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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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13 In re Silver Wheaton Corp.
14 Securities Litigation
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Master File No: 2:15-cv-05146-CAS(PJWx)
c/w: 2:15-cv-05173-CAS(PJWx)

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

Hon. Christina A. Snyder

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18 On the 3rd day of August, 2020, a hearing having been held before this Court
19 to determine: (1) whether the terms and conditions of the Stipulation of Settlement
20 dated January 31, 2020 (the “Stipulation”) are fair, reasonable and adequate for the
21 settlement of all claims asserted by (i) the Settlement Class against (ii) Defendants
22 Silver Wheaton Corp. (“Silver Wheaton”), Randy V. J. Smallwood, Peter Barnes, and
23 Gary Brown (collectively, the “Silver Wheaton Defendants”), and Deloitte LLP
24 (Canada) (“Deloitte”) (together, “Defendants”); (2) whether to approve the proposed
25 Plan of Allocation as a fair and reasonable method to allocate the Net Settlement Fund
26 among Settlement Class Members; (3) whether to finally certify the Deloitte
27 Settlement Class; (4) whether a judgment should be entered dismissing the Action
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1 with prejudice as against all Defendants; and (5) to rule upon such other matters as the
2 Court deemed appropriate; and

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

5 It appearing that the Postcard Notice substantially in the form approved by the
6 Court in the Court's Order Preliminarily Approving Settlement and Providing For
7 Notice Procedures (the "Preliminary Approval Order") was mailed to all reasonably
8 identifiable Settlement Class Members; and

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

12 It appearing that a case-specific website was created which, among other things,
13 permitted electronic filing of claims; and

14 It appearing that the Internet Notice substantially in the form approved by the
15 Court in the Preliminary Approval Order was published in accordance with that Order:

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

18 1. All capitalized terms used herein have the same meanings as set forth and
19 defined in the Stipulation, which is incorporated herein.

20 2. The Court has jurisdiction over the subject matter of the Litigation,
21 Plaintiffs, all Settlement Class Members and Defendants to the Litigation, including
22 all Settlement Class Members who did not file, pursuant to the Court's Preliminary
23 Approval Order dated March 9, 2020, a timely request for exclusion from the
24 Settlement Class by the requisite deadline.

25 3. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure,
26 the Court hereby certifies, for purposes of the Settlement only, a settlement class as to
27 Deloitte (the "Deloitte Settlement Class") consisting of all persons and entities who
28 purchased the publicly traded securities of Silver Wheaton (i) on a United States

1 Exchange, or (ii) in a transaction in the United States, during the period from March
2 30, 2011 to July 6, 2015, inclusive, and did not sell such securities prior to July 6,
3 2015. Excluded from the Deloitte Settlement Class are Defendants, all present and
4 former officers and directors of Silver Wheaton and any subsidiary thereof, Deloitte
5 and all of its present and former partners, members of all such excluded persons'
6 families and their legal representatives, heirs, successors or assigns and any entity
7 which such excluded persons controlled or in which they have or had a controlling
8 interest.

9 4. The Court finds, for purposes of the Settlement only, that the
10 prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of
11 Civil Procedure have been satisfied in that: (a) the number of Deloitte Settlement Class
12 Members is so numerous that joinder of all members of the Deloitte Settlement Class
13 is impracticable; (b) there are questions of law and fact common to the Deloitte
14 Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Deloitte
15 Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately represent
16 the interests of the Deloitte Settlement Class; (e) the questions of law and fact common
17 to the members of the Deloitte Settlement Class predominate over any questions
18 affecting only individual members of the Deloitte Settlement Class; and (f) a class
19 action is superior to other available methods for the fair and efficient adjudication of
20 this Litigation.

21 5. On May 11, 2017, the Court certified a class as to the Silver Wheaton
22 Defendants (the "Silver Wheaton Class") consisting of all persons and entities who
23 purchased the publicly traded securities of Silver Wheaton (i) on a United States
24 exchange, or (ii) in a transaction in the United States, during the period from March
25 30, 2011 to July 6, 2015, inclusive, and did not sell such securities prior to July 6,
26 2015. Excluded from the Silver Wheaton Class are Defendants, all present and former
27 officers and directors of Silver Wheaton and any subsidiary thereof, Deloitte and all
28 of its present and former partners, members of such excluded persons' families and

1 their legal representatives, heirs, successors or assigns and any entity which such
2 excluded persons controlled or in which they have or had a controlling interest.

3 6. For purposes of the Settlement only, the “Settlement Class” shall consist
4 of both the Silver Wheaton Class and the Deloitte Settlement Class.

5 7. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs
6 are certified as the class representatives on behalf of the Settlement Class and
7 Plaintiffs’ Counsel previously selected by Plaintiffs and appointed by the Court, is
8 hereby appointed as Lead Counsel for the Settlement Class (or “Plaintiffs’ Counsel”).

9 8. The Court hereby finds that the forms and methods of notifying the
10 Settlement Class of the terms and conditions of the Settlement met the requirements
11 of due process and Rule 23 of the Federal Rules of Civil Procedure, Section 21D(a)(7)
12 of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities
13 Litigation Reform Act of 1995; constituted the best notice practicable under the
14 circumstances; and constituted due and sufficient notice to all persons and entities
15 entitled thereto of these proceedings and the matters set forth herein, including the
16 Settlement and Plan of Allocation, to all Persons entitled to such notice. No Settlement
17 Class Member is relieved from the terms of the Settlement, including the releases
18 provided for therein, based upon the contention or proof that such Settlement Class
19 Member failed to receive actual or adequate notice. A full opportunity has been
20 offered to the Settlement Class Members to object to the Settlement and to participate
21 in the hearing thereon. The Court further finds that the notice provisions of the Class
22 Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby
23 determined that all members of the Settlement Class are bound by this Order and Final
24 Judgment except those persons listed on Exhibit A to this Order and Final Judgment.

25 9. The Settlement is approved as fair, reasonable and adequate, and in the
26 best interests of the Settlement Class. Plaintiffs and Defendants are directed to
27 consummate the Settlement in accordance with the terms and provisions of the
28 Stipulation.

1 10. The Litigation and the Second Amended Complaint (the “Complaint”)
2 are hereby dismissed with prejudice and without costs.

3 11. Plaintiffs, each and every member of the Settlement Class and each of
4 their respective parent entities, associates, affiliates, subsidiaries, predecessors,
5 successors, assigns, attorneys, heirs, representatives, administrators, executors,
6 devisees, legatees, and estates, hereby fully, finally, and forever release, relinquish,
7 and discharge any and all Released Claims against the Released Persons, and are
8 hereby permanently barred and enjoined from asserting, commencing, prosecuting,
9 instituting, assisting, instigating, or in any way participating in the commencement or
10 prosecution of any action or other proceeding, in any forum, asserting any Released
11 Claim, either directly, representatively, derivatively, or in any other capacity, against
12 any of the Released Persons.

13 12. Defendants, on behalf of themselves, their heirs, executors, predecessors,
14 successors, and assigns, hereby fully, finally, and forever release, relinquish, and
15 discharge any and all of Defendants’ Released Claims against the Plaintiffs,
16 Settlement Class Members and Plaintiffs’ Counsel, and are hereby permanently
17 enjoined from prosecuting the Defendants’ Released Claims against the Plaintiffs,
18 Settlement Class Members and Plaintiffs’ Counsel.

19 13. The Court orders that the Plan of Allocation be modified with Plaintiffs’
20 assent by eliminating the portion of pp. 9:21-23 of the Preliminary Approval Order,
21 dkt. #487, which provides “in which case the Settlement Class Member’s Recognized
22 Loss will be reduced by \$5 or 1%, whichever is greater.” The Recognized Losses of
23 Settlement Class Members who filed by mail will not be reduced. With that
24 modification, the Court hereby finds that the proposed Plan of Allocation is a fair and
25 reasonable method to allocate the Net Settlement Fund among Settlement Class
26 Members.

27 14. In accordance with 15 U.S.C. § 78u-4(f)(7) and any other applicable law
28 or regulation, any and all claims which are brought by any Person or entity against

1 Defendants (a) for contribution or indemnification arising out of any Settled Claim, or
2 (b) where the damage to the claimant is measured by reference to the claimant's
3 liability to the Plaintiffs or the Settlement Class, are hereby permanently barred and
4 discharged. Any such claims brought by Defendants against any Person or entity
5 (other than Persons or entities whose liability to Plaintiffs or the Settlement Class is
6 extinguished by this Judgment) are likewise permanently barred and discharged.
7 Further, nothing in this Stipulation shall apply to bar or otherwise affect any claim for
8 insurance coverage by any Defendant.

9 15. The Court finds that all parties and their counsel have complied with each
10 requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings
11 herein.

12 16. Neither this Order and Final Judgment, the Stipulation, nor any of the
13 negotiations, documents or proceedings connected with them shall be:

14 (a) referred to or used against Defendants or against Plaintiffs or the
15 Settlement Class as evidence of wrongdoing by anyone;

16 (b) construed against Defendants or against Plaintiffs or the
17 Settlement Class as an admission or concession that the consideration to be
18 given hereunder represents the amount which could be or would have been
19 recovered after trial;

20 (c) construed as, or received in evidence as, an admission, concession
21 or presumption against the Settlement Class or any of them, that any of their
22 claims are without merit or that damages recoverable under the Complaint
23 would not have exceeded the Settlement Fund; or

24 (d) used or construed as an admission of any fault, liability or
25 wrongdoing by any person or entity, or offered or received in evidence as an
26 admission, concession, presumption or inference against any of the Defendants
27 in any proceeding other than such proceedings as may be necessary to
28 consummate or enforce the Stipulation.

1 17. The Court retains exclusive jurisdiction over Defendants, Plaintiffs and
2 the Settlement Class Members for all matters relating to the Litigation, including the
3 administration, interpretation, effectuation or enforcement of the Stipulation, the
4 Settlement and/or this Order and Final Judgment, and including any application for
5 fees and expenses incurred in connection with administering and distributing the
6 settlement proceeds to the Settlement Class Members.

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

9 19. There is no just reason for delay in the entry of this Order and Final
10 Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule
11 54(b) of the Federal Rules of Civil Procedure.

12 20. The finality of this Order and Final Judgment shall not be affected, in any
13 manner, by rulings that the Court may make on Plaintiffs' Counsel's application for
14 an award of attorneys' fees and expenses and/or award to Plaintiffs.

15 21. The Court hereby awards attorneys' fees of 30% of the Settlement Fund,
16 or \$12,450,000, reimbursement of expenses of \$1,090,186.76, and awards Plaintiffs
17 \$12,500 each, for a total of \$87,500, all of which the Court finds reasonable. In
18 reaching this determination, the Court has considered (1) the results achieved; (2) the
19 risk of litigation; (3) the skill required and the quality of work; (4) the contingent
20 nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made
21 in similar cases.

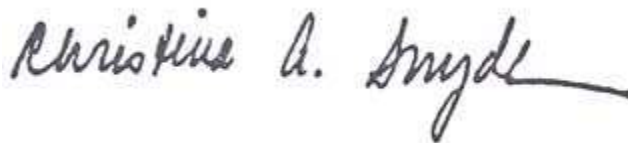
22 22. If the Settlement does not become final and effective in accordance with
23 the terms and conditions set forth in the Stipulation, then this Order and Final
24 Judgment shall be rendered null and void and be vacated and the Settlement and all
25 orders entered in connection therewith shall be rendered null and void (except as
26 otherwise provided in the Stipulation), and the parties shall be deemed to have reverted
27 to their respective status prior to the execution of this Stipulation, and they shall
28 proceed in all respects as if the Stipulation had not been executed and the related orders

1 had not been entered, preserving in that event all of their respective claims and
2 defenses in the Litigation, and shall revert to their respective positions in the
3 Litigation.

4 **IT IS SO ORDERED.**

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6 Dated: August 6, 2020



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HON. CHRISTINA A. SNYDER
UNITED STATES DISTRICT JUDGE

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