

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 4TH
JUSTICE E.M. MORGAN) DAY OF JANUARY, 2024

BETWEEN:

IZABELA PRZYBYLSKA

Plaintiff

- and -

GATOS SILVER, INC., STEPHEN ORR, ROGER JOHNSON, PHILIP PYLE, TETRA TECH, INC., GUILLERMO DANTE RAMÍREZ-RODRÍGUEZ, KIRA LYN JOHNSON, THE ELECTRUM GROUP LLC, ELECTRUM SILVER US LLC, ELECTRUM SILVER US II LLC, BMO NESBITT BURNS INC., GOLDMAN SACHS CANADA INC., RBC DOMINION SECURITIES INC., CANACCORD GENUITY CORP. and CIBC WORLD MARKETS INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order, among other things, approving the discontinuance of this proceeding on a without-costs and without-prejudice basis as against the Defendants BMO Nesbitt Burns Inc., Goldman Sachs Canada Inc., RBC Dominion Securities Inc., Canaccord Genuity Corp. and CIBC World Markets Inc. (collectively, “**Underwriter Defendants**”), was heard on January 4, 2024 in Toronto, Ontario by videoconference;

ON READING the materials filed by the Plaintiff, and on hearing the submissions of Counsel for the Plaintiff and Counsel for the Underwriter Defendants;

AND ON BEING ADVISED that the Underwriter Defendants consent to this Order;

5th, January, 2024



AND ON BEING ADVISED that the other Defendants take no position with respect to this Order.

1. **THIS COURT ORDERS** that the discontinuance of this proceeding on a without-costs and without-prejudice basis as against the Underwriter Defendants pursuant to section 29(1) of the *Class Proceedings Act, 1992*, SO 1992, c 6 be and is hereby approved.
2. **THIS COURT ORDERS** that leave is granted to the Plaintiff to amend the statement of claim in this action to remove the Underwriter Defendants as parties to the action and file the amended statement of claim as a Second Fresh as Amended Statement of Claim, in the form attached hereto as **Schedule "A"**.
3. **THIS COURT ORDERS** that notice of the discontinuance of the action against the Underwriter Defendants under sections 19 and 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c 6 shall be given by Class Counsel by posting a copy of this Order on their case webpages at <https://www.siskinds.com/class-action/gatos-silver/> and <https://www.cfmlawyers.ca/active-litigation/gatos-silver-inc-tsx-gato/>.



MORGAN J.

Schedule "A"
Proposed Second
Fresh as Amended
Statement of Claim

SCHEDULE "A"

Court File No. CV-22-00676682-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

IZABELA PRZYBYLSKA

Plaintiff

- and -

**GATOS SILVER, INC., STEPHEN ORR, ROGER JOHNSON, PHILIP PYLE, TETRA TECH,
INC., GUILLERMO DANTE RAMÍREZ-RODRÍGUEZ, KIRA LYN JOHNSON, THE
ELECTRUM GROUP LLC, ELECTRUM SILVER US LLC and ELECTRUM SILVER US II
LLC**

Defendants

Proceeding under the Class Proceedings Act, 1992

**SECOND FRESH AS AMENDED STATEMENT OF CLAIM
(NOTICE OF ACTION ISSUED ON FEBRUARY 9, 2022;
STATEMENT OF CLAIM FILED ON MARCH 11, 2022)**

I. DEFINITIONS

1. In this Second Fresh as Amended Statement of Claim, in addition to the terms that are defined elsewhere herein, the following definitions apply:

- (a) “**AIF**” means Annual Information Form;
- (b) “**CIM**” means the Canadian Institute of Mining, Metallurgy and Petroleum;
- (c) “**CIM Definition Standards**” means the CIM Definition Standards for Mineral Resources and Mineral Reserves, adopted by CIM Council on May 19, 2014, as amended;
- (d) “**Class**” or “**Class Members**” means all persons and entities, wherever they may reside or be domiciled, who acquired Gatos securities during the Class Period, other than Excluded Persons;
- (e) “**Class Period**” means the period from October 28, 2020 until January 25, 2022 at 6:52 pm Eastern Standard Time;
- (f) “**CLG**” means the Cerro Los Gatos deposit, mine, and processing facility;
- (g) “**CLG Measured and Indicated Mineral Resource**” means the estimated Measured Mineral Resources and Indicated Mineral Resources for CLG, effective September 6, 2019, as reported in section 14.1.10 of the Technical Report;
- (h) “**CLG Mineral Reserve Statement**” means the stated estimated Proven Mineral Reserves and Probable Mineral Reserves for CLG, effective July 2020, as reported in section 15.5 of the Technical Report;
- (i) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

- (j) “**CSA**” means the Canadian Securities Administrators;
- (k) “**Defendants**” means, collectively, Gatos, Orr, Johnson, Pyle, Tetra Tech, the Electrum Defendants, and the Individual Authors;
- (l) “**Electrum Defendants**” means, collectively, Electrum Group, ESUS and ESUS II;
- (m) “**Electrum Group**” means the Defendant, The Electrum Group LLC;
- (n) “**ESUS**” means the Defendant, Electrum Silver US LLC;
- (o) “**ESUS II**” means the Defendant, Electrum Silver US II LLC;
- (p) “**Excluded Persons**” means the Defendants and the Underwriters; the respective past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns of Gatos, Tetra Tech, the Electrum Defendants and the Underwriters; and the immediate family members of Orr, Johnson, Pyle and the Individual Authors;
- (q) “**FY 2020 Financial Statements**” means Gatos’s audited financial statements for the quarter and fiscal year ended December 31, 2020 (filed on SEDAR on March 29, 2021);
- (r) “**FY 2020 MD&A**” means Gatos’s MD&A for the quarter and fiscal year ended December 31, 2020 (filed on SEDAR on March 29, 2021);
- (s) “**Gatos**” means the Defendant Gatos Silver, Inc., including, where the context requires, its corporate predecessors;

- (t) **“Impugned AIF”** means Gatos’s AIF for the fiscal year ended December 31, 2020 (filed on SEDAR on March 29, 2021);
- (u) **“Impugned Documents”** means Gatos’s:
 - (i) Impugned Financial Statements;
 - (ii) Impugned MD&As;
 - (iii) Impugned Prospectuses; and
 - (iv) Impugned AIF;
- (v) **“Impugned Financial Statements”** means the FY 2020 Financial Statements;
- (w) **“Impugned MD&As”** means the Q3 2020 MD&A, FY 2020 MD&A, Q1 2021 MD&A, Q2 2021 MD&A, and Q3 2021 MD&A;
- (x) **“Impugned Prospectuses”** means the IPO Prospectus and the Second Prospectus;
- (y) **“Individual Authors”** means the Defendants Guillermo Dante Ramírez-Rodríguez and Kira Lyn Johnson;
- (z) **“IPO”** means Gatos’s initial public offering of common shares pursuant to the IPO Prospectus;
- (aa) **“IPO Prospectus”** means the Base Prep Prospectus dated October 27, 2020 and the Supplemented Prep Prospectus dated October 27, 2020;
- (bb) **“Johnson”** means the Defendant, Roger Johnson;
- (cc) **“LGJV”** means the Los Gatos Joint Venture;
- (dd) **“MD&A”** means Management’s Discussion and Analysis;

- (ee) “**Mineral Reserve(s)**” and the categories “Proven Mineral Reserve(s)” and “Probable Mineral Reserve(s)” have the meanings given to those terms in the CIM Definition Standards;
- (ff) “**Mineral Resource(s)**” and the categories “Measured Mineral Resource(s)” and “Indicated Mineral Resource(s)” have the meanings given to those terms in the CIM Definition Standards;
- (gg) “**NI 43-101**” means the CSA’s National Instrument 43-101 – *Standards of Disclosure for Mineral Projects*, as amended;
- (hh) “**NI 52-109**” means the CSA’s National Instrument 52-109 – *Certification of Disclosure in Issuers’ Annual and Interim Filings*, as amended;
- (ii) “**NYSE**” means the New York Stock Exchange;
- (jj) “**OSA**” means the *Securities Act*, RSO 1990, c S.5, as amended;
- (kk) “**Offerings**” means, collectively, the IPO and the Second Offering;
- (ll) “**Omitted Material Facts**” are the material facts that (i) the Technical Report contained errors and was unreliable; and (ii) the CLG Mineral Reserve Statement was overstated, invalid and/or unreliable, both as at the date of its creation and throughout the Class Period;
- (mm) “**Orr**” means the Defendant, Stephen Orr;
- (nn) “**Other 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, 1988*, SS 1988-89, c S-42.2, as amended; *Securities Act*, RSQ c V-1.1, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

- (oo) “**Plaintiff**” means the Plaintiff, Izabela Przybylska;
- (pp) “**Prospectus Purchaser Class Members**” means Class Members who purchased Gatos securities under the Impugned Prospectuses and in the distributions to which they related;
- (qq) “**Pyle**” means the Defendant, Philip Pyle;
- (rr) “**Q1 2021 MD&A**” means Gatos’s MD&A for the quarter ended March 31, 2021 (filed on SEDAR on May 7, 2021);
- (ss) “**Q2 2021 MD&A**” means Gatos’s MD&A for the quarter ended June 30, 2021 (filed on SEDAR on August 9, 2021);
- (tt) “**Q3 2020 MD&A**” means Gatos’s MD&A for the quarter ended September 30, 2020 (filed on SEDAR on December 8, 2020);
- (uu) “**Q3 2021 MD&A**” means Gatos’s MD&A for the quarter ended September 30, 2021 (filed on SEDAR on November 8, 2021);
- (vv) “**QP Certificate**” means a Certificate of Qualified Person under Part 8, section 8.1 of NI 43-101;
- (ww) “**QP Consent**” means a Consent of Qualified Person under Part 8, section 8.3 of NI 43-101;

- (xx) “**Qualified Person**” has the meaning given to that term in NI 43-101 and in the CIM Definition Standards;
- (yy) “**SEC Mining Modernization Rules**” means the United States Securities and Exchange Commission’s mining disclosure requirements, as set out in Subpart 1300 of Regulation S-K.
- (zz) “**Second Offering**” means the offering of Gatos securities pursuant to the Second Prospectus;
- (aaa) “**Second Prospectus**” means the Short Form Base Shelf Prospectus dated July 12, 2021 and the Prospectus Supplement dated July 15, 2021;
- (bbb) “**Secondary Market Class Members**” means Class Members who acquired Gatos securities in the secondary market;
- (ccc) “**SEDAR**” means the system for electronic document analysis and retrieval of the CSA;
- (ddd) “**Tetra Tech**” means the Defendant, Tetra Tech, Inc.;
- (eee) “**Technical Report**” means the technical report titled “Los Gatos Project, Chihuahua, Mexico”, prepared by Tetra Tech with an effective date of July 1, 2020, and an issue date of July 2020;
- (fff) “**TSX**” means the Toronto Stock Exchange; and
- (ggg) “**Underwriters**” means BMO Nesbitt Burns Inc., Goldman Sachs Canada Inc., RBC Dominion Securities Inc., Canaccord Genuity Corp. and CIBC World Markets Inc.

II. RELIEF SOUGHT

2. The Plaintiff claims:

- (a) an order granting leave to pursue this action under Part XXIII.1 of the *OSA* (and, if necessary, the equivalent sections of the Other 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, or any of them, contained one or more misrepresentations at common law and within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation);
- (d) a declaration that the Defendants or any of them made the misrepresentations negligently;
- (e) a declaration that Gatos is vicariously liable for the acts and/or omissions of Orr, Johnson, Pyle and, as may be applicable, its other officers, directors or employees;
- (f) a declaration that Tetra Tech is vicariously liable for the acts and/or omissions of the Individual Authors and, as may be applicable, its other officers, directors or employees;
- (g) a declaration that the Electrum Defendants are vicariously liable for the acts and/or omissions of their respective officers, directors or employees;
- (h) general and special damages in an amount to be determined including, if the court determines it is just and appropriate, aggregate damages;
- (i) in the alternative to damages, for Prospectus Purchaser Class Members who

acquired Gatos securities in the Second Offering on or around August 18, 2021, an order for rescission of the acquisition of those securities;

- (j) a monetary award, constructive trust, accounting or such other remedy as restitution for the unjust enrichment of Gatos, ESUS and ESUS II;
- (k) 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;
- (l) prejudgment and post judgment interest;
- (m) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity plus, pursuant to section 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes; and
- (n) such further and other relief as this Honourable Court may deem just.

III. OVERVIEW

3. Gatos is a Canada-based silver-dominant mining company. Its flagship asset is Cerro Los Gatos (defined herein as CLG), a polymetallic (principally, lead-zinc-silver) deposit, mine, and processing facility in the Los Gatos District of southern Chihuahua State, northwestern Mexico.
4. In 2015, Gatos entered the LGJV to develop the Los Gatos District with Dowa Metals & Mining Company, Limited, a Japanese company. The LGJV completed an advanced definitional drilling and decline development program at CLG in 2016, and a feasibility study in January 2017. The LGJV commenced limited production at CLG in November

2018. A Mineral Resource update was completed in September 2019, and commercial production commenced on September 1, 2019.

5. In July 2020, the LGJV completed a technical update to the January 2017 feasibility study in the form of the Technical Report. The Technical Report contained the CLG Mineral Reserve Statement, which was an estimate of the portion of the CLG deposit, more particularly the portion of the CLG Measured and Indicated Mineral Resource, determined to be economically mineable.
6. According to the CLG Mineral Reserve Statement, the CLG deposit contained approximately 9.6 million diluted tonnes of Proven Mineral Reserves and Probable Mineral Reserves, comprised of approximately 6.3 million diluted tonnes of Proven Mineral Reserves and approximately 3.3 million diluted tonnes of Probable Mineral Reserves. Average Proven Mineral Reserve and Probable Mineral Reserve grades were estimated at 306 g/t silver, 0.35 g/t gold, 2.76% lead, and 5.65% zinc.
7. The following factors and circumstances, among others, represented to the Class Members that there was a reasonable basis for the CLG Mineral Reserve Statement, which was disclosed, verbatim or in substance, in the Impugned Documents released throughout the Class Period:
 - (a) it was disclosed in the Impugned Documents by Gatos which, as the majority owner of the LGJV, had been involved in the exploration and development of the CLG and accumulated years of special knowledge and skill to inform a reliable estimate of the Mineral Reserves, and identify significant errors;

- (b) Gatos's disclosure of the CLG Mineral Reserve Statement was supported by the Technical Report that purported to be prepared by or under the supervision of one or more independent Qualified Persons, and in accordance with NI 43-101;
 - (c) it purported to use the CIM Definition Standards, which implied that, among other things, reasonable assumptions had been applied to data in which there was confidence because that data had been subjected to verification and validation processes, and the CLG Mineral Reserve Statement was based on advanced scientific and technical studies applied to that data to demonstrate that, at the time of reporting, economic extraction of the CLG Mineral Reserve could be justified; and
 - (d) it included Proven Mineral Reserves, which implied that there was the highest degree of confidence in that portion of the CLG Mineral Reserve Statement.
8. In reality, there was no reasonable basis for the CLG Mineral Reserve Statement or Gatos's disclosures concerning the CLG Mineral Reserve Statement.
9. Gatos conducted its IPO in October 2020. Its shares commenced trading on the TSX and NYSE on October 28, 2020, the first day of the Class Period. At the time of the IPO, it was the first dual-listed precious metals IPO on the TSX and NYSE since 2010, the largest precious metals IPO since 2010, and the largest precious metals equity financing during 2020.
10. There was broad global investor participation in the IPO. The CLG Mineral Reserve Statement was pivotal to its success. Thereafter, Gatos repeated and summarized the CLG Mineral Reserve Statement in other documents released throughout the Class

Period. At all material times, the CLG Mineral Reserve Statement gave enormous legitimacy to Gatos's description of CLG as a high-quality and long-life asset that, at modeled metal prices and running at design capacity, could be expected to be economically mined until the Mineral Reserve was exhausted in 11 years, i.e. 2031.

11. On January 25, 2022—the last day of the Class Period—after markets had closed, Gatos revealed that the CLG Mineral Reserve Statement was significantly overstated. In a news release, Gatos reported that, during a Mineral Resource and Mineral Reserve update process for CLG, including a detailed reconciliation of recent production performance, it had been concluded that there were errors in the Technical Report, as well as indications that there was an overestimation in the existing Mineral Resource model.
12. On a preliminary basis, Gatos estimated there would be a potential reduction of the metal content of the CLG Mineral Reserve ranging from 30%-50% of the metal content remaining after depletion. Gatos was not able to accurately quantify the exact magnitude of the reduction at that time but stated that the Mineral Resource and Mineral Reserve estimates in the Technical Report should not be relied upon. Gatos said it was working with independent engineering consultants to better understand the magnitude of the overestimation, including conducting a detailed reconciliation of production to previous models and reserve calculation estimates, as well as creating a new life of mine plan.
13. As is particularized below, the market value of Gatos's securities on the TSX and NYSE plummeted immediately. Within 24 hours of the news release, Gatos's share price had fallen by almost 70%.

14. On October 3, 2022, after working with independent consultants to re-estimate CLG's Mineral Resources and Mineral Reserves, Gatos confirmed that that the CLG Mineral Reserve Statement had been "significantly overstated", which it explained to mean overstated by approximately 32% silver, 37% zinc, 36% lead and 35% gold, after accounting for depletion. In tonnage terms, this was approximately 30Moz of contained silver, 445Mlbs of contained zinc, 210Mlbs of contained lead, and 38kOz of contained gold.
15. Gatos said that the majority of the overstatement was because of two errors in the preparation of the CLG Mineral Reserve Statement that it described as "material and compounding." First, the block model used in preparation of the CLG Mineral Reserve Statement was distorted during transfer between software packages resulting in reduced block dimensions and unestimated spaces between blocks. Second, an incorrect software parameter was used in calculating tonnes and grades within designed stope solids that resulted in any unestimated volume (both planned intentional dilution outside the estimated vein and unestimated spaces resulting from the distortion) being applied at the average mineralized grade instead of zero grade for dilution. The effective result of the combination of these errors is that metal grades were significantly overstated in the CLG Mineral Reserve Statement.
16. As is particularized below, the Plaintiff alleges the Impugned Documents released throughout the Class Period contained misrepresentations. The disclosure of the CLG Mineral Reserve Statement, verbatim or in substance, in the Impugned Documents constituted an untrue statement of material fact. Further or in the alternative, the Impugned Documents contained a misrepresentation by failing to state the Omitted

Material Facts, which were required to be stated or which were necessary to make the CLG Mineral Reserve Statement and related statements in the Impugned Documents not misleading in the light of the circumstances in which they were made.

17. The Plaintiff alleges the misrepresentations caused the market price or value of Gatos's securities to be artificially inflated during the Class Period, thus directly resulting in damage to the Plaintiff and the other Class Members. As the Defendants' misrepresentations were publicly corrected, so too the artificial inflation was removed, and the market price or value of Gatos's securities declined to their lower, true value.
18. The Plaintiff, on behalf of the Class, seeks to recover damages for misrepresentation, or in the alternative to damages for Prospectus Purchaser Class Members who acquired Gatos securities in the Second Offering on or around August 18, 2021, rescission of the acquisition of those securities.

IV. THE PARTIES

The Plaintiff

19. The Plaintiff Izabela Przybylska is an individual residing in North York, Ontario. She acquired shares of Gatos in the Second Offering pursuant to the Second Prospectus and continued to hold those shares at the end of the Class Period.

The Defendants

Gatos

20. Gatos is a company incorporated in Delaware, United States, and headquartered in Vancouver, British Columbia. It is a reporting issuer in Ontario and all other Canadian provinces and territories, except Québec. At material times, Gatos's common shares

were listed for trading on the TSX and the NYSE under ticker symbol “GATO”. Gatos’s shares began trading on those exchanges on October 28, 2020, in connection with its IPO.

21. At material times, Gatos’s common shares also traded on the TSX Alpha Exchange in Toronto, the NEO Exchange in Toronto, and Canadian and US alternative trading systems, including Omega ATS, Nasdaq CXC and Nasdaq CX2. As of January 25, 2022, Gatos was a constituent issuer of the S&P/TSX Global Mining Index, and the Russell 2000 Index maintained by FTSE Russell, a subsidiary of the London Stock Exchange Group.

Orr

22. Orr is an individual residing in Texas, USA. At all material times during the Class Period, he was Gatos’s Chief Executive Officer, and a director of Gatos.

Johnson

23. Johnson is an individual residing in Colorado, USA. At all material times during the Class Period, he was Gatos’s Chief Financial Officer.

Pyle

24. Pyle is an individual residing in Montana, USA. At all material times during the Class Period, he was Gatos’s Vice President of Exploration, Chief Geologist, and a Qualified Person.

Tetra Tech & Individual Authors

25. Tetra Tech is a global provider of consulting and engineering services with principal executive offices in Pasadena, California. Tetra Tech prepared the Technical Report.

26. Each of the Individual Authors is a Qualified Person and an employee of Tetra Tech who either directly prepared and approved the CLG Mineral Reserve Statement, supervised its preparation, or had involvement in its preparation through the provision of technical information they had prepared or caused others to prepare. More particularly:
- (a) Guillermo Dante Ramírez-Rodríguez is a Principal Mining Engineer at Tetra Tech who prepared sections 15 (Mineral Reserve Estimates), 16 (Mining Methods) and 22 (Economic Analysis) of the Technical Report; and
 - (b) Kira Lyn Johnson is a Senior Geological Engineer at Tetra Tech who prepared section 14 (Mineral Resource Estimates) of the Technical Report, as well as portions of other sections.

The Electrum Defendants

27. Electrum Group is a privately held natural resources investment management company based in New York City, USA. Gatos was founded by Electrum Group and associated entities. Electrum Group and its affiliates are investment advisors with experience in precious metals resources. At all relevant times, Electrum Group has been Gatos's largest shareholder. Electrum Group is affiliated with ESUS and ESUS II.
28. ESUS and ESUS II are controlled by Electrum Global Holdings LP, which is in turn controlled by its general partner, TEG Global GP Ltd. Electrum Group is the investment advisor to Electrum Global Holdings LP and possesses investment discretion with respect to assets of that entity, including indirect investment discretion with respect to securities held by ESUS and ESUS II.

29. Throughout the Class Period, both Electrum Group and ESUS were promoters of Gatos, and influential persons within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation). ESUS II was also an influential person within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation).

V. THE CLG MINERAL RESERVE STATEMENT

30. The CLG Mineral Reserve Statement, derived in substantial part from the CLG Measured and Indicated Mineral Resource, was contained in Section 15.5, Table 15-3, of the Technical Report.

31. Table 15-3 stated:

Table 15-3 presents the total Mineral Reserve, effective July 1, 2020, for Los Gatos, which includes dilution and recovery factors. The Reserves have been calculated at an NSR cutoff of \$75 and exclude material mined at the project since mining started in November 2018. The NSR cutoff is representative of the site operating conditions. It is noted that the Proven Reserves exceed the reported Measured Resources, this is due to the mining dilution exceeding the mineralized material lost due to the mining recovery factor, and the difference in cutoff parameters used in the Resource and Reserve estimates. The Resource estimate was reported at a cutoff of 150 g/t AgEq in September 2019. The Reserves, produced in July 2020, were reported at a \$75 NSR cutoff, to represent current site operating conditions and updated metal prices. The \$75 NSR cutoff allows for the economic extraction of additional mineralized material from the Resource that were estimated at a cutoff of 150 g/t AgEq.

Table 15-3: Mineral Reserve

Zone	Classification	Tonnes	Ag (g/t)	Au (g/t)	Pb (%)	Zn (%)
NWZ	Proven	2,587,684	359	0.43	3.09	5.88
	Probable	492,892	333	0.34	2.86	5.88
CZ	Proven	3,767,456	314	0.31	2.55	5.32
	Probable	1,772,921	299	0.44	2.32	5.82
SEZ	Proven	5,751	148	0.16	3.69	7.23
	Probable	569,380	148	0.16	3.69	7.23
SEZ2	Probable	421,547	118	0.17	3.11	4.16
Total	Proven	6,360,890	332	0.36	2.77	5.55
Total	Probable	3,256,740	254	0.34	2.74	5.86
Total	Proven + Probable	9,617,631	306	0.35	2.76	5.65

32. Application of the Proven Mineral Reserve and Probable Mineral Reserve classifications in the CLG Mineral Reserve Statement implied that there was a reasonable basis for the CLG Mineral Reserve Statement in data that had been subjected

to verification and validation procedures, and advanced scientific and technical studies with adequate information generated on mining, processing, metallurgical, economic, and other relevant factors to demonstrate, at the time of reporting, that economic extraction could be justified. Additionally, application of the Proven Mineral Reserve classification implied there was the highest degree of confidence in the Proven Mineral Reserve estimate.

VI. THE OFFERINGS

33. Gatos elected to become a reporting issuer to render its securities publicly tradable. Doing so made them a more attractive investment and provided Gatos with broader access to capital.
34. In the IPO, Gatos issued and sold 21,430,000 common shares on October 30, 2020 at a price of US\$7 per share. On November 10, 2020, Gatos issued and sold an additional 3,214,500 common shares at a price of US\$7 per share, pursuant to the exercise in full of the Underwriters' over-allotment option.
35. In the Second Offering, Gatos issued and sold 8,930,000 common shares on July 19, 2021 at a price of US\$14 per share. On August 18, 2021, Gatos issued and sold an additional 286,962 common shares at a price of US\$14 per share, pursuant to the exercise of the Underwriters' over-allotment option.
36. In the Second Offering, ESUS and ESUS II sold 2,500,000 common shares of Gatos on July 19, 2021 at a price of US\$14 per share. On August 18, 2021, ESUS and ESUS II sold an additional 80,337 common shares of Gatos at a price of US\$14 per share, pursuant to the exercise of the over-allotment option.

37. To distribute the securities in the Offerings, the Impugned Prospectuses were required by the *OSA* (and, if necessary, the Other Securities Legislation) to provide full, true, and plain disclosure of all material facts relating to the securities to be distributed.
38. In the IPO, Orr, Johnson, the Electrum Group and ESUS certified that the IPO Prospectus constituted full, true and plain disclosure of all material facts. Orr and Johnson did so by signing the Certificate of the Company, and the Electrum Group and ESUS did so by signing the Certificate of the Promoters.
39. In the Second Offering, Orr, Johnson, the Electrum Group, ESUS and ESUS II certified that the Second Prospectus constituted full, true and plain disclosure of all material facts. Orr and Johnson did so by signing the Certificate of the Company, the Electrum Group and ESUS did so by signing the Certificate of the Promoters, and ESUS and ESUS II did so by signing the Certificate of the Selling Securityholders.
40. In connection with the Offerings, certain scientific and technical information incorporated by reference into the Impugned Prospectuses that had not been summarized or extracted from the Technical Report was prepared under the supervision of or approved by Pyle in his capacity as Qualified Person.
41. On October 27, 2020, and also July 12, 2021 and July 15, 2021, Pyle signed consents in connection with the IPO and the Second Offering, respectively, wherein he consented to being named in those documents, and stated that he had read them and the documents they incorporated by reference and had no reason to believe that there were any misrepresentations in the information derived from statements he provided with respect to the Impugned Prospectuses, or that were within his knowledge as a result of services he performed in connection with such statements.

42. Similarly, on October 1, 2020, Tetra Tech consented to disclosure of information in connection with the IPO. Tetra Tech consented, among other things, to the public filing and use of the Technical Report, the use and reference of its name, and the use of the Technical Report in the IPO Prospectus. Tetra Tech stated that it was responsible for authoring the Technical Report, and that the IPO Prospectus fairly and accurately represented the Technical Report.
43. On July 12, 2021 and July 15, 2021, Tetra Tech signed a consent pursuant to section 4.2.1 of National Instrument 44-101 — *Short Form Prospectus Distributions*. Therein, Tetra Tech consented to being named in the Second Prospectus, and to the use of the Technical Report in the Second Prospectus. Tetra Tech’s signatory, Guillermo Dante Ramirez-Rodriguez, stated that he was an authorized signatory for Tetra Tech, that he had read the Second Prospectus, and that he had no reason to believe that there were any misrepresentations in the information contained in the Second Prospectus, including the applicable documents incorporated by reference therein.
44. In connection with the preparation of the Technical Report, each of the Individual Authors signed a QP Certificate on July 30, 2020. These certificates stated, among other things, “to the best of my knowledge, information and belief, the Technical Report contains all scientific and technical information that is required to be disclosed to make the Technical Report not misleading.”
45. Each of the Individual Authors signed a QP Consent on October 1, 2020. The QP Consents stated, among other things, that:
- (a) each of the Individual Authors consented to the public filing of the Technical Report;

- (b) the Technical Report had been prepared in accordance with NI 43-101 and the SEC Mining Modernization Rules; and
- (c) Gatos's Registration Statement and Preliminary Prospectus fairly and accurately represented the information in the Technical Report for which they were responsible.

46. Each of the Individual Authors signed consents on October 27, 2020 in connection with the IPO Prospectus.

VII. THE SECONDARY MARKET DISCLOSURE OBLIGATIONS OF GATOS, ORR & JOHNSON

47. Gatos was required to fulfil disclosure requirements on a continuing basis to maintain its status as a reporting issuer. Specifically, Gatos was required to issue and file on SEDAR:

- (a) within 45 days of the end of each quarter, quarterly financial statements prepared in accordance with applicable accounting principles including a comparative statement to the end of each of the corresponding periods in the previous financial year;
- (b) within 90 days of the end of the fiscal year, annual financial statements, including comparative financial statements relating to the period covered by the preceding financial year;
- (c) contemporaneously with each of the above, MD&A; and
- (d) within 90 days of the end of the fiscal year, an AIF.

48. MD&A is a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and prospects. The MD&A must discuss known trends, events and risks that have affected the financial statements of the issuer, or that are reasonably likely to influence the issuer's business in the future. Gatos's FY 2020 MD&A was incorporated by reference into the Second Prospectus.
49. AIFs are annual disclosure documents intended to provide material information about a company and its business at a point in time in the context of its historical and possible future development. The AIF describes the company, its operations and prospects, risks and other external factors that impact the company specifically. The Impugned AIF was incorporated by reference into the Second Prospectus.
50. Orr and Johnson knew that Gatos was a reporting issuer following the IPO, and that in their roles as executive officers of Gatos, and in Orr's case as a director, they would have direct responsibility for ensuring the accuracy of Gatos's secondary market disclosure documents.
51. In accordance with NI 52-109, Orr, as CEO, and Johnson, as CFO, certified the Impugned Financial Statements, Impugned MD&A, and Impugned AIF. They certified, among other things, that such documents did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made.
52. These certifications were false and were themselves misrepresentations. By signing the Impugned Prospectuses and certifying the other Impugned Documents, Orr and Johnson authorized, permitted or acquiesced to their release.

53. Orr and Johnson oversaw the preparation and reporting of Gatos's disclosures to the capital markets and knew or should have known of the misrepresentations in the Impugned Documents.

VIII. APPLICABLE DISCLOSURE OBLIGATIONS UNDER NI 43-101

54. Gatos was required to file the Technical Report in accordance with NI 43-101.
55. NI 43-101, section 3.2, subject to section 3.5, required Gatos to include in any written disclosure of scientific or technical information about CLG:
- (a) a description of how the data was verified and any limitations on the data verification process; and
 - (b) an explanation of any failure to verify the data.
56. Section 6.1 of NI 43-101 required that the Technical Report be based on all available data relevant to the disclosure it supported.

IX. THE MISREPRESENTATIONS

57. As particularized below, throughout the Class Period, Gatos released and filed with SEDAR the Impugned Documents, each of which contained a misrepresentation, as particularized below.
58. The disclosure of the CLG Mineral Reserve Statement, verbatim or in substance, in one or more of the Impugned Documents constituted an untrue statement of material fact. It was materially false because it was materially overstated and/or lacked a reasonable basis.

59. Further or in the alternative, the Impugned Documents contained a misrepresentation by failing to state the Omitted Material Facts. At all material times, the Omitted Material Facts were required to be stated or were necessary to make the CLG Mineral Reserve Statement, a detailed summary of it, or a statement of expectation of life-of-mine unlevered, after-tax free cash flow based on the CLG Mineral Reserve Statement, as stated in the Impugned Documents, not misleading in light of the circumstances in which they were made.
60. As a result of the misrepresentations, Gatos's securities traded at artificially inflated values during the Class Period and Gatos's securities were sold in the Offerings at artificially inflated prices.

Particulars – Impugned Prospectuses and Impugned AIF

IPO Prospectus

61. On October 27 and 29, 2020, respectively, Gatos released and filed on SEDAR the Base Prep Prospectus dated October 27, 2020 and the Supplemented Prep Prospectus dated October 27, 2020.
62. Each of the Base Prep Prospectus and the Supplemented Prep Prospectus contained:
- (a) at page 1, a detailed summary of the CLG Mineral Reserve Statement;
 - (b) at page 6, a description of CLG as a high-quality and long-life asset that, at modeled metal prices, could be expected to be economically mined for 11 years, generating average life-of-mine unlevered, after-tax free cash flow of approximately US\$39 million per year net to Gatos at its then 51.5% level of ownership; and
 - (c) at page 9, the CLG Mineral Reserve Statement, adjusted for rounding.

Second Prospectus & Impugned AIF

63. On July 12 and 15, 2021, respectively, Gatos released and filed on SEDAR the Short Form Base Shelf Prospectus dated July 12, 2021, and the Prospectus Supplement dated July 15, 2021.
64. Both the Short Form Base Shelf Prospectus and the Prospectus Supplement incorporated by reference the Impugned AIF, which Gatos had released and filed on SEDAR on March 29, 2021. The Impugned AIF contained:
- (a) at pages 6, 12, and 55, summaries of the CLG Mineral Reserve Statement;
 - (b) at page 9, a description of CLG as a high-quality and long-life asset that, at modeled metal prices, could be expected to generate average life-of-mine unlevered, after-tax free cash flow of approximately US\$53 million per year net to Gatos at its then 70% level of ownership; and
 - (c) at page 45, the CLG Mineral Reserve Statement, adjusted for rounding.
65. The Prospectus Supplement, independent of the Impugned AIF, contained, at page 1, a detailed summary of the CLG Mineral Reserve Statement.

Particulars — The Impugned Financial Statements & Impugned MD&As

Q3 2020 MD&A

66. On December 8, 2020, Gatos released and filed on SEDAR the Q3 2020 MD&A.
67. The Q3 2020 MD&A contained, at page 18, a detailed summary of the CLG Mineral Reserve Statement.

FY 2020 Financial Statements and FY 2020 MD&A

68. On March 29, 2021, Gatos released and filed on SEDAR the FY 2020 Financial Statements and FY 2020 MD&A.
69. The FY 2020 Financial Statements contained:
- (a) at pages 6 and 12, summaries of the CLG Mineral Reserve Statement;
 - (b) at page 9, a description of CLG as a high-quality and long-life asset that, at modeled metal prices, could be expected to generate average life-of-mine unlevered, after-tax free cash flow of approximately US\$53 million per year net to Gatos at its then 70% level of ownership; and
 - (c) at page 45, the CLG Mineral Reserve Statement, adjusted for rounding;
70. The FY 2020 MD&A contained, at page 55, a detailed summary of the CLG Mineral Reserve Statement.

Q1 2021 MD&A

71. On May 7, 2021, Gatos released and filed on SEDAR the Q1 2021 MD&A.
72. The Q1 2021 MD&A contained, at page 16, a detailed summary of the CLG Mineral Reserve Statement.

Q2 2021 MD&A

73. On August 9, 2021, Gatos released and filed on SEDAR the Q2 2021 MD&A.
74. The Q2 2021 MD&A contained, at page 18, a detailed summary of the CLG Mineral Reserve Statement.

Q3 2021 MD&A

75. On November 8, 2021, Gatos released and filed on SEDAR the Q3 2021 MD&A.
76. The Q3 2021 MD&A contained, at page 18, a detailed summary of the CLG Mineral Reserve Statement.

X. THE PUBLIC CORRECTION

77. In a news release issued after markets closed on January 25, 2022 (the “Public Correction”), Gatos publicly revealed the misrepresentations. The Public Correction stated:

DENVER—(BUSINESS WIRE)—Gatos Silver, Inc. (NYSE/TSX: GATO) (“Gatos Silver” or the “Company”) today provided an update on the resource and reserve estimation process following recent reconciliation work at its Cerro Los Gatos (“CLG”) mine and provided strong 2022 production and cost guidance for the CLG operation.

During the Company’s resource and reserve update process for the Los Gatos Joint Venture (“LGJV”), which included a detailed reconciliation of recent production performance, the Company concluded that there were errors in the technical report entitled “*Los Gatos Project, Chihuahua, Mexico*” with an effective date of July 1, 2020 (the “2020 Technical Report”), as well as indications that there is an overestimation in the existing resource model.

On a preliminary basis, the Company estimates a potential reduction of the metal content of CLG’s mineral reserve ranging from 30% to 50% of the metal content remaining after depletion. Since the 2020 Technical Report, depletion is 1.3 million tonnes grading 284 g/t silver, 3.9% zinc, 2.3% lead and 0.3 g/t gold that has been processed from July 1, 2020 to December 31, 2021. At this time, the Company cannot accurately quantify the exact magnitude of the reduction, and the mineral resource and reserve estimates in the 2020 Technical Report should not be relied upon.

The Company is working with independent engineering consultants to better understand the magnitude of the overestimation, including conducting a detailed reconciliation of production to previous models and reserve calculation estimates, as well as creating a new Life of Mine (“LOM”) plan. The Company is working expeditiously to complete this reconciliation. Given the complex nature of the reconciliation, Gatos Silver anticipates that it will complete its work in the second half of 2022.

The Company has identified that CLG’s geological structures and mineral veins

are more complex than previously modeled, with the size and orientation of the mineral veins more variable than expected. The Company has been successful in mining these veins through 2021. Gatos Silver expects continued strong performance in 2022. While the reconciliation work is ongoing, the Company continues to take steps to strengthen its technical capability and capacity, as well as enhance existing review processes.

[...]

The expected LOM reduction resulting from the reconciliation may be offset by future resource and reserve additions from ongoing exploration programs, continued optimization and cost reduction efforts. Exploration in the Los Gatos District will also be a major focus in 2022 with multiple new targets planned to be drilled.

[...]

Other Impacts

If it is determined the 2020 Technical Report materially overestimated resources and reserves, it could constitute an event of default under the Company's credit facility, and the Company would intend to seek a waiver from its lender. The Company has \$13 million outstanding under its credit facility as of December 31, 2021, and believes it has sufficient liquidity to manage the process.

The Company is also reviewing the potential financial statement impact of a revision in its mineral resources and reserves. It has commenced an impairment analysis to determine if the potential resource and reserve reduction could lead to an impairment charge in current or prior periods. In addition, any change in CLG's LOM could impact depreciation and amortization expense either prospectively or in prior periods. If the Company determines that any of these changes should have been reflected in prior periods, the Company may be required to restate its financial statements for those periods. No determination has been made that a restatement is necessary.

78. The Public Correction revealed that the CLG Mineral Reserve Statement was materially overstated and, by extension, was a misrepresentation. The Public Correction also revealed the existence of the Omitted Material Facts.
79. In the wake of the Public Correction, Canaccord Genuity Capital Markets issued a report describing the revelation as a "material setback." Similarly, RBC Capital Markets issued a report which stated, among other things, that "[o]bviously, this is a materially negative event."

80. All of BMO Capital Markets, RBC Capital Markets, and Canaccord Genuity Capital Markets—which had previously reported target prices for Gatos between US\$12.50 and US\$17 per share—slashed their price targets for Gatos shares to US\$4.
81. On January 25, 2022, the closing price for Gatos common shares on the TSX was C\$12.84. The volume weighted average closing price of Gatos’s shares on the TSX over the ten trading days following the Public Correction was C\$3.97, a decline of more than 69% from the closing price of C\$12.84 immediately prior to the Public Correction. Over the same period, Gatos also significantly underperformed the S&P/TSX Global Mining Index and the Russell 2000 Index. The closing price and trading volume of Gatos shares on the TSX over that period was as follows:

Date	Close (\$C)	Volume
2022-01-25	12.84	48,857
2022-01-26	4.03	1,151,827
2022-01-27	3.57	504,449
2022-01-28	3.91	239,382
2022-01-31	3.96	205,032
2022-02-01	4.09	237,403
2022-02-02	4.11	208,889
2022-02-03	3.80	136,364
2022-02-04	3.97	134,027
2022-02-07	4.29	218,629
2022-02-08	4.37	125,948

82. On January 25, 2022, the closing price for Gatos common shares on the NYSE was US\$10.19. The volume weighted average closing price of Gatos’s shares on the NYSE over the ten trading days following the Public Correction was US\$3.12, which was approximately 55% lower than Gatos’s IPO price, approximately 74% lower than the Second Offering price, and a decline of more than 69% from the closing price of

US\$10.19 immediately prior to the Public Correction. The closing price and trading volume of Gatos shares on the NYSE over that period was as follows:

Date	Close (US\$)	Volume
2022-01-25	10.19	724,400
2022-01-26	3.17	18,403,100
2022-01-27	2.81	6,905,800
2022-01-28	3.06	4,442,400
2022-01-31	3.11	3,505,400
2022-02-01	3.23	2,284,200
2022-02-02	3.25	2,690,300
2022-02-03	2.99	2,575,700
2022-02-04	3.11	3,022,300
2022-02-07	3.40	2,565,000
2022-02-08	3.45	1,279,300

XI. POST-CLASS PERIOD EVENTS

83. On October 3, 2022, Gatos announced an updated Mineral Reserve statement for CLG (“**2022 Mineral Reserve**”) and reported that:

Working with independent engineering consultants to better understand the magnitude of the errors and overestimation, it has been determined that the reduction in contained metal of the 2022 Mineral Reserve compared to the 2020 Technical Report is as follows: 32% silver, 37% zinc, 36% lead and 35% gold, after accounting for depletion. This reduction is within the bottom half of the 30% to 50% range originally estimated.

84. Gatos also disclosed that:

The reserve numbers reported in the 2020 Technical Report were impacted by two material and compounding errors. First, the block model used in preparation of the reserve estimate was distorted during transfer between software packages resulting in reduced block dimensions and unestimated spaces between blocks. Second, an incorrect software parameter was used in calculating tonnes and grades within designed stope solids that resulted in any unestimated volume (both planned intentional dilution outside the estimated vein and unestimated spaces resulting from the distortion) being applied at the average mineralized grade instead of zero grade for dilution. The effective result of the combination of these errors is that metal grades were significantly overstated in the 2020 Technical Report. There were other minor errors identified during the analysis of the 2020 Mineral Reserve, including overlapping reserve stope solids, incorrect external dilution calculations and the inclusion of a small amount of Inferred grades within stope solids. In addition to

correcting the errors identified in the 2020 Technical Report, which was the majority of the reduction, we previously disclosed the need to make additional adjustments in the 2020 Mineral Reserve. There are multiple factors that have contributed to the remaining adjustments in the 2022 Mineral Reserve since the 2020 Technical Report, and these adjustments have been addressed in the new 2022 Mineral Reserve, with all underlying assumptions modified based on actual operating experience since plant operations commenced in August 2019.

The factors that have reduced the metal content in the Mineral Reserve include the South-East zone infill drilling data, updated geological modelling, updated mining dilution and recovery assumptions, increased operating cost assumptions and decreased zinc plant recoveries. The factors that have increased the metal content in the Mineral Reserve include increased plant throughput, increased silver and lead processing recoveries and higher metal price assumptions compared to the 2020 Technical Report.

85. In tonnage terms, the CLG Mineral Reserve Statement was overstated by approximately 30Moz of contained silver, 445Mlbs of contained zinc, 210Mlbs of contained lead, and 38kOz of contained gold, as shown by Gatos in the following table:

Table 5: Summary of changes from the 2020 Technical Report to the 2022 Mineral Reserve

		2020 Technical Report LOM (A)	Depletion from July 1, 2020 to June 30, 2022 (B)	2022 Mineral Reserve (C)	2022 Mineral Reserve + Depletion (B+C)	% Change (B+C)/A - 1
P&P Reserve	Mt	9.62	1.73	6.07	7.79	(19)%
Ag Grade	g/t	305	305	244	258	(16)%
Zn Grade	%	5.65	4.07	4.48	4.39	(22)%
Pb Grade	%	2.76	2.33	2.14	2.19	(21)%
Au Grade	g/t	0.35	0.34	0.27	0.28	(20)%
Ag Contained	Moz	94.5	16.9	47.7	64.5	(32)%
Zn Contained	Mlbs	1,199	155	599	754	(37)%
Pb Contained	Mlbs	585	89	287	375	(36)%
Au Contained	kOz	109	19	52	71	(35)%

86. On November 22, 2022, Gatos held an investor conference to discuss the 2022 Mineral Reserve. Tony Scott, VP of Evaluations & Technical Services, stated:

This [2022 Mineral Reserve] and resource has been a group effort. Golder Associates are the ones that have signed off on the technical reports as our QPs, but there's been a lot of work by the LGJV staff, Gatos Silver staff. In both, workover went into the reserve and also various review processes. In addition to that work by Golder, we've also had AMC Mining consultants do an independent verification of the numbers as well. So we have set up a process that will stop the errors that occurred with the 2020 mineral reserve occurring again.

So addressing that situation, as we announced in January of this year, there was an error in the 2020 mineral reserve that was reported in the 2020 technical report. There was 2 main errors that contributed to the majority of the 30 million ounce reduction there, and those are explained in the images on the right-hand side. So the image on the top on the right is what the block model and stope design should have looked like. You can see that the stope design is slightly larger than the vein and the blocks and those blocks show the solar value there. That dilution that was assumed on either side was supposed to be applied at 0 or low grade.

The image on the bottom right of Slide 8 shows the distorted block model that occurred, and that distortion occurred as the block model was transferred between software packages. And the second error that occurred was that the material in the blank space is that unestimated material around the vein material instead of being applied at 0 or low grade was applied at the average grade of the mineralized blocks. So while the application of the dilution error was a big contributor to that, it was actually the combination of the 2 that exacerbated the issue and ended up with the difference that occurred.

XII. RIGHTS OF ACTION

Section 130 of the OSA

87. During the Class Period, Gatos offered securities to the public by way of the Offerings. The Impugned Prospectuses for the Offerings were required to provide full, true and plain disclosure of all material facts relating to the securities issued pursuant to those Impugned Prospectuses and in the distributions to which they related.
88. The Impugned Prospectuses contained the misrepresentations set out herein.
89. On behalf of the Prospectus Purchaser Class Members who purchased Gatos securities offered by the IPO Prospectus during the period of distribution, the Plaintiff pleads the right of action in section 130 of the *OSA* (and, if necessary, the equivalent sections of the Other Securities Legislation) against Gatos, Orr, Johnson, Pyle, Electrum Group, ESUS, the Individual Authors, and Tetra Tech.
90. On behalf of the Prospectus Purchaser Class Members who purchased Gatos securities offered by the Second Prospectus during the period of distribution, the Plaintiff pleads

the right of action in section 130 of the *OSA* (and, if necessary, the equivalent sections of the Other Securities Legislation) against Gatos, Orr, Johnson, Pyle, the Electrum Defendants, and Tetra Tech.

91. Gatos is the issuer on whose behalf the Offerings were made.
92. Orr was a director of Gatos at the time of the Offerings.
93. All of Orr, Johnson, Electrum Group, and ESUS signed the Impugned Prospectuses, and ESUS II signed the Second Prospectus.
94. Tetra Tech, the Individual Authors, and Pyle all consented to the disclosure of information in the IPO Prospectus, and such consents were filed pursuant to the requirements of regulations to the *OSA* (and, if necessary, the Other Securities Legislation).
95. ESUS and ESUS II were selling securityholders on whose behalf the Second Offering (or part thereof) was made.
96. Tetra Tech and Pyle consented to the disclosure of information in the Second Prospectus, and such consents were filed pursuant to the requirements of regulations to the *OSA* (and, if necessary, the Other Securities Legislation).
97. On August 18, 2021, Gatos, ESUS, and ESUS II issued and sold common shares as part of the Second Offering. For Prospectus Purchaser Class Members who acquired Gatos securities in the Second Offering on or around August 18, 2021, the Plaintiff claims, in the alternative to damages, an order for rescission of the acquisition of those securities.

Negligence simpliciter

98. On behalf of the Prospectus Purchaser Class Members who purchased Gatos securities

offered by the IPO Prospectus during the period of distribution, the Plaintiff pleads a claim for negligence *simpliciter* against Gatos, Orr, Johnson, Pyle, Electrum Group, ESUS, the Individual Authors, and Tetra Tech.

99. On behalf of the Prospectus Purchaser Class Members who purchased Gatos securities offered by the Second Prospectus during the period of distribution, the Plaintiff pleads a claim for negligence *simpliciter* against Gatos, Orr, Johnson, Pyle, the Electrum Defendants and Tetra Tech.
100. As all of Gatos, Orr, Johnson, and the Electrum Defendants knew, securities cannot be distributed under a prospectus unless the certificates required pursuant to the *OSA* (and, if necessary, the Other Securities Legislation) have been signed. These Defendants owed a duty of care to the Prospectus Purchaser Class Members to act diligently to ensure that the Impugned Prospectuses contained full, true and plain disclosure of all material facts concerning Gatos. They were required, pursuant to the *OSA* (and, if necessary, the Other Securities Legislation), to undertake a reasonable investigation to ensure the Impugned Prospectuses contained full, true and plain disclosure.
101. These Defendants made an undertaking to the Prospectus Purchaser Class Members to conduct a reasonable investigation to determine whether the Impugned Prospectuses contained full, plain and true disclosure of all material facts and to refrain from signing the relevant certificates if they did not contain full, plain and true disclosure of all material facts. They were aware that the Prospectus Purchaser Class Members would reasonably rely, to their detriment, upon the undertaking.
102. As Tetra Tech, Pyle, and the Individual Authors knew, their consent to disclosure of information in the IPO Prospectus and, in the case of Tetra Tech and Pyle, the Second

Prospectus, would need to be filed pursuant to the requirements of regulations to the *OSA* (and, if necessary, the Other Securities Legislation). These Defendants owed a duty of care to act diligently to ensure that the Impugned Prospectuses did not contain any misrepresentations derived from their work and/or the services they performed. They were required, pursuant to the *OSA* (and, if necessary, the Other Securities Legislation) to undertake a reasonable investigation to ensure there were no misrepresentations in the Impugned Prospectuses.

103. These Defendants made an undertaking to the Prospectus Purchaser Class Members to conduct a reasonable investigation to determine whether the Impugned Prospectuses contained misrepresentations derived from their work and/or the services they performed, and to refrain from granting consent to disclosure of information in the Impugned Prospectuses if such a misrepresentation existed. They were aware that the Prospectus Purchaser Class Members would reasonably rely, to their detriment, upon the undertaking.
104. The number of securities, the Prospectus Purchaser Class Members, and the value of the Offerings were all known or knowable to the Defendants. It was foreseeable the Prospectus Purchaser Class Members would suffer damages as a result of the Defendants' breaches of their duties of care, and the amount of liability was pre-determined and capped at the value of the Offerings.
105. The Defendants breached their duties of care, and the Prospectus Purchaser Class Members suffered damage. But for the negligence of the relevant Defendants to verify the CLG Mineral Reserve Statement, the Offerings would not have taken place or,

alternatively, the Gatos common shares would have been sold in the Offerings at a materially lower price.

Unjust Enrichment

106. On behalf of the Prospectus Purchaser Class Members who purchased Gatos securities offered by the IPO Prospectus during the period of distribution, the Plaintiff pleads a claim for unjust enrichment against Gatos.
107. On behalf of the Prospectus Purchaser Class Members who purchased Gatos securities offered by the Second Prospectus during the period of distribution, the Plaintiff pleads a claim for unjust enrichment against Gatos, ESUS and ESUS II.
108. Gatos was enriched through the Offerings, and ESUS and ESUS II were enriched through the Second Offering, and the Plaintiff and Prospectus Purchaser Class Members suffered a corresponding deprivation of:
 - (i) the amounts received by Gatos from the Offerings pursuant to the Impugned Prospectuses, and the amounts received by ESUS and ESUS II from the Second Offering pursuant to the Second Prospectus; or
 - (ii) alternatively, an amount equivalent to the difference between the price at which the common shares were sold in those Offerings and the price at which the common shares would have been sold in the Offerings had the misrepresentations particularized herein not been made, multiplied by the number of common shares that were sold in the Offerings.
109. There is no juristic reason for the enrichment of Gatos in the Offerings. The proceeds of the Offerings were received by Gatos as a result of its own wrongful and unlawful

acts. The Impugned Prospectuses contained misrepresentations, as particularized herein, in violation of Gatos's duties and the *OSA* (and, if necessary, the Other Securities Legislation). There is no contract, disposition of law, donative intent or other valid legal obligation that justifies the enrichment. Any contracts upon which Gatos purports to rely to justify its enrichment are void and illegal.

110. There is no juristic reason for the enrichment of ESUS and ESUS II in the Second Offering. The proceeds from sales of shares by ESUS and ESUS II in the Second Offering were received by these entities as a result of their own wrongful and unlawful acts. The Second Prospectus contained misrepresentations, as particularized herein, in violation of these Defendants' duties and the *OSA* (and, if necessary, the Other Securities Legislation). There is no contract, disposition of law, donative intent or other valid legal obligation that justifies the enrichment. Any contracts upon which ESUS and ESUS II purport to rely to justify its enrichment are void and illegal.

Part XXIII.1 of the *OSA*

111. On behalf of the Secondary Market Class Members, the Plaintiff pleads the right of action under Part XXIII.1 of the *OSA* (and, if necessary, the analogous sections of the Other Securities Legislation) against Gatos, Orr, Johnson, Pyle, the Electrum Defendants and Tetra Tech, but against Electrum Group and ESUS only in respect of the Impugned Prospectuses and ESUS II only in respect of the Second Prospectus.
112. The Secondary Market Class Members acquired Gatos securities following the release of one or more of the Impugned Documents, and prior to the Public Correction as described above. Each of the Impugned Documents contained one or more of the misrepresentations alleged herein. Such misrepresentations were misrepresentations

- within the meaning of *OSA* (and, if necessary, the Other Securities Legislation).
113. Each of the Impugned Documents is a “Core Document” within the meaning of *OSA* (and, if necessary, the Other Securities Legislation).
 114. Gatos is a reporting issuer and a responsible issuer within the meaning of Part XXIII.1 of the *OSA* (and, if necessary, the Other Securities Legislation).
 115. Orr is a director and officer of Gatos within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation). Orr signed the Impugned Prospectuses and provided certifications pursuant to NI 52-109 in connection with the other Impugned Documents. Orr authorized, permitted or acquiesced in the release of the Impugned Documents.
 116. Johnson is an officer of Gatos within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation). Johnson signed the Impugned Prospectuses and provided certifications pursuant to NI 52-109 in connection with the other Impugned Documents. Johnson authorized, permitted or acquiesced in the release of the Impugned Documents.
 117. Pyle is an officer of Gatos within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation). Pyle authorized, permitted or acquiesced in the release of the Impugned Documents. In the alternative, Pyle is liable as an expert within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation).
 118. Tetra Tech is an expert within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation). It is liable for misrepresentations contained in the Technical Report where the Impugned Documents include, summarize or quote from that document. Tetra Tech consented in writing to the use of the Technical Report in the Impugned Documents.

119. Each of the Electrum Defendants is an influential person within the meaning of the *OSA* (and, if necessary, the Other Securities Legislation), as they were each a control person, promoter and/or insider of Gatos. By signing the Certificates of the Promoters in the Impugned Prospectuses, Electrum Group and ESUS knowingly influenced Gatos to release those documents. By signing the Certificate of the Selling Securityholders in the Second Prospectus, ESUS and ESUS II knowingly influenced Gatos to release those documents.

Negligent Misrepresentation

120. On behalf of the Secondary Market Class Members, the Plaintiff pleads negligent misrepresentation against Gatos, Orr, Johnson, Pyle, the Electrum Defendants, and Tetra Tech, but against Electrum Group and ESUS only in respect of the Impugned Prospectuses and ESUS II only in respect of the Second Prospectus.
121. The Impugned Documents were prepared and disseminated for the purpose of providing material information and inducing Secondary Market Class Members to purchase Gatos shares. Gatos, Orr, Johnson, Pyle, and Tetra Tech all undertook to prepare and disseminate the Impugned Documents with reasonable care for the aforementioned purpose. These Defendants were aware that Secondary Market Class Members would reasonably and to their detriment rely on the Impugned Documents in making the decision to purchase Gatos shares, and that the information in the Impugned Documents would be incorporated into Gatos's shares.
122. These 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, Secondary Market Class Members. They had a duty of care at common law to exercise due care and

diligence to ensure that the Impugned Documents fairly and accurately disclosed all material information about CLG, including the Omitted Material Facts. They breached this duty by failing to disclose the Omitted Material Facts and failing to exercise due care in the creation and dissemination of the Impugned Documents.

123. Electrum Group and ESUS, in respect of the Impugned Prospectuses, and ESUS II, in respect of the Second Prospectus, undertook to prepare and disseminate these documents with reasonable care for the purpose of providing material information and inducing Secondary Market Class Members to purchase Gatos shares. Electrum Group and ESUS were aware that Secondary Market Class Members would reasonably and to their detriment rely on the Impugned Prospectuses, and ESUS II was aware that the Secondary Market Class Members would reasonably and to their detriment rely on the Second Prospectus, in making the decision to purchase Gatos shares, and that the information in these documents would be incorporated into Gatos's shares.
124. Electrum Group and ESUS had responsibility for the preparation of the Impugned Prospectuses and undertook to do so, for the benefit of, and to be relied upon by, Secondary Market Class Members. ESUS II had responsibility for the preparation of the Second Prospectus and undertook to do so, for the benefit of, and to be relied upon by, Secondary Market Class Members. Electrum Group and ESUS had a duty of care at common law to exercise due care and diligence to ensure that the Impugned Prospectuses fairly and accurately disclosed all material information about CLG, including the Omitted Material Facts. ESUS II had a duty of care at common law to exercise due care and diligence to ensure that the Second Prospectus fairly and accurately disclosed all material information about CLG, including the Omitted

Material Facts. They breached this duty by failing to disclose the Omitted Material Facts and failing to exercise due care in the creation and dissemination of these documents.

125. The Secondary Market Class Members directly or indirectly relied upon the misrepresentations in making a decision to purchase Gatos's shares and suffered damages in the aftermath of the Public Correction.

126. Alternatively, the Secondary Market Class Members relied upon the misrepresentations by the act of purchasing Gatos's shares in an efficient market that promptly incorporated into the price of those shares all publicly available material information regarding the shares of Gatos.

127. As a result, the misrepresentations caused the price of Gatos's shares to trade at artificially inflated prices during the Class Period, thus directly resulting in damage to the Secondary Market Class Members after the Public Correction.

XIII. THE RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE OF GATOS'S SECURITIES

128. The price of Gatos's securities was directly affected during the Class Period by the issuance of the Impugned Documents. The Defendants were aware at all material times of the effect of Gatos's disclosure documents upon the price of Gatos's securities.

129. The Impugned Documents were filed with SEDAR and the TSX, and otherwise made available to the public, including through the Electronic Data Gathering, Analysis and Retrieval System for companies submitting documents in the U.S. The Impugned Documents thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts, mining analysts, and the financial press.

130. Gatos routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of Gatos securities. Gatos either provided copies of the above referenced documents or links thereto on its website.
131. Gatos regularly communicated with public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada, the United States and elsewhere. Each time Gatos communicated new material information about Gatos's financial results to the public, the price of Gatos's securities was directly affected.
132. Gatos was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase Gatos securities in such reports during the Class Period were based, in whole or in part, upon that information.
133. At all material times during the Class Period, Gatos securities were traded, among other places, on the TSX and NYSE, which are efficient and automated markets. The price at which Gatos's securities traded promptly incorporated material information from Gatos's disclosure documents about Gatos's business and affairs, including the misrepresentations particularized herein, which were disseminated to the public through the documents referred to above and distributed by Gatos, as well as by other means.
134. If the Impugned Documents had contained the Omitted Material Facts:
- (a) the Offerings would not have occurred, or the value of the Offerings would have been lower, and the trading price of Gatos's shares would have promptly

incorporated the Omitted Material Facts, and declined;

- (b) Class Members would have acquired Gatos's shares during the Class Period at a lower price than they did, or would not have acquired Gatos's shares at all; and
- (c) Class Members would not have sustained the damage they did sustain.

XIV. VICARIOUS LIABILITY

- 135. In addition to its direct liability, Gatos is vicariously liable for the acts and/or omissions of Orr, Johnson, and Pyle, and its other officers, directors, and employees because their acts and omissions with respect to the misrepresentations were carried out while they were engaged in the management, direction and control of the business affairs of Gatos.
- 136. In addition to its direct liability, Tetra Tech is vicariously liable for the acts and/or omissions of the Individual Authors and, as may be applicable, its other officers, directors or employees because their acts and omissions with respect to the misrepresentations were carried out while they were engaged in the management, direction and control of the business affairs of Tetra Tech.
- 137. In addition to their direct liability, the Electrum Defendants are vicariously liable for the acts and/or omissions of their respective officers, directors or employees because their acts and omissions with respect to the misrepresentations were carried out while they were engaged in the management, direction and control of the business affairs of those entities.

XV. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

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

- (a) Gatos is a reporting issuer in Ontario;
- (b) The securities of Gatos trade on the TSX, the TSX Alpha Exchange, and the Omega ATS, which are in Toronto; and
- (c) The Plaintiff and other Class Members resident in Ontario acquired Gatos shares and suffered damage in Ontario.

XVI. RELEVANT LEGISLATION

139. The Plaintiff pleads and relies on the *Courts of Justice Act*, RSO 1990, c C-43, the *CPA*, the *OSA*, and the Other Securities Legislation, all as amended.

XVII. SERVICE OUTSIDE ONTARIO WITHOUT LEAVE

140. The Plaintiff pleads and relies on rule 17.02(g), (n), and (p) of the *Rules of Civil Procedure* to serve this claim outside Ontario without leave.

March 11, 2022

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Court File No: CV-22-00676682-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**SECOND FRESH AS AMENDED STATEMENT OF
CLAIM**

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ORDER

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