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Toronto

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

(Court Seal)

SYED S.A. PIRZADA

Plaintiff

and

NORTHERN DYNASTY MINERALS LTD., RONALD WILLIAM THIESSEN,  
MARK PETERS, CHRISTIAN MILAU, DAVID LIANG, CANTOR  
FITZGERALD CANADA CORPORATION, BMO NESBITT BURNS INC.,  
CANACCORD GENUITY CORP., PARADIGM CAPITAL INC., TD  
SECURITIES INC., and VELOCITY TRADE CAPITAL

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Superior Court of Justice  
330 University Avenue,  
Toronto ON M5G 1R7

TO: NORTHERN DYNASTY MINERALS LTD.  
1040 W Georgia St., 15<sup>th</sup> Floor  
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AND TO: RONALD WILLIAM THIESSEN  
1040 W Georgia St., 15<sup>th</sup> Floor  
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AND TO: MARK PETERS  
1040 W Georgia St., 15<sup>th</sup> Floor  
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AND TO: CHRISTIAN MILAU  
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AND TO: DAVID LIANG  
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AND TO: CANTOR FITZGERALD CANADA CORPORATION  
181 University Avenue, Suite 1500  
Toronto, ON M5H 3M7

AND TO: BMO NESBITT BURNS INC.  
1 First Canadian Place  
Toronto, ON M5X 1H3

AND TO: CANACCORD GENUITY CORP.  
161 Bay Street, Suite 3100  
Toronto, ON M5J 2S1

AND TO: PARADIGM CAPITAL INC.  
95 Wellington Street West, Suite 2101,  
Toronto, ON M5J 2N7

AND TO: TD SECURITIES INC.  
TD Bank Tower  
66 Wellington Street West  
Toronto, ON M5K 1A2

AND TO: VELOCITY TRADE CAPITAL  
100 Yonge Street, Suite 1800  
Toronto, ON M5C 2W1

## (1) DEFINITIONS

1. In this Statement of Claim, the following definitions apply in addition to other terms defined elsewhere herein:

- (a) “**BCA**” means the *Business Corporations Act*, SBC 2002, c 57, as amended;
- (b) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
- (c) “**Class Period**” means the period from and including June 25, 2020 to and including November 25, 2020;
- (d) “**Class**” and “**Class Members**” mean all persons and entities, wherever they may reside or be domiciled, who acquired **Northern Dynasty** securities during the **Class Period**, other than the **Excluded Persons**;
- (e) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (f) “**CSA**” means the Canadian Securities Administrators;
- (g) “**Defendants**” means, collectively, Northern Dynasty and the Individual Defendants;
- (h) “**Excluded Persons**” means: (i) the **Defendants**; (ii) **Northern Dynasty**’s and each of the Underwriter’s past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; and (iii) any member of an Individual Defendant’s respective family;

(i) **“Impugned Documents”** means the Impugned Core Documents and the Impugned Non-Core Documents;

(j) **“Impugned Core Documents”** means:

- i. the Short Form Base Shelf Prospectus of Northern Dynasty filed on SEDAR on July 2, 2020;
- ii. the Prospectus Supplement to the Short Form Base Shelf Prospectus of Northern Dynasty filed on SEDAR on July 10, 2020; and
- iii. the Q2/2020 Interim MD&A of Northern Dynasty filed with SEDAR on August 13, 2020; and
- iv. the Q3/2020 Interim MD&A of Northern Dynasty filed with SEDAR on November 16, 2020;

(k) **“Impugned Non-Core Documents”** means:

- i. Northern Dynasty’s news release dated June 25, 2020 titled “Northern Dynasty: Pebble Partnership takes next steps for sharing low-cost energy with Bristol Bay residents”;
- ii. Northern Dynasty’s news release dated July 6, 2020 titled “Northern Dynasty: Pebble Partnership announces transportation and port operations partnership with consortium of Alaska Native village corporations”;

- iii. Northern Dynasty’s news release dated July 15, 2020 titled “Northern Dynasty: Pebble Partnership comments on pending release of Final EIS for Alaska's Pebble Project”;
  - iv. Northern Dynasty’s news release dated July 21, 2020 titled “Northern Dynasty: Alaska’s Pebble Project has potential to become one of America’s leading metals producers”;
  - v. Northern Dynasty’s news release dated July 24, 2020 titled “Northern Dynasty receives Final Environmental Impact Statement (EIS) for Alaska’s Pebble Project”;
  - vi. Northern Dynasty’s news release dated July 29, 2020 titled “Northern Dynasty confirms Final Environmental Impact Statement for Alaska’s Pebble Project describes a modern, environmentally sound mine that can co-exist with clean water and healthy fisheries”; and
  - vii. Northern Dynasty’s news release dated August 28, 2020 titled “Northern Dynasty: USACE Alaska District Letter is Guiding Policy for Pebble – Seeks Mitigation Plan for ROD”;
- (l) “**Individual Defendants**” means collectively, Thiessen, Peters, Milau and Liang;
- (m) “**Liang**” means the defendant, David Liang;

- (n) “**MD&A**” and “**MD&As**” means **Northern Dynasty**’s management’s discussion and analysis documents dated June 30, 2020 and September 30, 2020, including all accompanying disclosure documents;
- (o) “**Milau**” means the defendant, Christina Milau
- (p) “**Northern Dynasty**” means the defendant, Northern Dynasty Minerals Ltd.;
- (q) “**November 25 News Release**” means the news release issued by **Northern Dynasty** on November 25, 2020 titled “Northern Dynasty reacts to negative federal Record of Decision on Alaska’s Pebble Project”;
- (r) “**NP 51-201**” means the CSA’s National Policy 51-201 - Disclosure Standards;
- (s) “**NYSE**” means the New York Stock Exchange;
- (t) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (u) “**Other Canadian Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; The *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; *The Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

- (v) “**Pebble**” means Pebble Limited Partnership, a US-based wholly owned subsidiary of **Northern Dynasty**;
- (w) “**Peters**” means the defendant, Mark Peters;
- (x) “**Plaintiff**” means the plaintiff, Syed S.A. Pirzada;
- (y) “**Prospectus Disclosure**” means, collectively:
  - i. the Short Form Base Shelf Prospectus of Northern Dynasty filed on SEDAR on July 2, 2020; and
  - ii. the Prospectus Supplement to the Short Form Base Shelf Prospectus of Northern Dynasty filed on SEDAR on July 10, 2020;
- (z) “**SEDAR**” means the system for electronic document analysis and retrieval of the **CSA**;
- (aa) “**Thiessen**” means the defendant, Ronald William Thiessen;
- (bb) “**TSX Company Manual**” means the Toronto Stock Exchange Company Manual, as amended;
- (cc) “**TSX**” means the Toronto Stock Exchange;
- (dd) “**Underwriters**” means, collectively, the Defendants, Cantor Fitzgerald Canada Corporation, BMO Nesbitt Burns Inc., Canaccord Genuity Corp., Paradigm Capital Inc., TD Securities Inc., and Velocity Trade Capital; and
- (ee) “**USACE**” means the U.S. Army Corps of Engineers.



2. Unless the context indicates otherwise, a reference herein to “Northern Dynasty” includes Northern Dynasty’s subsidiaries, including, but not limited to, Pebble.

**(2) CLAIM**

3. The Plaintiff claims on his behalf and on behalf of all Class Members:

(a) an order granting leave to pursue the right of action for misrepresentation in secondary market disclosure set out in section 138.3(1) of the OSA and, if necessary, in the equivalent sections of the Other Canadian Securities Legislation;

(b) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff for the Class;

(c) a declaration that the Impugned Documents contained one or more of the misrepresentations alleged herein, and that, when made, those misrepresentations constituted misrepresentations at law and within the meaning of the OSA and Other Canadian Securities Legislation;

(d) a declaration that Northern Dynasty failed to make timely disclosure of material changes to its business, contrary to the provisions of the OSA and Other Canadian Securities Legislation;

(e) on behalf of the Secondary Market Purchasers, damages as determined by the Court at common law and/or pursuant to section 138.5 of the OSA;

(f) on behalf of the Prospectus Purchasers, damages as determined by the Court at common law and/or pursuant to section 130 of the OSA;

(g) on behalf of the Private Purchasers, damages as determined by the Court at common law;

(h) a declaration that during the Class Period the Defendants made the misrepresentations and they did so negligently and that the Class was damaged, with damages as determined by Court;

(i) a declaration, pursuant to section 227 of the BCA, that:

- i. the acts and/or omissions of Northern Dynasty, and/or its affiliates, and/or the Individual Defendants have effected a result;
- ii. the business and affairs of Northern Dynasty and/or its affiliates have been carried on or conducted in a manner; and/or
- iii. the powers of the directors of Northern Dynasty and/or its affiliates have been exercised in a manner,

that is or has been oppressive or unfairly prejudicial to, or that unfairly disregards or disregarded, the interests of the Plaintiff and the Class Members;

(j) an order, pursuant to section 227 of the BCA, compensating the Plaintiff and the Class Members for their losses caused by the oppressive conduct of the Defendants as determined by the Court;

(k) a declaration that Northern Dynasty is vicariously liable for the acts and/or omissions of the Individual Defendants and, as may be applicable, of its other officers, directors, employees or agents;

- (l) an order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;
- (m) pre-judgment and post-judgment interest pursuant to the CJA;
- (n) costs of this action, plus, pursuant to s. 26(9) of the CPA, the costs of notices and of administering the plan of distribution of the recovery in this action; and
- (o) such further and other relief as this Honourable Court deems just.

### (3) OVERVIEW

4. Northern Dynasty is a publicly traded corporation in British Columbia. Its principal business activity is the development of a copper-gold-molybdenum porphyry deposit in southwest Alaska. In order to develop the mine, Northern Dynasty requires both federal and state permits from various government agencies.

5. Since December, 2017, Northern Dynasty has been working through the permitting process with the United States Army Corps of Engineers (“USACE”) to obtain a permit pursuant to Section 404 of the U.S. *Clean Water Act*.

6. That permitting process culminates by the issuance of a Record of Decision (“ROD”) by the USACE, whereby the USACE either grants or denies the federal permits. The USACE decision is guided by the years-long consultation process which results in the issuance of a Final Environmental Impact Statement (“FEIS”) by the USACE.

7. The FEIS was released by the USACE on July 24, 2020. Shortly before its release and for months following, Northern Dynasty put out multiple press releases and other disclosure

documents representing to the public that its permit application was proceeding on track and a positive ROD from the USACE was forthcoming.

8. These disclosure documents were materially misleading as to the risks of the permitting process and they contained numerous misrepresentations. More specifically, Northern Dynasty omitted from its public disclosures that in meetings in late-June with the USACE, the USACE informed Northern Dynasty that the project as proposed would lead to significant degradation on the area and that new compensatory mitigation requirements were needed. The USACE advised Northern Dynasty that unless there were sufficient mitigation plans, the project would not be permitted. As a result of these meetings, Northern Dynasty was aware at all material times that it faced significant (and likely unobtainable) hurdles in order to obtain a positive ROD.

9. In late-August, when news began leaking out of the new, mitigation requirements imposed on Northern Dynasty and that the project was heading for a negative ROD, Northern Dynasty doubled down and reassured the market that its mitigation plan efforts were going as planned and that the project was in a strong position to receive a positive ROD.

10. At no point did Northern Dynasty disclose the material risks that it faced to receive a positive ROD. Ultimately, on November 25, 2020, the USACE denied Northern Dynasty's permit application and issued a negative ROD. Northern Dynasty's stock price immediately plummeted by over 50%.

11. In this proposed class action, the Plaintiff sues on behalf of a class of Northern Dynasty shareholders for:

- (a) damages arising out of misrepresentations made in Northern Dynasty's required continuous disclosure documents, public oral statements, and the Prospectus Disclosure during the Class Period, pursuant to OSA Part XXIII.1, section 138.3, and OSA Part XXIII, section 130;
- (b) relief from oppression pursuant to the BCA; and
- (c) damages for common law negligent misrepresentation.

12. The Plaintiff and proposed Class Members were entitled to full, true and plain disclosure about the business and affairs of Northern Dynasty from the Defendants. They did not get it, and were damaged thereby.

#### **(4) PARTIES**

13. The Plaintiff is an individual living in Mississauga, Ontario. He bought common shares of Northern Dynasty during the Class Period and held those shares when Northern Dynasty issued the November 25 News Release, at which point he sold the shares at a significant loss.

14. Northern Dynasty is a company incorporated under the BCA. Northern Dynasty engages in the exploration of mineral properties in the United States. Its principal mineral property is the Pebble copper-gold-molybdenum project comprising 2,402 mineral claims that covers an area of approximately 417 square miles located in southwest Alaska.

15. At all materials times, Northern Dynasty was a reporting issuer in Ontario and all other Canadian provinces and territories. It was also a registrant with the US Securities and Exchange Commission. Northern Dynasty's securities are listed for trading on the TSX (NDM) and the NYSE (NAK).

16. Thiessen served as Northern Dynasty's Chief Executive Officer, President, and Director throughout the Class Period. He signed certificates delivered with the MD&As as well as the Prospectus Disclosure.
17. Peters served as the Chief Financial Officer of Northern Dynasty throughout the Class Period. He signed certificates delivered with the MD&As as well as the Prospectus Disclosure.
18. Milau served as a Director of Northern Dynasty throughout the Class Period. He signed the Prospectus Disclosure.
19. Liang served as a Director of Northern Dynasty throughout the Class Period. He signed the Prospectus Disclosure.
20. Each of the Underwriters is a financial institution whose business activities included acting as underwriters in prospective share offerings. Pursuant to an Underwriting Agreement with Northern Dynasty dated July 10, 2020, the Underwriters agreed to purchase from Northern Dynasty in the respective percentages set out below, an aggregate of 21,000,000 common shares of Northern Dynasty on an underwritten basis at a price of \$1.46 per share for an aggregate purchase price of \$30,660,000.

Cantor Fitzgerald Canada Corporation	60.0%
BMO Nesbitt Burns Inc.	15.0%
Canaccord Genuity Corp.	5.0%
H.C. Wainwright & Co., LLC	5.0%
Paradigm Capital Inc.	5.0%
TD Securities Inc.	5.0%
Roth Capital Partners, LLC	2.5%
Velocity Trade Capital	2.5%

## **(5) DEFENDANTS' DISCLOSURE OBLIGATIONS**

### **A. Northern Dynasty**

21. At all material times, Northern Dynasty was, by its own election, a reporting issuer in all Canadian provinces and territories. It elected to become a reporting issuer in order to render its securities publicly tradable. Doing so made them a more attractive investment and provided Northern Dynasty with broader access to capital.

22. Northern Dynasty was required to fulfil disclosure requirements on a continuing basis to maintain its status as a reporting issuer, including news releases when material changes occurred. In fulfilling the requirements, it was prohibited from: (i) omitting to state a material fact that is required to be stated or that is necessary to make a statement not misleading in the light of the circumstances in which it was made; and (ii) from making a statement that it knew or reasonably ought to have known:

(a) in a material respect and at the time and in the light of the circumstances under which it was made, was misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading; and

(b) would reasonably be expected to have a significant effect on the market price or value of its securities.

23. Under the TSX Company Manual, Northern Dynasty was obliged to disclose material information concerning its business and affairs forthwith upon the information becoming known to management, or in the case of information previously known, forthwith upon it becoming apparent that the information was material.

24. A material fact under the OSA means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities. A material change under the OSA is a change in the business, operations, or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of the securities of the issuer.

25. With respect to developments, such as its ability to obtain permitting for the Pebble Project, Northern Dynasty was obliged to explain the particular impact on it, if it would have a direct material effect on its business and affairs.

26. The Plaintiff pleads and relies on:

- (a) the OSA, in particular section 126.2, and the concordant provisions of the Other Canadian Securities Legislation;
- (b) NP 51-201, in particular sections 4.4 and 4.5; and
- (c) the TSX Company Manual, in particular sections 406 to 410.

## **B. The Individual Defendants**

27. The Individual Defendants knew, from the time that they accepted positions with Northern Dynasty, that Northern Dynasty was a reporting issuer and that in their roles as a director and officers of Northern Dynasty, they would have direct responsibility for ensuring the accuracy of Northern Dynasty's disclosure documents.

28. The OSA, the Other Canadian Securities Legislation and certain instruments and policies promulgated thereunder imposed specific obligations on Individual Defendants in the preparation of its disclosure documents.



29. The Individual Defendants were required to review and approve the contents of Northern Dynasty's disclosure documents released during the Class Period.

30. Furthermore, the Individual Defendants were required to review, approve and certify the accuracy of the Impugned Core Documents.

31. The prohibition and the obligations referred to in paragraphs 22 to 25, above, also applied to Individual Defendants.

### **C. The Underwriters**

32. Each of the Underwriters is an "underwriter" within the meaning of the OSA and the Other Canadian Securities Legislation.

33. Pursuant OSA, the Other Canadian Securities Legislation and certain instruments and policies promulgated thereunder, each Underwriter was required to sign a Certificate of the Underwriters included in the Prospectus Disclosure, certifying that the Prospectus Disclosure, and documents incorporated by reference, constituted full, true and plain disclosure of all material facts relating to the securities offered by the Prospectus Disclosure.

34. As such, the Underwriters were required to review, approve and certify the accuracy of Northern Dynasty's Prospectus Disclosure.

35. The prohibition and the obligations referred to in paragraphs 22 to 25, above, also applied to the Underwriters with respect to the Prospectus Disclosure.

36. In sum, pursuant to the obligations set out above, the Defendants undertook not to omit to disclose material information communicated to them by USACE to the Class Members in a manner

that contained all material information and was free of misrepresentations, with the intention, knowledge and understanding that the Class Members would consider and rely upon the Impugned Documents in making a decision to invest in Northern Dynasty's shares. By virtue of the existence of these obligations, the Class Members reasonably relied on the Defendants' undertaking of responsibility with respect to the Impugned Documents.

#### (6) NORTHERN DYNASTY'S PERMIT APPLICATION

37. In December 2017, Northern Dynasty filed a permit application pursuant to Section 404 of the U.S. *Clean Water Act* to the USACE for the purpose of developing a copper-gold-molybdenum porphyry deposit. Northern Dynasty's proposed mine location was in southwest Alaska, approximately 200 miles southwest of Anchorage and 60 miles west of Cook Inlet (the "**Pebble Project**").

38. The USACE, as the lead federal agency under the *National Environmental Policy Act*, determined that preparation of an Environmental Impact Statement ("**EIS**") was necessary to inform the permit decisions on the project.

39. The USACE developed a Draft Environmental Impact Statement ("**DEIS**") which was released for public comment in March 2019. The USACE also published a public notice soliciting comment on the permit application at that time. The public comment period for both the DEIS and the USACE public notice was from March 1, 2019 to July 1, 2019.

40. In December 2019 and again in June 2020, Northern Dynasty prepared updated permit applications with revisions and refinements to the Pebble Project design and footprint based on

comments received during the DEIS review period and its own purported efforts to further minimize proposed impacts.

41. The USACE prepared a preliminary final EIS in February 2020 and worked with cooperating agencies to produce the final EIS (“**FEIS**”), which was set to be released later that summer.

42. The FEIS was to be used by the USACE to issue a Record of Decision (“**ROD**”), which would be the permit decision of the USACE for Northern Dynasty’s federal permit application.

**(7) USACE ADVISES NORTHERN DYNASTY OF SIGNIFICANT DEGRADATION ISSUES WITH THE PEBBLE PROJECT**

43. In meetings on June 25 and 30, 2020, the USACE advised Northern Dynasty that the Pebble Project as proposed would lead to “significant degradation” of the Koptuli watershed in the surrounding area based on direct and indirect impacts, which in turn required new compensatory mitigation requirements from the Defendants to be able to obtain regulatory authorization to go ahead with the Pebble Project. The USACE explained that the Pebble Project would not receive a favourable decision to move ahead without clearing this hurdle. More specifically, the USACE advised Northern Dynasty at those meetings that the Pebble Project, as submitted:

- (a) remained contrary to the *Clean Water Act* guidelines;
- (b) was contrary to the public interest;
- (c) would lead to “significant degradation” of the Koptuli watershed based on direct and indirect impacts;
- (d) required new compensatory mitigation requirements; and

(e) that unless and until sufficient plans for mitigation were achieved, the Pebble Project would not be permitted under section 404 of the *Clean Water Act*.

44. The information communicated to the Defendants is hereinafter referred to as the “**Material Information**”.

45. The Material Information was a “material fact” and a “material change” within the meaning of the OSA. Without a positive ROD from the USACE, the Pebble Project could not lead to fruition as a mining operation. There was arguably nothing more material to the Pebble Project at that time than Northern Dynasty’s ability to obtain a positive ROD.

#### (8) THE PROSPECTUS OFFERING

46. Shortly following receiving the Material Information, Northern Dynasty sought to raise capital pursuant to a share offering. Pursuant to Prospectus Disclosure, Northern Dynasty offered 21,000,000 common shares to the public at a price of US\$1.46 per share (the “**Prospectus Offering**”).

47. The Prospectus Disclosure included a Certificate from the Individual Defendants stating:

The short form prospectus, together with the documents incorporated in the prospectus by reference, as supplemented by the foregoing, constitutes full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this prospectus supplement as required by the securities legislation of each of the provinces of Canada, except for Québec.

48. The Prospectus Disclosure also included a Certificate from each of the Underwriters stating:

To the best of our knowledge, information and belief, this short form prospectus, together with the documents incorporated by reference, constitutes full, true and

plain disclosure of all material facts relating to the securities offered by this short form prospectus as required by the securities legislation of each of the provinces of Canada, except for Québec.

49. On July 15, 2020, Northern Dynasty completed the Prospectus Offering for 24,150,000 common shares of Northern Dynasty at a price of US\$1.46 per share for gross proceeds of approximately US\$35.3 million.

### **(9) THE PRIVATE PLACEMENT**

50. In conjunction with the Prospectus Offering, on July 30, 2020, and August 6, 2020, Northern Dynasty completed in two tranches, a non-brokered private placement of 5,807,534 common shares and 100,000 common shares, respectively, at US\$1.46 per share for gross proceeds of US\$8.6 million (the “**Private Offering**”). The Private Offering was on the same terms as the Prospectus Offering.

### **(10) FAILURE TO DISCLOSE MATERIAL INFORMATION**

51. The Defendants did not disclose the Material Information from USACE to the Plaintiff or the Class even though Northern Dynasty issued multiple news releases and other disclosure documents on and after June 25, 2020. Instead, Northern Dynasty’s representations were to the effect that a positive ROD was forthcoming and imminent and that there were no significant obstacles to Northern Dynasty obtaining a positive ROD. For example:

(a) On June 25, 2020, Northern Dynasty issued a news release titled “Northern Dynasty: Pebble Partnership takes next steps for sharing low-cost energy with Bristol Bay residents”. The Defendants did not disclose the Material Information in that news release.

(b) On July 6, 2020, Northern Dynasty issued a news release titled “Northern Dynasty: Pebble Partnership announces transportation and port operations partnership with consortium of Alaska Native village corporations”. The Defendants did not disclose the Material Information in that news release. Instead, the Defendants stated, amongst others: “As we near approvals for our federal permits, it is time to begin laying concrete contractual commitments for construction and operations opportunities. The Pebble opportunity is real. We are excited about this opportunity to partner with our long-standing business partners in the area,” said PLP CEO Tom Collier.” ... “the Environmental Impact Statement and Record of Decision for Pebble are expected to be completed this summer. Collier noted as the project continues to pass major milestones that stakeholders can expect to see the company taking concrete steps on a range of issues long discussed.”

(c) On July 15, 2020, Northern Dynasty issued another news release titled “Northern Dynasty: Pebble Partnership comments on pending release of Final EIS for Alaska's Pebble Project”. The Defendants did not disclose the Material Information in that news release. Instead, the news release stated, amongst others: “The work undertaken by the USACE and the cooperating agencies to resolve these issues gives us confidence that the final EIS will demonstrate why we believe the project can be done without harm to the Bristol Bay fishery. This was confirmed earlier this year via the draft of the final EIS which noted no harm to the fishery and that the project can be developed in line with federal environmental requirements.”

(d) On July 21, 2020, Northern Dynasty issued a news release titled “Northern Dynasty: Alaska’s Pebble Project has potential to become one of America’s leading metals producers”. The Defendants did not disclose the Material Information in that news release.

Instead, the news release stated, amongst others: Pebble Project “is poised to become one of the leading metals producers in North America” and “it appears more and more likely that Alaska could become home to another significant metals producer [i.e., Pebble]”.

52. On July 24, 2020, the USACE released the FEIS.

53. That same day, Northern Dynasty released a news release titled “Northern Dynasty receives Final Environmental Impact Statement (EIS) for Alaska’s Pebble Project”, announcing Northern Dynasty’s views on the FEIS:

...Based on the findings of the Draft EIS published in February 2019 and the preliminary Final EIS distributed for cooperating agency review in February 2020, as well as the Pebble Partnership’s careful management and close scrutiny of the federal permitting process, Northern Dynasty believes the Final EIS describes a proposed open-pit mine and related project infrastructure that will protect water quality, fisheries, wildlife and other valued natural resources, and that can secure all necessary federal and state permits in future....

“There is more work to be done, but the publication of the Final EIS today is a clear validation that Pebble can be developed in an environmentally sound and socially responsible way, creating benefits and opportunities for the people of Bristol Bay and all Alaskans.”...

On the strength of the Final EIS and ROD expected this summer, Northern Dynasty’s goal is to secure a major mining company (or consortium of companies) to become a partner(s) in the Pebble enterprise, and participate in the final stages of project evaluation, design and permitting. In the meantime, the Pebble Partnership will continue to advance programs and partnerships to enhance public and political support for the Pebble Project in Alaska, and prepare for state permitting.

Pebble Partnership CEO Tom Collier said the publication of a Final EIS is the most significant milestone in the project’s history.

“Today was really fifteen years in the making,” Collier said. “From the beginning, we dedicated the time, resources and technical work to ensure we had a project that could be done responsibly, be done without harm to the Bristol Bay fishery, and

provide meaningful contributions to the communities closest to the project. After an extensive, rigorous, and transparent review process, the USACE has concluded the Pebble Project meets that mark.”

Collier said he expects the Final EIS to contribute to growing support for the Pebble Project in local villages and state-wide, and further enrollment in the Pebble Performance Dividend revenue sharing program for full-time residents of Bristol Bay.

“Alaskans have demanded that Pebble, and any Alaska resource development project, meet its high standards before the project could advance,” he said. “Today, we have passed a critical milestone on that journey.”

Stephen Hodgson, PEng, Vice President Engineering for Northern Dynasty reviewed and approved the technical information in this news release. □

54. The Defendants failed to disclose the Material Information in the July 24 news release.
55. In the morning before trading began on July 29, 2020, Northern Dynasty released a news release (the “**July 29 News Release**”), stating:

Northern Dynasty President & CEO Ron Thiessen confirmed the Final EIS for the Pebble Project describes a modern mineral development project that can fully co-exist with the subsistence, commercial and recreational fishing resources of southwest Alaska, while protecting water quality, downstream flows and associated aquatic habitat. The USACE also found Pebble can make a significant socioeconomic contribution to the Bristol Bay region, its residents and communities, as well as to state and local governments.

“In completing our comprehensive technical and legal review of the Final EIS for the Pebble Project, a document comprising more than 2,000 pages plus appendices, I can confirm that it describes a project of considerable merit that will fully protect important environmental values in the project area, that will create tremendous benefits for Alaska’s people and governments, and one we expect to secure a positive Record of Decision later this summer,” Thiessen said.

56. The July 29 News Release purported to set out the findings of the USACE, including that:



- (a) that the FEIS “is clear that development activities proposed at Pebble would not affect the number of adult salmon returning to Bristol Bay watersheds, nor the value of the fishery”;
- (b) that the FEIS “also concludes that Pebble’s potential effects on fish and fisheries will be undetectable at the level of the Bristol Bay region as a whole (~40,000 sq. miles), within the two large drainage areas in which project facilities are located (~23,000 sq. miles), or even within the direct project area (~10 sq. miles)”;
- (c) the FEIS “finds that the proposed Pebble mine would not impact water resources in a manner that affects aquatic species or local communities”;
- (d) “Pebble’s potential to create 850 direct, high-wage jobs and 2,000 total jobs is widely expected to have a dramatic and positive impact, both regionally and state-wide. The Final EIS points to a range of other positive socioeconomic benefits”;
- (e) the FEIS “finds an operating mine at Pebble would make significant contributions to local and state government revenues at a time when Alaska is facing a fiscal crisis related both to the COVID-19 pandemic and a substantial drop in oil and gas investment and commodity prices”; and
- (f) “Importantly, the Final EIS makes clear the Pebble Partnership proposes to employ a tailings storage facility design and operating protocols that preclude the type and scale of catastrophic failure seen in recent years in Brazil and British Columbia”.

57. The July 29 News Release concluded by stating:

Pebble Partnership CEO Tom Collier noted the Final EIS for the Pebble Project represents the first time an independent, expert regulatory body has comprehensively reviewed a development plan put forward by the project's proponents. He called the document "the most relevant and defensible science-based assessment of the Pebble Project ever developed, and the administrative record upon which final permitting decisions will be made."

"I've been involved in countless EIS processes over the course of my career, and can attest to the rigor, the attention to detail and objective care that the USACE and other federal, state and local cooperating agencies have put into this review process," Collier said. "I have every confidence in the legitimacy and the integrity of the US Army Corps of Engineers' findings when it comes to Pebble, and that this Final EIS document will ultimately prevail against any challenge – legal or otherwise – as the most appropriate administrative record upon which final permitting decisions at Pebble should and will be made."

58. The Defendants failed to disclose the Material Information in the July 29 News Release.

59. The July 29 News Release was also misleading and untrue in a material respect and at the time and in the light of the circumstances under which it was made about the contents of the FEIS in that it further mischaracterized the factual findings of the USACE contained in the FEIS with respect to the benefits of the Pebble Project by not disclosing the risks of the Pebble Project.

60. The share price of NDM increased by approximately 17% on July 29, 2020 following the release of the July 29 News Release.

61. During the Class Period, Northern Dynasty issued MD&As on two separate occasions and both after the June 25 and 30, 2020 meetings with the USACE. The MD&As did not disclose the Material Information. Instead, with respect to the ROD, the MD&As only specifically disclosed the risk that "the USACE may be delayed in issuing its Record of Decision", but did not disclose the risk that the ROD may (and as it presently stood at the time) be negative.

62. The statements referenced above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to Northern Dynasty's business, operational and financial results, which were known to Defendants or recklessly disregarded by them. The material risks constituted material facts because the materialization of those risks would reasonably be expected to have the following consequences, among others:

- (a) Northern Dynasty would not obtain a positive ROD;
- (b) permits for the mining operations for the Pebble Project would not be approved by the USACE; and
- (c) Northern Dynasty's profitability and financial position would be materially adversely affected if it did not obtain a positive ROD.

63. The material risks to the Pebble Project because of the Material Information were extant, specific and readily identifiable risks that were different from the generic risks that investors reasonably assume when investing in a company like Northern Dynasty.

64. The facts alleged herein were material facts known or that ought to have been known by the Defendants as of June 25, 2020 and at the time of the release of the Impugned Documents. The absence of any one of them from the Impugned Documents rendered each materially misleading.

#### **(11) PARTIAL CORRECTION**

65. On August 20, 2020, further to the previous meetings held in June 2020, the USACE sent a letter to Northern Dynasty confirming in writing that new compensatory mitigation would be required. The USACE's letter stated in part:

The [USACE] will next develop a Record of Decision (ROD) for your proposed discharge. As part of the ROD the [USACE] made Clean Water Act Section 404(b) (1) factual determinations that discharges at the mine site would cause unavoidable adverse impacts to aquatic resources and, preliminarily, that those adverse impacts would result in significant degradation to those aquatic resources. Therefore, the [USACE] has determined that in-kind compensatory mitigation within the Kaktuli River Watershed will be required to compensate for all direct and indirect impacts caused by discharges into aquatic resources at the mine site. Direct and indirect impacts at the mine site total 2,825 acres of wetlands, 132.5 acres of open waters, and 129.5 miles of streams.

66. On August 24, 2020, the U.S. Army released a statement concerning the Pebble Project, stating that it would result in “significant degradation of the environment and would likely result in significant adverse effects on the aquatic system or human environment.” The U.S. Army further stated that “the project, as currently proposed, cannot be permitted under section 404 of the Clean Water Act”.

67. On this news and given the materiality of permitting for the Pebble Project, Northern Dynasty’s stock price fell \$0.72 per share, or 37.7%, to close at \$1.19 per share on August 24, 2020.

68. On August 28, 2020, Northern Dynasty released a news release titled “Northern Dynasty: USACE Alaska District Letter is Guiding Policy for Pebble – Seeks Mitigation Plan for ROD”. Instead of correcting the Defendants’ previous misrepresentations, the August 28 News Release doubled down, partially disclosing the Material Information the USACE had advised Northern Dynasty in the June 25 and 30 meetings:

Many news media outlets incorrectly reported that the Trump Administration had stopped or was going to stop the project. Much of the speculation came from misreading the intent of a USACE letter regarding the mitigation requirements the agency had set for the Pebble Project. Nothing in the letter was new to the Pebble team as the company has been

in discussions with the USACE about mitigation since the announcement of the draft Least Environmentally Damaging Practicable Alternative (“LEDPA”) for the project. A press release from the Army Public Affairs office said that the USACE “finds that the project as currently proposed cannot be permitted” and several news stories have interpreted this to mean the project is finished. Collier said this is simply incorrect.

“Quite frankly it has been astonishing to watch how quickly the news media and others irresponsibly jumped on the bandwagon to report that the project had been stopped – even when we repeatedly told them it has not. We had been anticipating the USACE letter for some time and told this to many who frankly did not care to believe our position. At least we now have solid confirmation about the policy position of the USACE as the week draws to a close. Perhaps now we can get back to focusing on our core work and that is to finalize the mitigation plan for the project,” said Collier.

The Pebble team remains at work to finalize a mitigation plan – something the company has been working on for the last couple of months. Collier noted that once the company had clarity that the USACE had changed direction about its approach to wetlands mitigation to seek in-kind mitigation, the project team began working on a plan that would meet the USACE requirements. Pebble has had crews in the field finalizing wetlands survey work in the Kuktuli watershed for several weeks and anticipates finishing the field work by early September. Collier further noted that reports stating the project could not achieve mitigation are equally incorrect.

69. The August 28 news release concluded by stating:

We will provide the necessary mitigation and in fact we are well down the road to doing so. The final Environmental Impact Statement says Pebble development won’t damage the fishery in Bristol Bay. Thus, we see no scientific or regulatory reason why we should not have a positive record of decision on the project,” said Collier.

70. The August 28 news release constituted a partial correction and was a continued misrepresentation by Northern Dynasty.

**(12) THE TRUTH EMERGES**

71. Northern Dynasty submitted its compensatory mitigation plan required by the USACE in November 2020.

72. On November 25, 2020, Northern Dynasty issued the November 25 News Release and reported that the USACE had rejected its permit applications related to the Pebble Project, stating, in relevant part:

VANCOUVER, BC / ACCESSWIRE / November 25, 2020 / Northern Dynasty Minerals Ltd. (TSX:NDM) (NYSE American:NAK) ("Northern Dynasty" or the "Company") announces that today, its 100%-owned, US-based subsidiary Pebble Limited Partnership (the "Pebble Partnership") received formal notification from the US Army Corps of Engineers ("USACE") that its application for permits under the Clean Water Act and other federal statutes has been denied. The lead federal regulator found Pebble's 'compensatory mitigation plan' as submitted earlier this month to be 'non-compliant', and that the project is 'not in the public interest'.

73. The ROD further corrected the prior misrepresentations made by the Defendants:

As documented in Attachment B of this ROD, I have determined that the proposed discharge does not comply with the 404 (b)(1) Guidelines because the proposed project will result in significant degradation of the aquatic ecosystem.

I have concluded that the benefits of the proposed elimination and alteration of wetlands, streams and other waters within the USACE jurisdiction do not outweigh the detriments that would be caused by such eliminations and alterations, based upon the information contained with the FEIS, the extensive public comments received, and the analysis of the public interest review factors. As those eliminations and alterations would be necessary to realize any benefits from the proposed project, I have found that the proposed project is contrary to the public interest.

...the [compensatory mitigation] plan has been found noncompliant with nine specific requirements of rule to include lack of detail to determine compensatory mitigation sufficiency, lack of information for preservation

waiver, insufficient amount of compensatory mitigation, inadequate site protection, omission of a maintenance plan, omission of performance standards, omission of long term management plan, inadequate monitoring and omission of financial assurances. Therefore, the compensatory mitigation offered is inadequate to overcome the significant degradation identified in the 404(b)(1) analysis rendering the permit application noncompliant with the 404(b)(1) Guidelines.

74. Following the issuance of the November 25 News Release, Northern Dynasty's stock price fell \$0.54 per share, or 51%, to close at \$0.51 per share on November 25, 2020, damaging investors. In the ten trading days following the November 25 News Release, to December 9, 2020, the price of Northern Dynasty's shares on the TSX declined, from \$1.05 to \$0.455, i.e., approximately 56.7%.

### **(13) RIGHTS OF ACTION**

#### **A. Statutory Secondary Market Liability**

75. Subject to leave being granted under section 138.8(1) of the OSA (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation), on behalf of the Class Members that purchased Northern Dynasty common shares on the secondary market (the "**Secondary Market Purchasers**"), the Plaintiff pleads the right of action found in section 138.3(1) of Part XXIII.1 of the OSA (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation) against the Defendants for their misrepresentation by omission of material facts and failure to disclose the Material Information in the Impugned Documents.

76. The Impugned Documents constitute "documents" within the meaning of Part XXIII.1 of the OSA (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

77. At all material times, Northern Dynasty was a “responsible issuer” within the meaning of Part XXIII.1 of the OSA (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

78. Northern Dynasty released the Impugned Documents, which contained one or more of the misrepresentations particularized herein, any one of which is a misrepresentation for the purposes of the OSA (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

79. The Defendants knew, at the time that the Impugned Documents were released, that they contained a misrepresentation; or alternatively, at or before the time that they were released, the Defendants deliberately avoided acquiring knowledge that they contained a misrepresentation; or alternatively, the Defendants were, through action or failure to act, guilty of gross misconduct in connection with the release of the above documents containing a misrepresentation.

80. The Individual Defendants authorized, permitted or acquiesced in the making of a misrepresentation in the Impugned Documents while knowing it to be a misrepresentation, and/or influenced the making of a misrepresentation in the Impugned Documents while knowing that it was a misrepresentation.

81. Thiessen and Peters were the CEO and CFO of Northern Dynasty during the Class Period. They certified the MD&As and authorized, permitted or acquiesced in the release of the Impugned Documents.

82. The Secondary Market Purchasers who purchased common shares of Northern Dynasty in the secondary market after a misrepresentation was made and before it was corrected on November



25, 2020 are entitled to damages assessed in accordance with section 138.5 of the OSA (and, if necessary, the equivalent sections of the Other Canadian Securities Legislation).

## **B. Prospectus Misrepresentation**

83. On behalf of the Class Members who purchased Northern Dynasty common shares offered by the Prospectus Disclosure during the period of distribution or during distribution to the public (“**Prospectus Purchasers**”), the Plaintiff pleads the cause of action set forth in section 130 of the OSA and the analogous provisions of the Other Canadian Securities Legislation.

84. Northern Dynasty issued the Prospectus Disclosure, which, along with the Northern Dynasty disclosure documents incorporated therein by reference, contained the misrepresentations that are alleged above.

85. The Defendants knew, at the time that the Prospectus Disclosure was released, that it contained a misrepresentation; or alternatively, at or before the time that they were released, the Defendants deliberately avoided acquiring knowledge that they contained a misrepresentation; or alternatively, the Defendants were, through action or failure to act, guilty of gross misconduct in connection with the release of the Prospectus Disclosure containing a misrepresentation.

86. Each of the Individual Defendants signed the Prospectus Disclosure, and certified that the Prospectus Disclosure constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was not so as the Prospectus Disclosure failed to disclose the Material Information and contained misrepresentations. The Individual Defendants authorized, permitted or acquiesced in the making of a misrepresentation in the Prospectus Disclosure while

knowing it to be a misrepresentation, and/or influenced the making of a misrepresentation in the Impugned Documents while knowing that it was a misrepresentation.

87. Each of the Underwriters signed the Prospectus Disclosure, and certified that the Prospectus Disclosure constituted full, true and plain disclosure of all material facts relating to the securities offered thereby. This was not so as the Prospectus Disclosure failed to disclose the Material Information. The Underwriters authorized, permitted or acquiesced in the making of a misrepresentation in the Prospectus Disclosure while knowing it to be a misrepresentation, and/or influenced the making of a misrepresentation in the Prospectus Disclosure while knowing that it was a misrepresentation.

88. The Defendants are jointly and severally liable to the Prospectus Purchasers for the damages suffered by them as a result of their misrepresentations in the Prospectus Disclosure.

**C. Negligent Misrepresentation**

89. On behalf of the Class Members, the Plaintiff pleads negligent misrepresentation against the Defendants for the Impugned Documents.

90. The Impugned Documents were prepared and disseminated for the purpose of providing material information and inducing Class Members to purchase Northern Dynasty shares.

91. The Defendants undertook, at all material times, to prepare and disseminate the above documents and make representations to the Class with reasonable care for the aforementioned purpose. The Defendants intended and were aware that Class Members would rely reasonably and to their detriment upon the Impugned Documents in making the decision to purchase Northern Dynasty securities.

92. The Defendants further knew and intended that the information contained in the above documents would be incorporated into the price of Northern Dynasty's common shares such that the trading price of those shares would at all times reflect the information contained in the Impugned Documents.

93. The Defendants had responsibility for the preparation of the Impugned Documents and undertook to do so for the benefit of, and to be relied upon by, Class Members.

94. The Defendants, therefore, had a duty of care at common law, informed by the obligations referred to herein, to exercise due care and diligence to ensure that they fairly and accurately disclosed all material information about the Pebble Project and the material risks for Northern Dynasty arising from the Pebble Project.

95. The Defendants breached that duty by failing to take reasonable or any steps to ensure that the Impugned Documents did not contain the misrepresentations particularized herein, including by:

- (a) failing to conduct or cause to be conducted a review of the Impugned Documents before releasing them to the market;
- (b) failing to exercise due care in the creation and dissemination of the Impugned Documents to ensure that the statements made therein were fair and accurate; and
- (c) failing to disclose that the Defendants' belief and confidence as expressed in the Impugned Documents were without merit had not been adequately verified prior to its incorporation into the above documents.

96. Throughout the Class Period, the Defendants had exclusive access to information about Northern Dynasty's business and operations. They also had direct communications with the USACE regarding the Pebble Project, including the meetings on June 25 and 30, 2020. As such, they were the primary source of information specifically related to the Pebble Project, which was relevant and material to each Class Member's decision to acquire Northern Dynasty's shares and the price at which they would be acquired.

97. The Secondary Market Purchasers directly or indirectly relied upon the misrepresentations in making a decision to purchase Northern Dynasty common shares, and suffered damage when the misrepresentations were publicly corrected by the November 25 News Release.

98. Alternatively, the Class Members relied upon the misrepresentations by the act of purchasing Northern Dynasty's common shares in efficient markets that promptly incorporated into the price of those common shares all publicly available material information regarding the common shares of Northern Dynasty.

99. As a result, the misrepresentations caused the price of Northern Dynasty's common shares to trade at artificially inflated prices during the Class Period, thus directly resulting in damage to the Class Members when the misrepresentations were publicly corrected by the November 2020 News Release.

**D. Negligence *Simpliciter* in Connection with the Prospectus Offering and Private Offering**

100. On behalf of the Prospectus Purchasers and Private Purchasers who acquired Northern Dynasty shares in the Prospectus Offering and Private Offering (collectively, the "**Offerings**"), respectively, the Plaintiff asserts negligence *simpliciter*.

101. The Defendants issued the Prospectus Disclosure or caused it to be issued, and caused the Offerings to occur while the Prospectus Disclosure contained misrepresentations.

102. The Defendants owed a duty to ensure that the Prospectus Disclosure they issued made full, true and plain disclosure of all material facts relating to the shares offered thereby, including disclosure of the Material Information.

103. The reasonable standard of care expected in the circumstances required the Defendants to prevent the Offerings from occurring prior to the correction of the misrepresentations. Accordingly, the Defendants breached the standard of care, and violated their duties to Prospectus Purchasers and Private Purchasers.

104. If the Defendants had exercised the duty of care expected from them in the circumstances, then the Offerings would not have happened. In the alternative, the Offerings would have happened at a price that would have reflected the true value of the Northern Dynasty's shares.

105. As a result of the Defendants' breach of their duty of care, the Offerings took place and those Class Members who purchased shares pursuant to the Prospectus Disclosure suffered damages as a result of purchasing the shares at an inflated price. Had the Defendants satisfied their duty of care to such Class Members, then those Class Members would not have purchased the shares that they acquired under the Prospectus Disclosure, or they would have purchased them at a lower price that reflected their true value.

#### **E. Oppression**

106. The Plaintiff and the Class Members are "shareholders" within the meaning of section 227 of the BCA.

107. The Plaintiff and the Class Members had reasonable expectations about how the business and affairs of Northern Dynasty be conducted. Those reasonable expectations are informed, in part, by the statutes regulations and policies governing Northern Dynasty and its officers and directors, including the OSA and the BCA and the regulations and policies promulgated thereunder.

108. The reasonable expectations of the Plaintiff and the Class Members during the Class Period included the following:

- (a) that the business and affairs of Northern Dynasty would be conducted in a manner that complied with the OSA, the BCA and all applicable laws, and Northern Dynasty's own publicly disclosed policies and procedures to the extent that they are consistent with all applicable laws;
- (b) that each director and officer of Northern Dynasty would act honestly and in good faith with a view to the best interests of the corporation, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (c) that, in accordance with applicable securities law, Northern Dynasty would make full, true and plain disclosure of all material facts relating to its securities; and
- (d) that Northern Dynasty would periodically update its disclosures by issuing interim financial reports, quarterly and annual MD&As, interim and annual certifications by its CEO and CFO, audited annual financial statements and material change reports all in accordance with the OSA, which would accurately describe its business, operations,

financial results and financial position as at the time that each such disclosure was made, and would be free of misrepresentation.

109. Such reasonable expectations were defeated in that, and as particularized throughout this Statement of Claim:

- (a) the business and affairs of Northern Dynasty during the Class Period were not conducted in a manner that complied with the OSA, the BCA and all applicable laws, and Northern Dynasty's own publicly disclosed policies and procedures;
- (b) the Individual Defendants caused Northern Dynasty to breach the requirements of the OSA and other applicable laws, all as pleaded herein, and in so doing misled the capital markets and caused the price of Northern Dynasty's shares to trade at inflated prices during the Class Period, which resulted in damage to the Plaintiff and the Class Members;
- (c) the Individual Defendants, as officers and/or directors of Northern Dynasty during the Class Period, did not act honestly and in good faith with a view to the best interests of the corporation, and, in the discharge of their duties, they did not exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- (d) the Individual Defendants, as officers and/or directors of Northern Dynasty during the Class Period, caused or permitted Northern Dynasty to conduct its business in a way that did not comply with all applicable laws and regulations;
- (e) contrary to applicable securities laws and regulatory requirements, Northern Dynasty's periodic financial disclosure (namely the Impugned Documents), were not free

from misrepresentations, and they failed to accurately describe Northern Dynasty's business, operations, and financial position as at the time that each such disclosure was made.

110. This conduct had the effect of oppressing, unfairly disregarding, and unfairly prejudicing the interests of the Plaintiff and the Class Members and caused damage to the Plaintiff and the Class Members.

111. The Plaintiff and the Class Members seek a remedy for the oppressive conduct, namely an award of compensation, pursuant to section 227 of the BCA.

**(14) RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE OF NORTHERN DYNASTY'S SHARES**

112. The price of Northern Dynasty's securities was directly affected during the Class Period by the issuance of the above misrepresentations. The Defendants were aware at all material times of the effect of Northern Dynasty's disclosure documents upon the price of its shares.

113. The misrepresented documents were released to the public or released to the public and filed with SEDAR, and thereby became immediately available to and were reproduced for inspection by Class Members, the public, financial analysts, professional investors and the financial press through the internet and other media.

114. Northern Dynasty is traded on the TSX and the NYSE, which are efficient and automated markets. The prices at which Northern Dynasty's shares traded promptly incorporated material information from Northern Dynasty's disclosure documents about Northern Dynasty's business



and affairs, including the misrepresentations alleged herein, which was disseminated to the public through the impugned documents and distributed by Northern Dynasty, as well as by other means.

115. The Defendants knew and, in fact, intended that each investor who purchased Northern Dynasty shares during the Class Period would rely on the misrepresentations whether directly or indirectly.

116. If the Impugned Documents had contained the material facts pleaded herein:

- (a) the trading price of Northern Dynasty's shares would have promptly incorporated that material information and declined;
- (b) Class Members would have acquired Northern Dynasty's shares during the Class Period at a lower price than they did, or would not have acquired Northern Dynasty's shares at all; and
- (c) Class Members would not have sustained the damage they did sustain.

#### **(15) VICARIOUS LIABILITY**

117. Northern Dynasty is vicariously liable for the acts and omissions of the Individual Defendants particularized herein.

118. The acts or omissions particularized and alleged herein to have been done by Northern Dynasty were authorized, ordered and done by Individual Defendants and other agents, employees and representatives of Northern Dynasty, while engaged in the management, direction, control and transaction of the business and affairs of Northern Dynasty.

119. By virtue of the relationship between Northern Dynasty and the Individual Defendants, such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants but are also the acts and omissions of Northern Dynasty.

120. At all material times, the Individual Defendants were directors and officers of Northern Dynasty. As their acts and omissions are independently tortious, they are personally liable for same to the Plaintiff and the other Class Members.

**(16) REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO**

121. This action has a real and substantial connection with Ontario because, among other things:

- (a) Northern Dynasty is a reporting issuer in Ontario;
- (b) Northern Dynasty trades on the TSX, which is based in Toronto, Ontario;
- (c) the misrepresentations alleged herein were disseminated to Class Members resident in Ontario;
- (d) a substantial proportion of the Class Members reside in Ontario; and
- (e) damage was sustained by Class Members in Ontario.

**(17) SERVICE OUTSIDE OF ONTARIO**

122. The Plaintiff may serve the Statement of Claim outside of Ontario without leave in accordance with rule 17.02 of the *Rules of Civil Procedure*, because this claim is:

- (a) a claim in respect of personal property in Ontario (rule 17.02(a));

- (b) a claim in respect of a tort committed in Ontario (rule 17.02(g)); and
- (c) a claim against a person or entity carrying on business in Ontario (rule 17.02(p)).

**(18) RELEVANT LEGISLATION**

123. The Plaintiff pleads and relies on the CJA, the CPA, the OSA, the BCA, the Other Canadian Securities Legislation, securities regulatory instruments (including, but not limited to, NP 51-201) and the TSX Company Manual.

March 5, 2021

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-and-

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**Defendants**

**Court File No.**

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

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**STATEMENT OF CLAIM**

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