mill to treat the sulfide mineralization, thereby, maintaining its heap leach operations, solely, which were projected to produce 225,000 ounces of gold per year to 2020 and reducing after that time.

72. On August 6, Hycroft hosted a conference call with investors. During the call, statements were made acknowledging that:

- (a) the Company discovered operational problems with the Lewis Leach Pad, e.g., improper design of the drip mechanisms and irrigation tubing for leaching of the ore placed on the Lewis Leach Pad during late 2012 and early 2013 but not being leached because of a lack of fresh water, during late May and early June;
- (b) there were operational problems with the Lewis Leach Pad, which the Company should have known, when it reiterated gold production guidance in May but did not disclose;
- (c) the tubing used to apply the leach solution was not the appropriate size and that the process infrastructure was inadequate, with the result that Hycroft would be required to replace all of the irrigation infrastructure in order to ensure that its leach pads were operating according to plans;
- (d) the Company expected to double its available fresh water, which would require further permits to increase the flows to its leach pads; and
- (e) because the Company could not leach enough ore in order to generate adequate cash flows from its operations, the construction of the Hycroft Mill (the principal reason for raising funds in the SPO) had to be deferred.

73. Because the August 6 and 7, 2013 disclosures contradicted Hycroft's prior statements released prior to and within the Prospectus and provided to investors about its business and operations, including the operations of the Lewis Leach Pad and Metallurgical Recovery Rates, all of which had the effect of inflating the price at which Hycroft's securities were distributed in

the SPO, the perceived investment value of Hycroft was reduced and the market reacted by selling-off Hycroft's securities to new lows.

74. On August 7, 2013, within two days of trading on the TSX after these corrective disclosures, the price of Hycroft's shares plummeted and closed at \$3.85 from a closing price of \$6.09 on August 2, 2013 on trading volume of 0.97 million shares on August 6 and 3.4 million shares on August 7, 2013, a decline of close to 37%.

#### **NO STATUTORY DEFENCE FOR FORWARD LOOKING INFORMATION**

75. To the extent that any of the disclosure documents or public statements addressed in this Second Fresh as Amended Statement of Claim, including the Prospectus, contained forward-looking information, same constituted misrepresentations because the Corporate Defendants had no reasonable basis for the underlying assumptions on which this forward-looking information was based for the reasons particularized above, especially given Hycroft's knowledge that it could not meet its gold production guidance when its Lewis Leach Pad was not performing (e.g. Metallurgical Recovery Rate) for several months and, specifically, immediately prior to when the Prospectus was released.

76. Further or in the alternative, to the extent that the statutory defences of sections 132.1 and 134(1) do apply to any forward-looking statements pleaded herein, the Corporate Defendants are liable for those forward looking statements containing the alleged misrepresentations because at the time each of those forward-looking statements was made, the Defendants knew or should have known that the particular forward-looking statements were misrepresentations for the reasons alleged herein.

77. The Underwriters cannot invoke any due diligence defense because the omitted material facts would have been discovered with *de minimis* due diligence prior to the release of the final Prospectus.

78. Alternatively, if the Underwriters did learn of the impugned omitted material facts, they negligently failed to engage in reasonable due diligence to insist these material facts be disclosed by the Corporate Defendants in the Prospectus.

**THE RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE AND VALUE OF HYCROFT'S SECURITIES**

79. The price and value of Hycroft's securities were directly affected each time the Defendants communicated new material changes and material facts about Hycroft's business and operations, including the performance of the Lewis Leach Pad, Metallurgical Recovery Rate, and gold production numbers.

80. The Defendants were aware at all material times of the effect of Hycroft's disclosures about its business and operations, including the quantity of the mineralized ore, mining and milling results, and the efficiency of its processing plant, on the price of the Company's publicly traded securities.

81. The Corporate Defendants intended that the Class Members would rely upon the disclosures, which they did to their detriment by purchasing the Company's securities offered by the Prospectus during the period of distribution or during the distribution to the public.

82. The disclosure documents referred to herein were filed with SEDAR and thereby became immediately available to and were reproduced for inspection for the benefit of the Plaintiff and

the other Class Members, the public, financial analysts and the financial press through the Internet and financial publications.

83. Hycroft routinely transmitted the documents referred to herein to the financial press, financial analysts and certain prospective and existing shareholders of the Company.

84. Hycroft regularly communicated with public investors and financial analysts via established market communication mechanisms, including through regular dissemination of news releases on newswire services and through teleconferences with investors and analysts.

85. Hycroft was the subject of analysts' reports, including those authored by the Underwriters, that incorporated the information in the disclosure documents referred to herein, with the effect that any recommendation in such reports were based, in whole or in part, upon the news releases, interim and annual filings, and statements made during the investor conference calls, which contained misrepresentations.

86. At all material times, Hycroft's securities were traded on the TSX and NYSE MKT, which are highly efficient and automated markets. The price at which Hycroft's securities traded on the TSX and NYSE MKT incorporated material facts and statements about the Hycroft Mine.

87. The misrepresentations released prior to the release of the preliminary and final Prospectuses had the effect of artificially inflating the price at which Hycroft's securities were priced and distributed in the SPO by Hycroft and the Underwriters.

## **THE VICARIOUS LIABILITY OF HYCROFT FOR THE INDIVIDUAL DEFENDANTS**

88. The acts particularized and alleged in this Claim to have been done by Hycroft were authorized, ordered and done by Caldwell and Buchan as well as other officers, agents, employees and representatives who were engaged in the management, direction, control and transaction of Hycroft's business and operations and are, therefore, acts and omissions for which Hycroft is vicariously liable.

### **CAUSE OF ACTION NO. 1**

#### **PART XXIII OF THE *OSA* AGAINST THE CORPORATE DEFENDANTS**

89. On May 9, 2013, Hycroft released a Prospectus and published it on SEDAR, raising an aggregate of \$150.5 million, issuing 14,000,000 shares priced at US \$10.75. On May 17, 2013, this SPO closed as a bought deal co-lead by the Underwriters.

90. As particularized above, the Prospectus contained misrepresentations and incorporated other core documents that contained misrepresentations. Moreover, the Corporate Defendants had a statutory duty under Part XV of the *OSA* and the Equivalent Securities Acts to ensure that the Prospectus provided full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed in the SPO to which it related.

91. The Corporate Defendants breached this duty because the Prospectus contained misrepresentations and incorporated documents which contained misrepresentations of material fact related to Hycroft's business and operations concerning its Lewis Leach Pad and corresponding ability to achieve its gold production and sales numbers..

92. A direct and foreseeable result of the Corporate Defendants' negligence was that the price and value of Hycroft's securities was distorted. Had the Corporate Defendants fulfilled their duty of care, Hycroft's securities offered by the Prospectus would not have been offered or would have been offered at a reduced price to reflect the true value of Hycroft's assets, business, and operations.

93. The Plaintiff asserts Part XXIII claims in its personal and representative capacity against Hycroft and the Individual Defendants.

94. Pursuant to Part XXIII of the *OSA*, the Corporate Defendants are liable to pay damages to the Plaintiff and the members of the Class.

95. The prima facie measure of damages is the differential between the price paid and the post-misrepresentation price.

96. The Plaintiff and the members of the Class are also entitled to recover interest and costs.

**CAUSE OF ACTION NO. 2  
NEGLIGENCE SIMPLICITER AGAINST THE UNDERWRITERS**

97. The Underwriters and Hycroft entered into an underwriting agreement for the SPO, which resulted in a special relationship with the members of the Class.

98. The Underwriters owed a duty of care to the members of the Class to ensure that the securities offered by the Prospectus were priced in a manner that incorporated all material facts about Hycroft and its Lewis Leach Pad.

99. On April 30, 2013, Hycroft released a statement that it was raising USD \$150 million in a bought deal by offering 14 million shares at USD \$10.75 per share. At this time, the

Underwriters had not entered into the underwriter agreement with Hycroft or conducted any non-public due diligence.

100. On May 2, 2013, Hycroft entered into the underwriting agreement with the Underwriters and released the preliminary Prospectus, stating that it was raising USD \$150 million in a bought deal by offering 14 million shares at USD \$10.75 per share.

101. The underwriting agreement expressly granted the Underwriters full access to senior level employees and consultants in order to perform their due diligence to reach a final offering price.

102. On May 9, 2013, Hycroft released the final Prospectus stating that it was raising USD \$150 million in a bought deal by offering 14 million shares at USD \$10.75 per share. It disclosed that the offering price of the securities being offered by the Prospectus was determined by negotiation between Hycroft and the Underwriters.

103. The Underwriters became aware of the identities of each member of the Class prior to the distribution of the securities being offered by the final Prospectus.

104. Had the Underwriters not breached their duty of care in conducting their due diligence and pricing the securities offered by the Prospectus, the Plaintiff and the members of the Class would either: (a) not have purchased Hycroft's securities in the SPO at all; or, in the alternative, (b) they would have purchased those securities at a lower price; or, in the further alternative, (c) they would have purchased fewer securities offered in the SPO.

105. After the release of the corrective disclosures addressed herein, the price and value of Hycroft's securities materially dropped in value, resulting in damages to the Plaintiff and the members of the Class.

106. As a direct and proximate cause of the Underwriters' negligence in pricing the securities being offered by the Prospectus, the Plaintiff and the members of the Class suffered damages.

107. At common law, the Underwriters are liable to pay damages to the Plaintiff and the members of the Class.

**CAUSE OF ACTION NO. 3  
NEGLIGENT MISREPRESENTATION AGAINST THE UNDERWRITERS**

108. The Underwriters and Hycroft entered into an underwriting agreement for the SPO, which resulted in a special relationship with the members of the Class.

109. The Underwriters owed a duty of care to the members of the Class to ensure that the Prospectus was free of misrepresentations, and to perform its due diligence in a reasonably prudent manner.

110. On May 9, 2013, the Underwriters executed a section 59 of the *OSA* underwriter certification for Hycroft's final Prospectus, representing that the Prospectus made full, true and plain disclosure, which was annexed to the final Prospectus.

111. The Underwriters knew that their section 59 of the *OSA* underwriter certification would be released by Hycroft and relied upon by the members of the Class as reflective of a certificate of approval from prominent and respected Canadian investment banks.

112. The Underwriters became aware of the identification of each member of the Class prior to the distribution of the securities being offered by the final Prospectus.

113. The Underwriters knew that the members of the Class would rely upon the final Prospectus, including all its disclosures of material fact, in making a decision to purchase securities being offered by the final Prospectus.

114. The Plaintiff and the Class did rely upon the misrepresentations in the Prospectus to their detriment by purchasing Hycroft's securities in the SPO at USD \$10.75 per share.

115. The Underwriters breached their duty of care to the members of the Class in that their section 59 of the *OSA* underwriter certification included a misrepresentation because the final Prospectus omitted the material facts about the operational problems at the Lewis Leach Pad and the resulting unreasonableness of Hycroft's then *pro forma* gold production numbers, revenues, and cash costs.

116. Had the Underwriters not released the misrepresentation, i.e., the section 59 certificate, in the Prospectus, the Plaintiff and the members of the Class would either (a) not have purchased Hycroft's securities in the SPO at all, or, in the alternative, (b) they would have purchased those securities at a lower price, or (c) they would have purchased fewer securities offered from the SPO.

117. After the release of these corrective disclosures, the price and value of Hycroft's securities to materially drop in value resulting in damages to the Plaintiff and the members of the Class.

118. As a direct and proximate cause of the Underwriters' negligent misrepresentations the Plaintiff and the members of the Class suffered damages.

119. Pursuant to common law, the Underwriters are liable to pay damages to the Plaintiff and the members of the Class.

#### **RELEVANT LEGISLATION**

120. The Plaintiff pleads and relies upon the *33 Act*, the *34 Act*, the *CJA*, the *CPA*, *NI 43-101*, *NI 44-101*, *NI 71-102*, the *OSA*, the Equivalent Securities Acts, and Regulation S-K.

#### **PLACE OF TRIAL**

121. The Plaintiff proposes that the certified common issues be tried in the City of Toronto.

August 10, 2017

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Plaintiff

and

**ALLIED NEVADA GOLD CORP., et al**  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
Proceeding Commenced at **Toronto**

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM**  
**(NOTICE OF ACTION ISSUED JULY 16, 2014)**  
**(STATEMENT OF CLAIM FILED AUGUST 14, 2014)**  
**(AMENDED NOTICE OF ACTION ISSUED MARCH 5, 2015)**  
**(AMENDED STATEMENT OF CLAIM FILED MARCH 5, 2015)**  
**(FRESH AS AMENDED STATEMENT OF CLAIM FILED MARCH 15, 2017)**

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