IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Allied Nevada Gold Corp., *et al.*,[1]	Case No. 15-10503 (MFW)
	Jointly Administered
Debtors.	**Re: Docket Nos. 1049, 1050, 1110, 1112**
	Hearing Date: October 27, 2015 at 10:30 a.m. (prevailing ET)

DEBTORS' OMNIBUS OBJECTION TO BRIAN TUTTLE'S: (I) MOTION FOR STANDING TO PROSECUTE; (II) MOTION FOR LEAVE OF COURT TO TAKE DEPOSITIONS UPON WRITTEN QUESTIONS; (III) SECOND MOTION TO APPOINT AN EXAMINER WITH ACCESS TO AND AUTHORITY TO DISCLOSE PRIVILEGED MATERIALS; AND (IV) APPLICATION FOR REIMBURSEMENT OF EXPENSES INCURRED BY PARTY OF INTEREST

The above-captioned debtors and debtors in possession (collectively, the "***Debtors***") hereby object (the "***Omnibus Objection***") to the following pleadings filed by Brian Tuttle ("***Tuttle***"): (i) *Motion for Standing to Prosecute* [Docket No. 1049] (the "***Standing Motion***"); (ii) *Motion for Leave of Court to Take Depositions Upon Written Questions* [Docket No. 1050] (the "***Deposition Motion***"); (iii) *Second Motion to Appoint an Examiner with Access to and Authority to Disclose Privileged Materials* [Docket No. 1110] (the "***Second Examiner Motion***" and, together with the Standing Motion and the Deposition Motion, the "***Tuttle Motions***"); and (iv) *Application for Reimbursement of Expenses Incurred by Party of Interest Brian Tuttle* [Docket No. 1112] (the "***Reimbursement Application***" and, collectively with the Tuttle Motions, the

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Allied Nevada Gold Corp. (7115); Allied Nevada Gold Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291); ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC (7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources & Development, Inc. (1989); Victory Exploration Inc. (8144); and Victory Gold Inc. (8139). The corporate headquarters for each of the above Debtors are located at, and the mailing address for each of the above Debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, NV 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

"***Tuttle Pleadings***"). In support of this Omnibus Objection, the Debtors respectfully state as follows:

OMNIBUS OBJECTION

1. On October 8, 2015, this Court entered an order [Docket No. 1136] (the "***Confirmation Order***") confirming the *Debtors' Amended Joint Chapter 11 Plan of Reorganization* [Docket No. 931] (the "***Plan***").[2] As a result of the entry of the Confirmation Order, the relief requested by the Tuttle Motions has been rendered moot.

2. First, Mr. Tuttle's request, through the Standing Motion, for authority to commence litigation to equitably subordinate or equitably disallow the Claims of the holders of the Debtors' Senior Unsecured Notes and the Claims of The Bank of Nova Scotia has been rendered moot based on the fact that the Plan and Confirmation Order expressly provide that such Claims are Allowed.[3] *See* Plan Arts. 1.137, 2.7(b) and 2.8(b); Conf. Order ¶ A.1. Even if the Standing Motion was not moot, Mr. Tuttle has not shown that there is a colorable claim to equitably subordinate or disallow the applicable Claims. *See In re Yes! Entm't Corp.*, 316 B.R. 141, 145 (Bankr. D. Del. 2004).[4]

3. Second, the Deposition Motion, which seeks authority to obtain discovery in connection with the Standing Motion, has been rendered moot since the Standing Motion itself is moot for the reasons noted above. *See, e.g.*, *Braden v. Murphy*, No. 3:11cv884, 2012 WL

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2 Terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

3 Moreover, the Claims of The Bank of Nova Scotia previously were expressly Allowed by virtue of the terms of the Final DIP Order. *See* Final DIP Order ¶¶ E, 15.

4 Furthermore, equity security holders do not have standing to pursue claims for equitable subordination because they cannot demonstrate an alleged injury that can be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Pursuant to Bankruptcy Code section 510(c), "equitable subordination only permits a creditor's claim to be subordinated to another claim and not to equity." *In re Wash. Mut., Inc.*, 461 B.R. 200, 255-256 (Bankr. D. Del. 2011) (Walrath, J.), vacated in part on other grounds, 2012 WL 1563880 (Feb. 24, 2012). Thus, "[e]quitable subordination is not a remedy available to (or of much help in redressing any injury to) the shareholders." *Id.* at 256.

1069188 at *6 (D. Conn. Mar. 29, 2012) (denying motion to take deposition after finding plaintiff failed to state a claim upon which relief could be granted).

4. Third, Mr. Tuttle's Second Examiner Motion has been rendered moot by the entry of the Confirmation Order and the plain language of Bankruptcy Code section 1104(c), which provides that a bankruptcy court may appoint an examiner "[a]t any time ***before the confirmation of a plan***." 11 U.S.C. § 1104(c) (emphasis added); *see also In re eToys, Inc.*, 331 B.R. 176, 186 (Bankr. D. Del. 2005) (denying shareholder request to appoint an examiner because the debtor's plan had been confirmed and, therefore, "such a remedy [was] unavailable based on the express language of the Code.").[5]

5. The Court should also deny the Reimbursement Application, which does not even set forth the amounts sought thereby, because Mr. Tuttle fails to satisfy the requirements of Bankruptcy Code section 503(b)(3)(D) for the reimbursement of his fees and expenses. Bankruptcy Code section 503(b)(3)(D) allows the reimbursement of an equity security holder's "actual, necessary expenses" incurred in "making a ***substantial contribution*** in a case." 11 U.S.C. § 503(b)(3)(D) (emphasis added). "[I]n determining whether there has been a 'substantial contribution' pursuant to section 503(b)(3)(D), the applicable test is whether the efforts of the applicant resulted in an actual and demonstrable benefit to the debtor's estate and the creditors."

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[5] In the Second Examiner Motion, Mr. Tuttle acknowledges that he "re-alleges the facts and arguments" raised and the "colorable claims alleged" in the *Motion to Appoint an Examiner with Access to and Authority to Disclose Privileged Materials* [Docket No. 819] (the "***First Examiner Motion***"). *See* Second Examiner Mot. ¶ 11. However, the Court already held an evidentiary hearing with respect to the First Examiner Motion and found that the evidence submitted by Mr. Tuttle in support thereof was "spurious." Sept. 11, 2015 Hr'g Tr. 91: 16-17 (Sept. 11, 2015). Indeed, the Court found that Mr. Tuttle failed to submit any evidence to establish a basis for appointing an examiner. *Id.* at 90:16-25. Finally, the Court held that it was not "in the best interests of anybody to appoint an examiner" given the status of the chapter 11 cases (then approximately one month away from the Confirmation Hearing). *Id.* at 91: 22-25. While Mr. Tuttle now asserts that "new facts have come to light" to support the appointment of an examiner, Mr. Tuttle fails to demonstrate what, exactly, those new facts are. *See* Second Examiner Mot. ¶ 12. As such, the Second Examiner Motion is left to stand on the assertions previously alleged in the First Examiner Motion and rejected by the Court after an evidentiary hearing. Therefore, the Court should likewise deny the Second Examiner Motion.

Lebron v. Mechem Fin. Inc., 27 F.3d 937, 944 (3d Cir. 1994) (internal quotations omitted). Moreover, "'substantial contribution' should be applied in a manner that excludes reimbursement in connection with activities of . . . . other interested parties which are designed primarily to serve their own interests . . . ." *Id*.

6. The Reimbursement Application should be denied because Mr. Tuttle offers no evidence that he has provided *any* kind of benefit to the Debtors' estates that would satisfy the requirements for allowance of reimbursement under Bankruptcy Code section 503(b)(3). To the contrary, Mr. Tuttle requests reimbursement of past and future expenses incurred solely on account of "representing his interests in these matters." *See* Appl. ¶¶ 3-4. Mr. Tuttle has been given ample opportunity to espouse various creative theories in the chapter 11 cases, which have been completely untethered from the facts at hand. Indeed, upon the record of several evidentiary hearings, the Court has consistently denied Mr. Tuttle's motions and objections, and has stated that his allegations are unfounded. Unfortunately, the Debtors and their estates have incurred substantial expense in responding to Mr. Tuttle's filings and correcting his misstatements. The Tuttle Pleadings are nothing more than a rehash of Mr. Tuttle's already-rejected allegations and a shameless attempt to seek reimbursement from the Debtors' estates on account of wasteful conduct. Accordingly, the relief requested in the Tuttle Pleadings should be denied.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) deny the relief requested in each of the Tuttle Pleadings and (b) grant such other and further relief as may be just, proper and equitable.

Wilmington, Delaware
Date: October 20, 2015

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